

• LATEST CASE LAWS

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- **Bihar State Food & Civil Supplies Corporation Ltd. v. Sanjay Kumar, (2025 SCC OnLine SC 1604)** The Supreme Court has reaffirmed that courts under Section 34 of the Arbitration & Conciliation Act, 1996 cannot re-appreciate evidence and may interfere with arbitral awards only on limited grounds like patent illegality or jurisdictional error.

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- **Surender Bajaj v. Dinesh Chand Gupta & Ors., ARB.P. 1076/2025 (Delhi High Court)**
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ARBITRATION & COMMERCIAL CASES UPDATES

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An E - Newsletter

Delhi High Court: Neosky India Ltd. and Anr. V. Nagendran Kandasamy and Ors. (2025 SCC OnLine Del 5396): Neosky India Ltd., a subsidiary of Rattan India Enterprises, invested in Throttle Aerospace Systems Pvt. Ltd. (“TAS”), acquiring 60% equity under a Share Subscription and Shareholders’ Agreement (SSHA) dated 25.05.2022. Alongside, the parties executed Non-Compete and Employment Agreements, which prohibited the promoters (respondents) from engaging in competing businesses for a defined period. However, three key promoters resigned in July 2023 and subsequently incorporated *Zulu Defence Systems Pvt. Ltd.*, a competing drone venture. Neosky initiated Section 9 proceedings to restrain the respondents from breaching their non-compete obligations and later invoked arbitration under the SSHA and NCA when the respondents failed to appoint an arbitrator within the prescribed time.

Background: Neosky alleged that the respondents breached contractual obligations by launching a competing venture and misusing confidential information, all of which were covered by the arbitration clauses. The respondents countered that the non-compete clause had expired, was void under Section 27 of the Contract Act, and could not bind them after resignation. They also objected to dragging non-signatories like Zulu and its directors into arbitration.

Decision: The Delhi High Court, per Justice Jasmeet Singh, held that the arbitration clauses in the SSHA and NCA were valid and binding, and that challenges to the non-compete obligations must be decided by the arbitral tribunal under the doctrines of kompetenz-kompetenz and separability. The Court reiterated that under Section 11 its role was confined to verifying the existence of an arbitration agreement, leaving substantive objections to the arbitrator. On non-signatories, it ruled that their involvement raised factual issues best left to the tribunal. Former Supreme Court judge Justice S.K. Kaul was appointed as sole arbitrator, with all rights and objections kept open for adjudication.

Gujarat High Court: Gujarat Power Corporation Ltd. v. Tata Power Renewable Energy Ltd., (R/SCA No. 6910 of 2025): The dispute arose out of a Power Purchase Agreement (2019) and an Implementation and Support Agreement (ISA) (2019) between Gujarat Power Corporation Ltd. (GPCL) and Tata Power Renewable Energy Ltd. (TPREL). Under these agreements, TPREL was required to commission a 250 MW power project and lay 33 KV evacuation lines, while GPCL was to provide the pooling station. TPREL claimed that delays on GPCL’s part in providing evacuation infrastructure caused losses exceeding ₹146 crores. Arbitral proceedings were initiated, and during evidence, GPCL discovered documents from the Chief Electrical Inspector suggesting that TPREL’s project was not ready on the date claimed. GPCL applied under Section 23(3) of the Arbitration and Conciliation Act, 1996 to amend its Statement of Defence based on this material. The arbitral tribunal rejected this amendment request, leading GPCL to file a writ petition under Articles 226 and 227 of the Constitution.

Background: Gujarat Power Corporation Ltd. (GPCL) entered into agreements with Tata Power Renewable Energy Ltd. (TPREL) for setting up a 250 MW project, where TPREL was to commission the project and lay evacuation lines while GPCL was to provide the pooling station. TPREL alleged delays by GPCL caused heavy losses and initiated arbitration. During the proceedings, GPCL sought to amend its defence on the basis of fresh documents obtained from the Chief Electrical Inspector, but the arbitral tribunal rejected this request, leading GPCL to file a writ petition challenging the order.

Decision: The Court, per Justice Mauna M. Bhatt, dismissed the writ petition at the threshold. It held that judicial review under Articles 226 and 227 against procedural orders of arbitral tribunals is to be exercised only in the rarest of cases where perversity, bad faith, or complete illegality is evident. Referring to Supreme Court precedents, the Court emphasised that supervisory jurisdiction cannot be used to correct every procedural lapse, as doing so would defeat the legislative objective of minimal judicial interference and speedy resolution under the 1996 Act. Since the arbitral tribunal’s order was a plausible view and not shown to be perverse or mala fide, the petition was not entertained.



