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1.PARTY CANNOT CHALLENGE AN AWARD BY INVOKING ARTICLE 227 AFTER WITHDRAWING ITS OBJECTIONS UNDER SECTION 34 OF THE ARBITRATION ACT: PUNJAB & HARYANA HIGH COURT [MAY 15, 2026]

Introduction:

In the case of **M/s. Pahwa Impex Pvt. Ltd. v. M/s. Kanuj Home Textiles Exim** **[1]**, the Hon'ble Punjab and Haryana High Court ("**Hon'ble High Court**") held that a party who voluntarily withdraws its challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") cannot subsequently invoke the supervisory jurisdiction under Article 227 of the Constitution of India to re-agitate the same grounds.

Facts:

The dispute arose from an arbitral award passed by a sole arbitrator pursuant to a reference made by the Chairman, Haryana Micro and Small Enterprises Facilitation Council ("**Facilitation Council**") under Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**"). The Petitioner, M/s Pahwa Impex Pvt. Ltd. ("**Petitioner**"), participated in the arbitral proceedings and contested the claims raised by the Respondent, M/s Kanuj Home Textiles Exim ("**Respondent**"). The sole arbitrator ultimately passed an award in favour of the Respondent.

Aggrieved, the Petitioner filed objections under Section 34 of the Arbitration Act, before the Additional District Judge, Karnal ("**Hon'ble District Judge**"). In the meantime, the Respondent also filed execution proceedings under Section 36 of the Arbitration Act. The Petitioner withdrew its objections under Section 34, citing a technical defect arising from a notification issued by the Haryana Government following which, the Hon'ble District Judge dismissed the Petitioner's objections to the execution petition.

The Petitioner challenged the order of the Hon'ble District Judge by way of a Civil Revision Petition under Article 227 of the Constitution of India before the Hon'ble High Court. The Petitioner submitted that since the sole arbitrator directly issued the award and it was never sent back to the Facilitation Council for a final award, the award was without jurisdiction and incapable of execution. The Respondent submitted that the Petitioner withdrew the objections under Section 34 as the Petitioner did not deposit 75% of the awarded amount as mandated under Section 19 of the MSMED Act and that the Petitioner could not be permitted to circumvent the provisions of law by invoking the extraordinary powers of the Hon'ble High Court under Article 227.

It was further submitted that the issue as to whether the Facilitation Council can act as an arbitrator or not, was pending before a larger bench of the Hon'ble Supreme Court in the case of *M/s Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council, 2025 SCC OnLine 127*, and therefore the present petition was liable to be dismissed.

Issues:

1.Whether the impugned order was liable to be set aside on the ground that the award under execution was inexecutable having been rendered by an authority lacking inherent jurisdiction;

2.Whether upon withdrawal of objections under Section 34 of the Arbitration Act, a Civil Revision Petition under Article 227 of the Constitution of India challenging the said award and the execution proceedings were entertainable or not.

Held:

The Hon'ble High Court perused the objections filed by the Petitioner in the execution proceedings and noted that the same pertained to grounds taken on the merits of the award and not on jurisdiction. It was noted that the Petitioner while filing objections in the execution proceedings stated that the award was perverse, patently illegal and liable to be set aside under Section 34(2A) and 34(2)(b)(ii) of the Arbitration Act and that the Petitioner had subsequently withdrawn the same on ground of a technical defect. Therefore, the Hon'ble High Court ruled that the Hon'ble District Judge had rightly observed that it could not go beyond the award itself and that the same was executable.

The Hon'ble High Court ruled that the issue as to whether the award is executable or not could not be examined due to the pendency of *M/s Tamil Nadu Cements Corporation Limited* case and therefore the Hon'ble District Judge had was correct in dismissing the objections of the Petitioner.

Regarding the maintainability of the Civil Revision Petition, the Hon'ble High Court ruled that the same must be tested on the anvil of the facts and circumstances of the present case. It was noted that once the award was passed, the same was open to challenge before the competent court by filing objections under Section 34 of the Arbitration Act. The Petitioner invoked the said remedy but withdrew its objection and thereafter filed a Civil Revision Petition challenging the order passed by the Hon'ble District Judge whereby the Petitioner's objections to the execution petition were dismissed. The Hon'ble High Court ruled that the Petitioner, after having withdrawn the objections, could be permitted to re-agitate the same grounds by invoking the extra ordinary powers of the Hon'ble High Court under Article 227 of the Constitution. It was held that the power of

[1] 2026:PHHC:076529

superintendence exercised by the Hon'ble High Court under Article 227 could not be extended to assume appellate jurisdiction or an alternative remedy to the statutory remedy already available under the statute which was abandoned by the Petitioner.

