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Introduction

In a landmark ruling, a five-judge bench of the Supreme Court of India has held that courts, while reviewing challenge to arbitral awards under the Arbitration and Conciliation Act, 1996 ("**1996 Act**"), possess the power, albeit limited, to modify arbitral awards ("**Gayatri Balasamy**").¹ The judgment resolves a long-standing divergence in judicial opinion, most recently seen in *Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem*,² where a division bench of the Supreme Court had rendered a diametrically opposite view.

Amongst the basis for modification of arbitral awards, Gayatri Balasamy impresses upon the age-old doctrine of severability for modifying arbitral awards. However, the practical application of this doctrine in the context of arbitral awards may raise its own set of challenges for courts and parties alike.

Supreme Court's ruling in Gayatri Balasamy

In November 2024, a three-judge Bench of the Supreme Court referred the legal question of "**whether courts, under Sections 34 and 37 of the 1996 Act, are empowered to modify arbitral awards**" to a constitutional bench of five judges.

The Supreme Court in Gayatri Balasamy, with a 4:1 majority, positively answered the reference by holding that courts have the power, albeit limited, to modify arbitral awards. The Court reasoned that the greater power to completely set aside arbitral awards under Section 34 inherently includes the lesser power to modify arbitral awards or set them aside partially.³

While affirming the existence of court's power to modify awards, the Supreme Court clarified that this power may be exercised only under the following circumstances:

- ▶ Where the arbitral award is severable, i.e. when the invalid portion of the award can be severed from the valid portion, and the two are not interdependent or intrinsically intertwined;
- ▶ To correct clerical, computational or typographical errors as well as other manifest errors appearing on

1 *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, 2025 SCC OnLine SC 986.

2 *Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem*, 2021 SCC OnLine SC 473.

3 *Gayatri Balasamy*, at para 46.

the face of record, without delving into merits;

- ▶ To modify post-award interest based on facts that unfold after the issuance of an award – for instance, if the party entitled to the post-award interest has caused unnecessary delays in acceptance of the interest amount;
- ▶ Invocation of Article 142 of the Constitution of India for the purpose of modification an of arbitral award is to be exercised with great care and caution, and only where necessary to bring litigation to an end without rewriting the award on merits.

In the event of uncertainty in relation to the exercise of powers to modify the award, courts may remand the award to the arbitral tribunal under Section 34(4) of the 1996 Act – allowing the tribunal to take necessary steps to eliminate the grounds for setting aside the award. However, such remand cannot be an open-ended process and has to be confined to specific issues pre-identified by the court.

Severability of Awards – How it Works

Routine and obvious corrections and post-award interest adjustments are straightforward areas for the modification of arbitral awards and have been addressed in several judgments permitting such modification.⁴ However, the aspect of “**severability**” of the award is one that invites substantive judicial examination and perhaps, a nuanced approach.

Doctrine of Severability explained

Rooted in the realm of contract law, the doctrine of severability permits severance of a valid part of a document from an invalid part ensuring existence and enforcement of the valid part irrespective of the legal infirmities in other parts of a document.

In *Shin Satellite Public Co. Ltd. v. Jain Studios Ltd.*⁵, the Supreme Court, in the context of applying severability in an agreement, propounded the ‘**blue pencil**’ principle. It was held that a court may excise invalid portions of a contract, provided the remaining terms are workable, enforceable, and reflect the original intention of the parties. This approach requires that the valid and invalid parts are not so entwined as to render the remainder unworkable or contrary to the contract’s foundational purpose.

The Supreme Court also clarified that the test is one of ‘**substantial severability**’ not mere textual divisibility and depends on whether the parties would still have agreed to the valid terms had they known the rest were unenforceable. If so, the valid portion can be enforced and the invalid parts ignored.

The power to sever the invalid part of the arbitral award, as held in *Gayatri Balasamy*, is intrinsically found in Section 34(2)(a)(iv) of the 1996 Act, which states that while considering setting aside of the award on the grounds of non-arbitrability of any dispute, only such part can be separated and set aside which contains the decisions on matters which are non-arbitrable.

When can Awards be severed?

