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Decoding the Conundrum around Section 34(4) of the Arbitration and Conciliation Act, 1996

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Section 34[1] of the Arbitration and Conciliation Act, 1996 (the "Arbitration Act") specifies the options open to a party who seeks to contest an arbitral ruling. There have been a few legislative changes made to Section 34(2)[2] of the Arbitration Act, and it has become the focus of numerous decisions that illustrate the constraints on how an arbitral result can be challenged. The courts and the Legislature have both worked to limit judicial meddling with arbitral decisions and arbitration processes since party autonomy and the permanency of awards are trademarks of the arbitration proceedings. This was accomplished by narrowing the application and implementation of the arguments permitted under Section 34(2) of the Arbitration Act. In an arbitration seated in India, the only option for an aggrieved party to dispute an arbitral award is to do so under Section 34(2) of the Arbitration Act. The verdict will be ruled out if the challenging party can fit their argument into one of the few grounds allowed by the provision and receives the court's sanction. However, the award holder has another rarely considered option; he can ask the court to strike down the basis for putting aside a decision by applying under Section 34(4)[3] of the Arbitration Act. It is not quite clear what Section 34(4)'s actual scope and application are. The Section is written in such a way that the party in whose interest an order has been made would like to provide the broadest interpretation that should be given to the provision to uphold the award. Instead, a party that has lost in front of the arbitrator will attempt to argue that the scope is extremely narrow and that a cause for contesting an award cannot be disregarded by the court by returning the case to the arbitrator to eliminate such arguments.

[1] Arbitration and Conciliation Act 1996, s 34
[2] Arbitration and Conciliation Act 1996, s 34(2)
[3] Arbitration and Conciliation Act 1996, s 34(4)

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APPLICABILITY OF SECTION 34(4) OF THE ARBITRATION AND CONCILIATION ACT, 1996

The Madras High Court's almost ten-year-old decision in MMTC v Vicnivass Agency[4] appears to be the most thorough study of Section 34(4) of the Arbitration Act to date. The arbitrator's evaluation of an affidavit and a document submitted by one party after the arbitral proceedings were over was the subject of the MMTC (supra) case. Without giving the other party a copy or the chance to comment on it, the arbitrator made his decision based only on this paper. Before the Tuticorin District Court, the arbitration award was contested by Section 34 of the Arbitration Act. In response to a request made according to Section 34(4) of the Arbitration Act, the District Court remanded the case to the arbitrator for further examination, after affording each party a reasonable chance to be heard and suspended the award for a period of six months.

In a ruling on appeal, the Madras High Court determined that the District Court had the prerogative to use its authority under Section 34(4) of the Arbitration Act because (a) neither party had the chance to contest the affidavit submitted by the other party, which is a clear and convincing reason to set aside the judgment; (b) the arbitrator could have eliminated the reason for doing so; and (c) a situation had evolved where it was appropriate to use Section 34(4) of the Arbitration Act to overcome the party's incompetence or inability to make his case. It further ruled that because the power under Section 34(4) of the Arbitration Act is distinct from the power under Section 16 of the 1940 Act, the remission of the case for new consideration was not completely in line with that provision of the law.

It could be claimed that the arbitral tribunal is given much greater power under MMTC (above) than is allowed by Section 34(4) of the Arbitration Act. The instances in which the court can or should utilize its discretion under Section 34(4) of the Arbitration Act remain a pending question, even if the arbitral tribunal's discretion is as broad as it has been understood in MMTC.

[4] *M/S.M.M.T.C v Vicnivass Agency* (2009) (1) MLJ 199

In this regard, Section 34(4) is noticeably quiet, and it only states that the court may use this authority "when appropriate." There are numerous unanswered questions and uncertainties in this.

CAN ANY FOUNDATION WITHIN SECTION 34(2) OF THE ARBITRATION ACT BE ELIMINATED BY USING SECTION 34(4) OF THE ARBITRATION ACT?

The Arbitration and Conciliation Act's Section 34(2)[5] lists two kinds of circumstances for annulling an award. The Arbitration Act's Section 34(2) lists two kinds of circumstances for annulling an award. Illegitimacy of the arbitration agreement, absence of adequate notice of the arbitrator's nomination or the arbitral proceedings, the incapability of a party to convey his argument, an award that engages with a conflict that was not forwarded to arbitration, an improperly constituted arbitral tribunal, an arbitral procedure that is against the parties' assent, etc. are just a few of the premises for challenge listed in Section 34(2)(a)[6]. Upon the foundation of the arbitral tribunal's findings, these reasons must be proven by the party contesting the verdict. According to Section 34(2)(b)[7] of the Arbitration Act, a judgement may be revoked if the court determines that the issue cannot be resolved through arbitration or that it is against Indian public policy.

The grounds listed in Section 34(2)(b) of the Arbitration Act are fundamental to the decision and are substantive. The court should put the decision aside in such a situation, despite a request made under Section 34(4)[8] of the Arbitration Act, since the decision relates to a conflict that cannot be resolved by arbitration and this is consequently not a ground that can be eliminated. Aside from the fact that it could be wasteful and even harmful to transfer parties back to an arbitral tribunal that has rendered a decision that is contrary to public policy, the arbitral tribunal is also unable to eliminate the basis of conflict with public policy.