The Hon'ble High Court held that once the Petitioner withdrew the objections under Section 34 of the Arbitration Act and the objections to execution had already been dismissed, allowing the Petitioner to re-agitate the same grounds under Article 227 would amount to permitting the Petitioner to approbate and reprobate and abuse the process of law. It was ruled that the supervisory jurisdiction under Article 227 being discretionary and equitable, ought not to be exercised in favour of a litigant who has, by withdrawing its objections, abandoned the statutory remedy and now seeks to circumvent the consequences of such withdrawal.

It was observed that the Petitioner, after having participated before the sole arbitrator and contesting the claim and thereafter, when the objections were filed by the Petitioner to the execution under Section 36 of the Arbitration Act having referred to the award by terming it as an 'award' could not now turn around to contend that the same was not an award. The Hon'ble High Court reiterated the settled position of law that when an award is without jurisdiction then a plea can be taken regarding jurisdiction at any stage. However, it held that in the facts and circumstances of the present case, the Petitioner could not now assail the award under Article 227 after withdrawing its objections under Section 34 of the Arbitration Act. Accordingly, the Hon'ble High Court dismissed the Civil Revision Petition.

2.EXCLUSION OF DISSENTING ARBITRATOR FROM DELIBERATIVE PROCESS CONSTITUTES PATENT ILLEGALITY: CALCUTTA HIGH COURT [MAY 15, 2026]

Introduction:

The Hon'ble Calcutta High Court ("**Hon'ble Court**") in the case of **Kessels Engineering Works Pvt. Ltd. v. Neo Metalicks Limited** **[2]** has held that an arbitral award is liable to be set aside if a dissenting arbitrator is not part of the decision making process and is provided with the majority award only *post facto*.

Kessels Engineering Works Pvt. Ltd. ("**Petitioner**") and Neo Metalicks Limited ("**Respondent**") entered into a contract for manufacturing, supply and commissioning of a Bleed Cum Condensing Steam Turbine Generator Set ("**TG Set**") from the Petitioner to the Respondent for captive power generation by the respondent at its plant. A dispute arose from the contract over some defects in the TG Set and the dispute was submitted to a three-member arbitral tribunal.

The tribunal passed an award and the same was challenged by the Petitioner under Section 34 of the Arbitration Act before the Hon'ble Court. On the other hand, the Respondent sought enforcement of the award under Section 36 of the Arbitration Act.

The Petitioner challenged the award on the ground that the majority award was vitiated by fraud and/or corruption and that the same was liable to be set aside under Section 34(2)(b) of the Arbitration Act and also under Section 31(2) of the Arbitration Act since no reason for the abstinence of the dissenting arbitrator was disclosed in the award. The award was assailed on merits and it was stated that the award was contrary to the express terms of the contract entered between the parties and amounted to the rewriting of the contract. The Petitioner argued that the Presiding Arbitrator, in whose first person the majority award was written, was not in a mental and physical position to pass the award at the relevant junction and that he was hospitalized due to which he was not in shape for the purposes of reading, writing and consulting the award. It was submitted that the Presiding Arbitrator mindlessly signed the award.

The Petitioner also contended that Section 31(1) of the Arbitration Act mandates an arbitral award to be made in writing and signed by all members of the arbitral tribunal and that signing of the award is not a ministerial act or an empty formality which can be dispensed with. It was submitted that a reading of Section 31(1), (2), (3) and (5) of the Arbitration Act make it clear that in case of a tribunal consisting of three arbitrators, the majority award ought to state the reasons for any omitted signature. The Petitioner stated that the majority award did not contain any reason for the omission of the signature of the dissenting arbitrator, whereas, in the dissenting minority award, the third arbitrator recorded that he was informed only later that the Presiding Arbitrator and the other co-arbitrator allowed the claims of the Respondent and being unable to agree with the same, he delivered a separate award. Therefore, it was submitted that the third Arbitrator could not have discussed with the other arbitrators prior to the preparation of the award. The Respondent argued that the pronouncement of a separate minority award by the third arbitrator was the reason for the omission of his signature in the majority award.

