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COURT'S POWERS TO MODIFY ARBITRAL AWARDS

The Supreme Court (SC) in the Gayatri Balaswamy case¹ directed the Special Leave Petition (SLP) to be placed before the Chief Justice of India to refer the questions of law relating to the powers of a court to modify an arbitral award before a larger bench. The SC by a 4:1 majority, held that the courts hold limited power to modify an arbitral award.

Brief Facts.

- Gayathri Balaswamy alleged sexual harassment by the CEO of ISG Novasoft, and subsequently filed a criminal complaint in 2006. Eventually, the matter reached the SC and was referred to arbitration.²
- The Arbitral Tribunal (AT) awarded Balaswamy a sum of Rs. 2 crore (Award). Balaswamy was, however, dissatisfied with the Award and moved the Madras High Court (HC), under Section 34³ of the Arbitration and Conciliation Act, 1996 (ACA) on the grounds that several of the allegations were not considered by the AT. In 2014, the HC modified the earlier award and awarded an additional compensation of Rs. 1.6 crore. Subsequently, in 2019, a Division Bench of the HC further modified the Award, stating that the additional compensation was “*excessive and onerous*,” and reduced it to Rs. 50,000⁴.
- Balaswamy thereafter moved the matter to the SC, through an SLP.
- The SC, *via* an order dated 20 Feb 2024, directed that the SLP be placed before the Chief Justice of India (CJI).⁵

¹ *Gayatri Balaswamy v M/S. ISG Novasoft Technologies Limited* SLP (C) Nos.15336-15337/2021. Copy available [here](#).

² ‘Court’s Power to Modify an Arbitral Award – Gayatri Balaswamy v ISG Novasoft Technologies Ltd’, *Supreme Court Observer* (30 April 2025) 2025 INSC 605 (accessed 11 July 2025).

³ Section 34 directs that an arbitral award can only be challenged in court through an application for setting aside the award, based on specific grounds such as incapacity, invalid agreement, lack of notice, jurisdictional errors, procedural irregularities, or conflict with public policy.

⁴ *Ibid* at 2.

⁵ Page 2 of the judgment.

Questions & Principle of Law.⁶

At the crux, the question was whether Indian courts were jurisdictionally empowered to modify an arbitral award? If so, what was the extent of the same. And the ancillary questions were:

- Whether modification is permitted when the award is severable?
- Whether the power to set aside an award must be interpreted as including the power to modify it?
- Whether the judgments⁷ were correctly decided, given that modifications have been made or accepted by other benches?

Arguments For & Against Modification.

- **For:** Relied on *Abmedabad St. Xavier College Society* case⁸ where a nine-judge bench of the SC applied the legal maxim *omne majus continet in se minus*⁹ meaning “the greater includes the lesser.” Based on this principle, argued that the power to set aside an award should inherently include the power to modify or partially set it aside.
- **Against:** Indian courts lack the authority to modify arbitral awards during set-aside proceedings because:
 - The ACA, based on the UNCITRAL Model Law,¹⁰ does not provide for court-led modifications of arbitral awards;
 - Courts are not vested with appellate powers to reassess the merits of an award and alter it; and
 - An award modified by a court may risk being unenforceable under the New York Convention.¹¹

SC’s Judgement & Reasoning.

The SC:

- Examined the scope and the ambit of the power of recourse under Section 34 of the ACA.
- Held that courts only have limited powers of modification.¹²
- Observed that denying courts the authority to modify an arbitral award—especially when such denial results in undue hardship, increased costs, and avoidable delays—would undermine the very purpose of arbitration.¹³

⁶ *Ibid* at 5.

⁷ *Project Director, NHAI vs. M. Hakeem*, (2021) 9 SCC 1 and judgments following it *Larsen Air Conditioning and Refrigeration Company vs. Union of India* (2023) 15 SCC 472, and *SV Samudram vs. State of Karnataka* (2024) 3 SCC 623, *Oriental Structural Engineers Pvt. Ltd vs. State of Kerala* (2021) 6 SCC 150.

⁸ *Abmedabad St. Xavier College Society and Another v. State of Gujarat and Another*(1974) 1 SCC 717.

⁹ Paragraph 18 of the judgement.

¹⁰ United Nations Commission On International Trade Law (UNCITRAL) on International Commercial Arbitration (1985) available [here](#).

¹¹ Paragraphs 20 & 21 of the judgement referring to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1985.

¹² Paragraph 38 of the judgement.

¹³ Paragraph 41 of the judgement.

- Opined that if there is ambiguity or uncertainty surrounding the court’s power to modify an award, the court should refrain from doing so. Instead, it should exercise its remedial authority under Section 34(4) and remit the matter back to the arbitral tribunal for reconsideration.¹⁴
- Held that partial setting aside of an award is allowed only if the valid and invalid parts—especially regarding liability and quantum—are clearly separable.¹⁵
- Held, through 4:1 majority, that courts have limited powers to modify an arbitral award under Section 34 of the ACA.
- Held that modification is allowed when:
 - “*The error is apparent.*”¹⁶
 - When the award is severable, to rectify computational, clerical, or typographical mistakes that are evident, along with any “*manifest errors*” that do not require an assessment of the award on its merits.¹⁷
 - Post award interest may be modified in some circumstances.¹⁸
- SC’s powers under Article 142¹⁹ of the Constitution must be exercised with utmost care and caution, avoiding interference with the merits of the arbitral award. However, it may be used to conclusively resolve disputes and prevent prolonged litigation.²⁰

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¹⁴ Paragraph 55 of the judgement.

¹⁵ Paragraph 36 of the judgement.

¹⁶ Paragraph 54 of the judgement.

¹⁷ Paragraph 49 of the judgement.

¹⁸ Paragraph 85 of the judgement.

¹⁹ Grants the Supreme Court the power to issue decrees and orders necessary to ensure “complete justice” in any matter pending before it.

²⁰ Paragraph 84 of the judgement.