EDITOR'S COMMENTS

- The judgment is a reaffirmation of the Court's consistent stand that Section 11 proceedings are not intended to examine the merits of the dispute or entertain technical objections.
- By placing the focus on the *prima facie* existence of an arbitration agreement, the Court has ensured that arbitral tribunals are not undermined at the threshold.
- This approach is particularly important in government contracts, where referrals are often delayed by raising jurisdictional or technical objection, Thus strengthens institutional respect for arbitration and curtails dilatory tactics in commercial disputes.

The Supreme Court's recent ruling in Bihar State Food & Civil Supplies Corporation Ltd. v. Sanjay Kumar, (2025 SCC OnLine SC 1604): The Supreme Court has reaffirmed that courts under Section 34 of the Arbitration & Conciliation Act, 1996 can re-appreciate evidence and may interfere with arbitral awards only on limited grounds like patent illegality or jurisdictional error.

Background

The dispute arose out of contractual arrangements between the Bihar State Food & Civil Supply Corporation Ltd. and the respondent, Sanjay Kumar. Differences in execution of the agreement led to invocation of the arbitration clause. The respondent approached the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator. The High Court allowed the petition and appointed a former judge as the sole arbitrator. Aggrieved, the Corporation carried the matter to the Supreme Court, primarily challenging the maintainability of the petition and the validity of the appointment.

The Supreme Court's Decision

The Supreme Court dismissed the appeal and upheld the High Court's order appointing the arbitrator. The Court reiterated that its role under Section 11 of the Arbitration and Conciliation Act, 1996 is confined to verifying the *prima facie* existence of an arbitration agreement, and any objections touching upon arbitrability, scope of disputes, or validity of claims must be left for determination by the arbitral tribunal under the principle of *kompetenz-kompetenz*. The Court further emphasized that judicial interference at the stage of Section 11 of the Arbitration and Conciliation Act, 1996 should remain minimal so as not to frustrate the legislative intent of speedy referral to arbitration.

Our View

This judgment reinforces the pro-arbitration approach consistently adopted by the Supreme Court, underlining the limited scope of judicial scrutiny at the referral stage. It sends a clear signal that parties cannot stall proceedings by raising issues that fall squarely within the tribunal's jurisdiction. From a practitioner's perspective, the decision underscores the importance of drafting arbitration clauses carefully, as once the agreement is evident, courts will be reluctant to entertain objections delaying arbitral reference. The ruling thus strengthens party autonomy and ensures expeditious commencement of arbitral proceedings, which is central to the scheme of the 1996 Act. t o

Surender Bajaj v. Dinesh Chand Gupta & Ors., ARB.P. 1076/2025 (Delhi High Court)

The petitioner sought appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, relying on an arbitration clause in a collaboration agreement concerning construction and possession rights over property at Paschim Vihar, Delhi. However, the respondents argued that the issue was already settled: the petitioner's earlier application under Section 8 of the Act had been dismissed by the Civil Judge in 2023 for failure to produce the original arbitration agreement, and the dismissal was upheld in appeal in 2024. The High Court held that entertaining a fresh Section 11 petition on the same arbitration clause would amount to res judicata, as the issue of reference to arbitration had already been conclusively decided by competent courts. Accordingly, the petition was dismissed, though liberty was reserved for the petitioner to pursue other remedies available in law

Shriram EPC Ltd. v. Parker-Hannifin India Pvt. Ltd. (2025 SCC OnLine Bom 2815)

Bombay High Court dismissed a Section 34 petition challenging an arbitral award. The dispute arose from a Supply Agreement for custom-made hydraulic equipment, where Shriram EPC failed to procure Letters of Credit as required, leading Parker-Hannifin to terminate the contract and invoke arbitration. The arbitrator partly allowed Parker-Hannifin's claims, awarding compensation for manufactured lots and raw materials. Shriram argued that third parties (CIAL and APL) were necessary parties and that its liability was limited to a 10% advance, but the Court held that the Supply Agreement prevailed over the later Multi-Party Agreement, Shriram bore the responsibility to procure the Letters of Credit, and the arbitrator's interpretation was a possible view not warranting interference.



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