Issues:

1.Whether the majority award was vitiated by fraud / corruption;

2.Whether the majority award being violative of Section 31(2) of the Arbitration Act, ought to be set aside.

Held:

The Hon'ble Court held that for the court to come to a finding of fraud / corruption, higher standards have to be met than mere preponderance of probability and such allegations must be proved beyond reasonable doubt.

[2] 2026:CHC-OS:206

The Hon'ble Court further distinguished between Sections 34(2)(a) and 34(2)(b) of the Arbitration Act and observed that while the former requires an applicant to establish the ground of challenge, the latter empowers the Court to independently determine whether fraud, corruption, or public policy violations exist. Nevertheless, allegations of fraud must satisfy a standard higher than a mere balance of probabilities.

The Hon'ble Court then examined the validity of the majority award under Sections 31(1) and 31(2) of the Arbitration Act and held that sub-section (1), by use of mandatory language "shall be", makes it clear that an arbitral award has to be signed by all the members of the arbitral tribunal. It observed that only exception is carved out in sub-section (2) which relaxes such mandatory condition only if the reason for any omitted signature is stated. Further, it was ruled that deliberation between the co-arbitrators in a multi-member arbitral tribunal is an essential ingredient of party autonomy since the parties agree to submit to adjudication by all the members and not by one or some of them. It was held if the dissenting arbitrator was taken into the loop and was part of the decision, he could have convinced the other two to see things his way, thus changing the entire outcome of the adjudication. Therefore, it was held that a post facto handing out of the majority award to the dissenting arbitrator hit at the very root of the validity of the award and was violative of Section 31(1) of the Arbitration Act. The Hon'ble Court held that the impugned award was liable to be set aside on the aforementioned ground alone under Section 34(2-A) of the Arbitration Act by virtue of being patently illegal.

3.COURT'S AUTHORITY TO SET ASIDE AN AWARD INCLUDES THE POWER TO SET IT ASDIE IN PART AND PRESERVE VALID PORTIONS: DELHI HIGH COURT [MAY 18, 2026]

Introduction:

The Hon'ble Delhi High Court ("**Hon'ble Court**") in the case of **Sarvpriya Securities Pvt. Ltd. v. ANK Hotels Pvt. Ltd.** **[3]** applied the principle of *omne majus continet* in se minus (the greater power includes the lesser) and held that the court's authority to set aside an award includes the power to set it aside in part so as to preserve valid portions. The Hon'ble Court also re-affirmed that under Section 31(3) of the Arbitration Act, an arbitral award must be supported by intelligible and adequate reasoning. It further held that a non-reasoned award falls within the teeth of Section 3(3) of the Arbitration Act and is liable to be set aside. Applying the aforementioned principles to the case at hand, the Hon'ble Court set aside only the non-reasoned portion of the award under challenge.

Facts:

Sarvpriya Securities Pvt. Ltd ("**Petitioner**") is in the business of developing real estate projects and was developing Signature Global mall ("**Mall**") in Uttar Pradesh under its own brand name. The Petitioner entered into a Memorandum of Understanding ("**MoU**") with ANK Hotels Pvt. Ltd. ("**Respondent**"). As per the MoU the Respondent agreed to operate and maintain service apartments / hotels at the 3rd to 6th floor of the Mall under the name "Clark Premier". As per the terms of the MoU, the Petitioner was to pay a one-time brand collaboration fee and a technical support fee. The Respondent was also entitled to an additional amount towards expenses to commence service apartment / hotel operation, within a period of 6-8 months from the date of signing of the MoU.

Subsequently, meetings were held between the parties, following which, the Petitioner sent an email with an undertaking for mutual termination of the MoU. Thereafter, the Petitioner demanded a refund of Rs. 1,18,00,000 paid as advance and the Respondent declined the refund and instead demanded payment of the balance amount of Rs. 1,70,00,000.