[5] Arbitration and Conciliation Act 1996, s 34(2)
[6] Arbitration and Conciliation Act 1996, s 34(2)(a)
[7] Arbitration and Conciliation Act 1996, s 34(4)(b)
[8] Arbitration and Conciliation Act 1996, s 34(4)

In Dyna Technologies Pvt. Ltd. v Crompton Greaves Ltd[9]., the Supreme Court addressed an award that seemed to be illogical and insufficiently substantiated and made the following ruling: An appeal to an award may only be made for the reasons listed in Section 34 of the Arbitration Act if it is based on improper behaviour or perverse thinking. Awards that are difficult to understand must be disregarded, under party autonomy to eliminate rational awards. The purpose of Section 34(4) of the Arbitration Act was to make the judgment binding after the arbitral tribunal had a chance to correct any rectifiable errors. If there is no justification, the Arbitration Act's Section 34(4) utility can be used to correct the problem. Only when logic is wholly absurd can it be contested under Section 34 of the Arbitration Act? The authority granted by Section 34(4) of the Arbitration Act to correct deficiencies may be used in situations where the award lacks any justification, has a gap in its justification, or otherwise has a deficiency that can be corrected to prevent a challenge based on the curable deficiencies under Section 34 of the Arbitration Act. For Section 34 of the Arbitration Act, Dyna (above) makes a clear distinction between faults in an award that are recoverable and those that are not. According to Section 34(4) of the Arbitration Act, the court may grant the arbitral panel a chance to dismiss the first party. The judgment must, nevertheless, be revoked by the court about the latter.

WHAT ARGUMENTS FOR A CHALLENGE CAN THE ARBITRAL PANEL DISMISS?

The court considered it appropriate to use its authority under Section 34(4) of the Arbitration Act in the following cases. The Bombay High Court's Division Bench noted that the authority within Section 34(4) of the Arbitration Act might be used where the arbitral tribunal disregarded a specific argument for which the parties provided proof and made justifications[10]. When the arbitral tribunal refused to address a jurisdictional objection, a single judge of the Bombay High Court used his authority under Section 34(4) of the Arbitration Act[11]. A party was refused the chance to submit its case, that is, to engage with documentation that the arbitral tribunal had relied upon, in the matter of MMTC v Vicnivass Agency, in which the Madras High Court invoked its discretion under Section 34(4) of the Arbitration Act. According to Dyna, a deficiency

[9] *Dyna Technologies Pvt. Ltd. v Crompton Greaves Ltd* Civil Appeal No 2153/2010
[10] *Suresh Prabhu v Bombay Mercantile Co-op Bank Ltd* (2007) (5) Bom CR 205
[11] *Geojit Financial Services Ltd. v Kritika Nagpal* Appeal No 35/2013

in understanding or a lacuna in reasoning is a flaw that may be corrected, as contrasted to perversity in thinking that cannot be corrected and would require the decision to be revoked.

CONCLUSION

By using the method of elimination, we can try to determine the application of Section 34(4) of the Arbitration Act in more detail. An arbitral tribunal is unable to overturn its own decision[12]. As a result, an arbitral tribunal cannot be given the right to evaluate the contents of the decision (or the reasons supporting it) or to revise the judgement under the pretence of having the chance to do so by Section 34(4) of the Arbitration Act. In addition, Section 33 of the Arbitration Act specifies a method for the arbitral tribunal's rectification of analytical, administrative, or clerical errors in the judgment and mandates that parties submit requests for rectification within 30 days of receiving the award. This should rule out the possibility of the arbitral tribunal amending such inaccuracies by starting new arbitration procedures by Section 34(4) of the Arbitration Act.

The MMTC's (supra) conclusion that the arbitral tribunal independently sets the extent of inquiry to remove the bases of challenge and has broad authority to dismiss these concerns in any way it sees appropriate is excessively broad and could be abused. Only a few groups of grounds can be remedied or removed by an arbitral tribunal, as was previously said. Therefore, it would stand to reason that the court must specify the basis for challenges that have been established in a petition under Section 34(1) of the Arbitration Act and only use Section 34(4) of the Arbitration Act if the arbitral tribunal can successfully dismiss those arguments. Lack of such protocol could result in a few problems, including the arbitral tribunal's potential decision to modify the award, which is against the rules and could seriously harm a party contesting the judgement.

One could also contend that the Arbitration Act's Section 34(4) should only be applied in cases where doing so will eliminate all the court-identified viable basis for dispute. Consider a scenario where the court determines that the award should be cast aside because the arbitral

[12] *State of Arunachal Pradesh v Damani Construction Co.* (2007) 10 SCC 742

tribunal disregarded a specific assertion (a remediable ground), but also determines that the award's basic reasoning is against the core principles of Indian legislature.

While numerous judgments can provide some clarification on the applicability of Section 34(4) of the Arbitration Act, there is still scope for different courts to apply this clause inconsistently (including District Courts). Any step performed by the arbitral tribunal to erase the basis for putting aside the award could be subject to additional appeal by the party who was harmed by such conduct if the court does not recognize the curable faults before using Section 34(4) of the Arbitration Act. This could significantly hinder the effectiveness of the arbitral procedure and cause excessive delays in the execution of arbitral rulings. Therefore, a thorough explanation of Section 34(4) of the Arbitration Act's actual scope is urgently required.

The purpose of Section 34(4) of the Act is to make the decision binding after giving the Tribunal a chance to correct "curable deficiencies." The decision in I-Pay reinforces this intention by outlining explicit limitations on how a party to litigation may employ this clause. The decision makes it clear that the authority granted under Section 34(4) of the Act to remedy defects may be used in situations where the arbitral ruling lacks justification, has shortfalls in its justification, or otherwise contains a defect that can be corrected to prevent an appeal under Section 34 of the Act.