While *Gayatri Balasamy* does not specify instances for severability of the arbitral award, existing judicial precedents provides assistive direction on the circumstances under which arbitral awards can be severed:

⁴ See, *ONGC Ltd. v. Western Geco International Limited*, (2014) 9 SCC 263; *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited*, (2019) 11 SCC 465.

⁵ *Shin Satellite Public Co. Ltd. v. Jain Studios Ltd.*, (2006) 5 SCC 501.

- ▶ **Severance of findings on claims barred by limitation** - In *J.C. Budhraj v. Chairman, Orissa Mining Corporation*,⁶ the Supreme Court, while considering an award passed under the erstwhile 1940 Act, severed an award only to the extent of the claims which were barred by limitation, and were beyond the jurisdiction of the arbitral tribunal. Thus, in cases where multiple claims have been referred to arbitration and a court under Section 34 of the 1996 Act holds that one of the claims is barred by limitation, the findings in relation to such a claim can be set aside and the award *qua* the other claims can stand.
- ▶ **Severance of specific parts of the award vitiated by grounds for challenge under Section 34** - In *R.S. Jiwani v. Ircon International*,⁷ the Bombay High Court noted that if an award falls under any of the grounds mentioned for setting aside the award, it may not be necessary for the court to set aside the entire award, and only that part of the award which is affected by the grounds under Section 34 may be set aside. The Court provided an example where a party, although duly notified and present during arbitral proceedings, was not given an adequate opportunity to lead evidence and present its case on its counterclaim. In this scenario, only the portion of the award relating to the counterclaim would be set aside due to procedural infirmity, while the remainder of the award would continue to stand. The Bombay High Court emphasized that it is *sine qua non* for severability that the bad part of the award has not intermingled or is not interdependent on the good part of the award and severing the bad part will not affect the award as a whole.
- ▶ **Award itself deals with several claims separately and distinctly** – In *J.G. Engineers v. Union of India*,⁸ the Supreme Court held that when the award itself deals with several claims separately and distinctly, courts under Section 34 would be compelled to deal with the challenge to the arbitral award in the same manner and set aside the findings only on the claims which are found to be infirm. A similar conclusion was reached in *Hindustan Steelworks Construction Limited v. New Okhla Industrial Development Authority*,⁹ where the Allahabad High Court held that the findings of the arbitral tribunal in relation to a specific claim may be set aside if the claim is separate and distinct from the rest.
- ▶ **Claims arising out of composite contract / transaction** - In *NHAI v. Trichy Tanjavur*,¹⁰ the Delhi High Court has observed that where each of the claims considered in an award arises out of a composite contract or transaction founded in distinct facts and flowing from separate identifiable obligations, and if such claims are separate, complete and self-contained in themselves, the decision of the tribunal on such individual claims would constitute an award in itself.

Conclusion

Our discussion leads us to postulate the following 3 step enquiry for applying the doctrine of severability to arbitral awards –

- ▶ Is the invalid part clearly identifiable?;
- ▶ Is the residual valid part(s) factually and legally independent of the invalid part?;
- and

6 *J.C. Budhraj v. Chairman, Orissa Mining Corporation Limited*, 2008 (2) SCC 444.

7 *R.S. Jiwani v. Ircon International Limited*, 2009 SCC OnLine Bom 2021.

8 *J.G. Engineers Private Limited v. Union of India*, (2011) 5 SCC 758.

9 *Hindustan Steelworks Construction Limited v. New Okhla Industrial Development Authority*, 2023 SCC OnLine All 2146.

10 *National Highways Authority of India v. Trichy Thanjavur Expressway Limited*, 2023 SCC OnLine Del.

- ▶ Can the invalid part be severed without affecting the rest of the award as a whole?

To bring objectivity and minimize judicial scrutiny on this account, it is advisable for parties and arbitrators alike to ensure that arbitration clauses and arbitration awards include specific covenants/ observations on severability of claims/findings, similar to clauses on severability of contracts embedded in commercial contracts. Such measures will not only minimize unnecessary legal squabble on the applicability of the doctrine of severability but also provide ease and clarity to courts in the judicial dissection of awards.

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