Owing to the aforementioned, a dispute arose between the parties and arbitration was invoked at the instance of the Respondent. The Hon'ble Court appointed an arbitrator and an arbitral award came to be passed. Vide the award, the Respondent's claim of Rs. 1,70,00,000 was rejected and the Petitioner's counter-claim seeking refund of Rs. 1,18,00,000 was also dismissed. The Petitioner challenged the award under Section 34 of the Arbitration Act before the Hon'ble Court and contended that the award was non-speaking and suffered from patent illegality. It was also contended that the arbitrator erred in concluding that the advance paid by the Petitioner was not subject to incurring of expenses and that the MoU did not contain a clause for forfeiture of the advance paid and that the sums paid were not earnest money. The Respondent contended that the arbitral award could not be interfered with for another possible view and that re-appreciation of evidence was impermissible under section 34 of the Arbitration Act.

Issues:

1. Whether the arbitral award rejecting the Petitioner's counter-claim ought to be set aside on the ground that it was a non-speaking and unreasoned award;

2. If in the absence of a contractual clause permitting forfeiture and proof of actual loss or damage, the Respondent could be entitled to retain the advance amounts received under the MoU.

Held:

The Hon'ble Court examined the terms of the MoU and reviewed the award. It The Hon'ble Court relied on the section 31(3) of the Arbitration Act and observed that it mandates a reasoned award. It was noted that after adjudicating the issue of breach of terms of the MoU, the contentions of both parties were noted and the counter-

[3] 2026:DHC:4386

claim was rejected stating that the submission of the Respondent carried force. It was further noted that the MoU did not contain any clause which stipulated that the payments made were subject to incurring of expenses. The Hon'ble Court observed that the rejection of the counter-claim of the Petitioner was bereft of reasons and that the award did not contain any discussion or reasoning on that aspect. Further, observing that the award was non-speaking and unreasoned, it was held that the award dismissing the counter-claim was liable to be set aside on that ground alone.

The Hon'ble Court observed that the parties did not dispute that there was no clause for forfeiture and that in such circumstances the settled principles for invoking Section 73 of the Indian Contract Act, 1872 ("**Contract Act**") are to be applied. It was held that the Respondent did not set up a case that actual loss or damage was suffered. It was thus held that the arbitrator committed a patent illegality in not proceeding in accordance with Section 73 of the Contract Act. The Hon'ble Court noted that the arbitrator's finding that the project was a non-starter and that none of the parties adhered to the terms of the MoU was not challenged and therefore, it was held that breach of contract was not proved. It was further held that since there was no finding recording the proportionate role of each party in breach of the contract, the foundation to proceed under Section 73 of the Contract Act was missing. Thus, the Hon'ble Court held that the dismissal of the counter-claim violated Section 73 of the Contract Act and was against public policy.

The Hon'ble Court then reviewed the case of *Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1* wherein the Hon'ble Supreme Court held that a severable part of the award may be set aside. Relying on the case of Gayatri Balaswamy, the Hon'ble Court held that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature and that the authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award. The Hon'ble Court applied the doctrine of "omne majus continet in se minus" – the greater power includes lesser – and held that the authority to set aside the award necessarily encompasses the power to set it aside in part, rather than in its entirety. It was ruled that this was a practical and pragmatic approach and a contrary interpretation would not only be inconsistent with the statutory framework but would also result in a valid determination being unnecessarily nullified.

Thus, the Hon'ble Court set aside the award only to the extent of dismissal of the counter-claim of the Petitioner for refund of advance amount.

4.ORDER REJECTING COUNTER CLAIM IS AN INTERIM AWARD CAPABLE OF CHALLENGE UNDER SECTION 34: DELHI HIGH COURT [MAY 18, 2026]

Introduction:

The Hon'ble Delhi High Court ("**Hon'ble High Court**"), in the case of **Eureka Forbes Ltd. v. Indian Railway Catering and Tourism Corporation Ltd.** **[4]** held that while an order proceeding ex parte is merely procedural and not amenable to challenge under Section 34 of the Arbitration Act, the rejection of a duly filed counter-claim amounts to a final determination of substantive rights and therefore constitutes an interim award capable of challenge under Section 34.

Facts:

In the present case, the Indian Railways Catering and Tourism Corporation ("**Respondent**") invited bids for the management, operation and maintenance of Water Vending Machines and sale of potable drinking water at railway stations across designated clusters through a Model Bid Document. Eureka Forbes ("**Petitioner**") participated in the bid process and was issued a Letter of Award ("**LOA**") whereby the license to operate and manage the Water Vending Machines was granted to the Petitioner at an annual license fee. Pursuant to the LOA, the parties also entered into a License Agreement.

Disputes arose between the parties concerning non-payment of outstanding license fees and the Respondent invoked the arbitration clause and an arbitrator was appointed by the Hon'ble High Court. The Respondent filed its Statement of Claim and the Petitioner filed its Statement of Defence. During the course of the proceedings, the arbitrator observed that if the Petitioner proposed to file a counter-claim, the same could be filed and the Respondent would be at liberty to file its reply to the counter-claim and a rejoinder to the Statement of Defence before the next date of hearing.

On the next date, no one appeared on behalf of the Petitioner and on the following hearing date the arbitrator passed an order ("**Impugned Order I**") recording that emails had been circulated to the Petitioner at multiple email addresses which had not bounced back and in the absence of any appearance on behalf of the Petitioner, the arbitrator proceeded ex parte against the Petitioner and rejected the Petitioner's counter-claim. The Petitioner filed an application before the arbitrator seeking recall of Impugned Order I and restoration of its counter-claim. The arbitrator passed an order ("**Impugned Order II**") stating that the arbitral proceedings had not been formally closed and that the Statement of Defence filed by the Petitioner continued to

[4] 2026:DHC:4177

remain on record. The Impugned Order II further recorded that the Petitioner would still be entitled to participate in the ongoing proceedings, however, the arbitrator dismissed the Petitioner's application seeking recall of the Impugned Order I and further declined the Petitioner's prayer for restoration of its counter-claim.

Aggrieved, the Petitioner challenged the Impugned Orders before the Hon'ble Court by way of a petition under Section 34 of the Arbitration Act. The Petitioner contended that the Impugned Order I amounts to a conclusive determination of the Petitioner's substantive claim and the said determination would attain finality in respect of the counter-claim and would therefore bear the character of an interim award rendering the same amenable to challenge under Section 34 of the Arbitration Act. It was further submitted that Impugned Order II had several shortcomings, inconsistencies and contradictions. The Respondent contended that the Impugned Order I and Impugned Order II did not suffer from any legal infirmity and that the same were passed in accordance with the procedure governing the arbitral proceedings. The Respondent further contended that the Petitioner's challenge under Section 34 was not maintainable as the Impugned Orders were purely procedural in nature and did not amount to an arbitral award or interim award within the meaning of the Arbitration Act.

Issue:

Whether an order directing proceedings to continue ex parte and rejecting a counter-claim amounts to an interim award.

Held:

The Hon'ble High Court perused the Impugned Order I and noted that the rejection of the Petitioner's counter-claim was treated as having the character of an interim award on the ground that it constituted a final determination of those claims, thereby rendering the arbitral tribunal functus officio in respect thereof. It was noted that simultaneously, in relation to the claims of the Respondent, the arbitrator declined to recall the ex parte order and directed that the arbitral proceedings should continue and that the Petitioner was entitled to participate in those proceedings.

Based on the ruling of the Hon'ble Court in the case of *H.S. Nag v. Asian Hotel (North) Ltd. 2026 DHC 1396* and the Hon'ble Supreme Court in the case of *IFFCO Ltd. v Bhadra Products (2018) 2 SCC 534*, the Hon'ble Court examined the nature and characteristics of an order that would qualify as an interim award under the Arbitration Act. The Hon'ble Court noted that the judgment of *H.S. Nag* provided the following test for determining whether an order qualifies as an "interim award":

i.whether the order finally adjudicates a substantive dispute or claim between the parties;

ii.whether such adjudication attains finality and has a binding effect in respect of the issue so determined;

iii.whether consequent upon such determination, the arbitral tribunal becomes 'functus officio' qua that issue, thereby retaining no further adjudicatory discretion in relation thereto.

The Hon'ble Court applied the aforesaid triple test and held that the Impugned Order I, in so far as it pertained to the Respondent's claims namely, the order directing the Petitioner to be proceeded against *ex parte*, did not satisfy the parameters necessary to quality as an interim award. It further ruled that an order directing proceedings to continue ex parte is essentially procedural in nature, is intended to regulate the conduct and progression of arbitral proceedings and the same does not adjudicate the substantive disputes between the parties. The Hon'ble Court held that arbitral tribunals may be constrained to invoke such procedural powers in order to prevent obstruction or delay in proceedings, however, the tribunal also retains the authority to revisit, recall or set aside such an order if sufficient cause is demonstrated. The Hon'ble Court held that any grievance arising from a procedural order may ordinarily be urged at the stage of challenge to the final award and in exceptional circumstances, the same may also be amenable to scrutiny in exercise of the extraordinary jurisdiction of the Constitutional Courts.

In the facts and circumstances of the present case, the Hon'ble Court held that the arbitral tribunal did not render itself *functus officio* in relation to the Respondent's claims, rather it continued to remain in seisin of the issues raised before it and to examine the evidence, assess the merits and render a final determination thereof. Thus, it was thus ruled that the Impugned Order I, to the extent that it merely directs the continuation of proceedings ex parte in relation to the Respondent's claims, does not partake the character of an interim award and consequently the same is not amenable to challenge under Section 34 of the Arbitration Act.

The Hon'ble Court held that the position in relation to the Petitioner's counter-claim stood on an entirely different footing and that the rejection of the counter-claim effectively results in a final determination of the Petitioner's counter-claim, leaving no scope for its further consideration by the arbitral tribunal. It was held that such an order possesses the essential attributes of finality and binding effect in respect of the counter-claim. The Hon'ble Court noted that the arbitrator proceeded on the basis that he lacked jurisdiction to revisit or recall the said determination, thereby treating himself as 'functus officio' qua the counter-claim. Therefore, the Hon'ble Court held that Impugned Order II, to this limited respect, would constitute an interim award.

The Hon'ble Court then proceeded to examine if the interim award, insofar as it related to the Petitioner's counter-claim fell within the narrow and well-defined grounds for judicial interference under Section 34 of the Arbitration Act. The Hon'ble Court noted the counter-claim was still at the stage of completion of pleadings and that an adjournment was sought by the Respondent. Therefore, delay could not have been attributed solely to the Petitioner. The Hon'ble Court opined that the arbitrator while proceeding ex parte against the Petitioner erred in rejecting the counter-claim on that basis. It was noted that the mere fact that a party has been proceeded *ex parte* does not ipso facto justify the striking off or rejection of counter-claim already duly filed and forming part of the record.

The Hon'ble Court held that the approach of the arbitrator was inconsistent with Section 18 of the Arbitration Act which mandates equal treatment of parties and ensuring that each party is afforded a full and fair opportunity to present its case. It was held that since the Petitioner duly filed its counter-claim in compliance with the direction of the arbitrator, the present case did not fall within the ambit of Section 25 of the Arbitration Act.

In this view of the matter, the Hon'ble High Court held that the Impugned Order I, insofar as it rejected the Petitioner's counter-claim was an interim award and amenable to judicial scrutiny under Section 34 of the Arbitration Act on the same footing as a final arbitral award. Accordingly, the Impugned Orders were set aside to the extent that the counter-claim of the Petitioner was rejected.

5.ALLEGED COMPUTATIONAL ERRORS CANNOT JUSTIFY REAPPRECIATION OF EVIDENCE IN SECTION 37 APPEALS: DELHI HIGH COURT [MAY 19, 2026]

Introduction:

In **IRCON International Limited v. M/s Tantia Construction Limited [5]**, the Hon'ble Delhi High Court ("**Hon'ble Court**") reiterated the limited scope of judicial review under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 and held that alleged computational errors cannot justify a re-appreciation of evidence or reassessment of factual findings made by an arbitral tribunal. The Court emphasized that an arbitral award based on a plausible appreciation of the material on record cannot be interfered with merely because an alternative view is possible.

Facts:

Ircon International Limited ("**Appellant**") entered into a contract with Tantia Construction Limited ("**Respondent**") for execution of certain works. Disputes arose between the parties in relation to the execution of the contract and the financial claims emanating therefrom. The said disputes were referred to arbitration and a sole arbitrator was appointed to adjudicate the same. The sole arbitrator rendered the award granting the Respondent a sum of Rs. 4,80,37,967. Among the claims allowed, Claim No. 6 concerned the encashment of a Performance Bank Guarantee ("**PBG**") by the Appellant. The arbitrator held that the contract had been wrongfully terminated by IRCON despite the occurrence of a force majeure event and, therefore, the invocation and encashment of the PBG was illegal. Consequently, the Respondent was awarded Rs.1,90,86,595 towards refund of the amount recovered through such encashment. The arbitrator also adjudicated Claim No. 7 relating to recovery and adjustment of mobilization advance. Under that claim, the arbitrator recorded that substantial recoveries had already been effected through running account bills and encashment of bank guarantees and awarded refund of the balance amount recoverable by the Respondent.

After the award, the appellant filed an application under Section 33 of the Arbitration Act for modification/rectification on alleged computational errors. The said application was however, dismissed. Thereafter, the Appellant filed an application under Section 34 of the Arbitration Act before the Hon'ble Single Judge whereby the Appellant sought modification of the award in respect of certain claims including Claim No. 6. The Appellant contended that while awarding the amount relating to wrongful encashment of the Performance Bank Guarantee, the arbitrator failed to account for an amount of Rs. 93,01,410 allegedly recovered towards mobilization advance, resulting in an excessive award.

The Hon'ble Single Judge rejected the Petitioner's challenge and upheld the award. The Hon'ble Single Judge held that the arbitrator's findings regarding wrongful termination of the contract and applicability of the force majeure clause constituted a plausible interpretation of the contract and did not suffer from perversity. The Hon'ble Single Judge further observed that the Appellant's plea regarding adjustment of Rs. 93,01,410 had not been raised before the arbitrator in its Statement of Defence and therefore could not be permitted to be raised for the first time in proceedings under Section 34. The Hon'ble Single Judge also held that permitting reliance upon contentions raised in the Section 33 proceedings would amount to circumventing an earlier judgment by which the supplementary award had already been set aside. Consequently, the Section 34 petition was dismissed.

After dismissal of the Section 34 petition, the Appellant preferred the present appeal under Section 37, restricting its challenge solely to Claim No. 6

Issues:

1. Whether the arbitral award suffered from patent illegality because the Arbitrator failed to account for Rs.

[5] 2026:DHC:4227-DB

93,01,410 already recovered towards mobilization advance, thereby granting an excess amount under Claim No. 6;

2.Whether the Hon'ble Court could re-examine the Arbitrator's computation and factual findings while exercising jurisdiction under Sections 34 and 37 of the Arbitration Act.

Held:

The Hon'ble Court first examined the scope of interference available under Sections 34 and 37 of the Arbitration Act. Relying upon the principle laid down in *MMTC Ltd. v. Vedanta Ltd. (2019) 4 SCC 163* and reaffirmed in *UHL Power Co. Ltd. v. State of Himachal Pradesh (2022) 4 SCC 116,* the Hon'ble Court observed that a Section 37 appeal is not a continuation of arbitral proceedings and that the appellate court cannot undertake an independent assessment of the merits of the award. It stated that the appellant court's role is confined to determining whether the Section 34 court acted within the limited parameters prescribed by the Arbitration Act. The Hon'ble Court then considered the Appellant's contention that the arbitrator had failed to account for Rs. 93,01,410 already recovered towards mobilization advance, thereby resulting in an excessive award under Claim No. 6. However, it found that the challenge was directed only towards the quantum awarded and not towards the arbitrator's finding that the termination of the contract was wrongful and that invocation of the PBG was impermissible. Since those foundational findings had attained finality, the Respondent's entitlement to reimbursement under Claim No. 6 could not be reopened.

The Hon'ble Court further held that Claim Nos. 6 and 7 operated in distinct spheres. While Claim No. 6 concerned wrongful encashment of the PBG, Claim No. 7 dealt with recovery and adjustment of mobilization advance. Upon examining the award and the affidavit filed by the respondent, the Hon'ble Court concluded that the arbitrator had already taken into account the recoveries effected towards mobilization advance through running account bills and encashment of the bank guarantee. Consequently, the allegation of duplication or excess payment was not borne out from the record.

Rejecting the Appellant's submissions, the Hon'ble Court observed that the Appellant's challenge effectively invited it to undertake a fresh reconciliation of accounts and reassessment of the arbitrator's computation. Referring to the principle reiterated in *McDermott International Inc. v. Burn Standard Co. Ltd. 2006 INSC 326* and subsequently followed in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI (2019) 15 SCC 131*, the Hon'ble Court held that judicial review under Sections 34 and 37 of the Arbitration Act is supervisory in nature and does not permit re-appreciation of evidence or substitution of the court's own view for that of the arbitrator.

Accordingly, the Hon'ble Court held that no patent illegality, perversity, or jurisdictional error had been established. Since the award reflected a plausible appreciation of the material on record and the alleged computational error was not demonstrably apparent on the face of the award, no ground for interference under Sections 34 or 37 was made out. The appeal was therefore dismissed.

6.AWARD CANNOT BE INTERFERED WITH UNDER SECTION 34 DUE TO ANOTHER POSSIBLE VIEW: DELHI HIGH COURT [MAY 26, 2026]

Introduction:

In the case of **Pandrol Rahee Technologies Pvt. Ltd. v. IRCON International Ltd.** **[6]**, the Hon'ble Delhi High Court ("**Hon'ble Court**") reiterated that the scope for interference under Section 34 of the Arbitration Act is limited and there cannot be interference with a plausible view of the arbitrator. It was ruled that the interpretation of the clauses of the contract falls within the exclusive domain of the arbitrator and that an award cannot be interfered with unless it is vitiated by perversity.

Facts:

Ircon International Ltd. ("**Respondent**") issued a Notice Inviting Tender (NIT). Pandrol Rahee Technologies Pvt. Ltd. ("**Petitioner**") was the successful bidder. A Letter of Acceptance ("**LOA**") came to be issued in favour of the Petitioner and a contract was executed by the parties. The Respondent varied the quantity of the contracted product and the total quantity increased.

A dispute arose between the parties as, according to the Petitioner, the revised quantities required additional components. The payment for the products supplied was released by the Respondent. The claim of the Petitioner for payment over and above agreed price towards the additional components supplied, was denied by the Respondent. The Petitioner invoked arbitration by issuing notice under Section 21 of the Arbitration Act and a sole arbitrator was appointed. The arbitrator passed an award rejecting the claims of the Petitioner. Resultantly, the Petitioner approached the Hon'ble Court.

The Petitioner contended that the findings of the arbitrator were perverse, beyond the terms of the contract and since the award was contrary to the evidence on record, it was liable to be set aside. It was further contended that the contract was not a fixed value contract and that the quantities under contract terms were subject to variation. Further, in the event the individual items exceeded 25%, fresh rates were to be negotiated. It was submitted that clause 2.8 of the LOA did not deal with payment for supply of additional

[6]2026:DHC:4478

components and that the interpretation of the aforesaid clause by the arbitrator was not plausible and warranted interference under Section 34 of the Arbitration Act.

The Respondent stated that the terms of the contract specified that before commencement of supplies, the Petitioner had to obtain approval of the design of the product from Delhi Metro Rail Corporation, however, the Petitioner made supplies before getting the approval. The Respondent relied upon the contract terms to argue that only the agreed price was to be paid for additional supplies. It was also argued that the scope of interference under Section 34 of the Arbitration Act is limited. The Respondent further contended that the interpretation of the clauses of the contract fell within the domain of the arbitrator and unless the interpretation was perverse, no interference was to be made on ground that another view is possible.

Issue:

Whether a court, under Section 34 of the Arbitration Act, can interfere with an award in the event that another possible view exists.

Held:

The Hon'ble Court examined the relevant contract terms as well as the award and rejected the Petitioner's contention that the arbitrator re-wrote the terms and conditions agreed between the parties. It was held that the arbitrator took into consideration the terms of the tender, the LOA as well as other contractual terms agreed between the parties and gave a plausible interpretation. Referring to the view taken by the Hon'ble Supreme Court of India in a catena of decisions such as *Prakash Atlanta (JV) v. National Highways Authority of India 2026 INSC 76, Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO) 2025 INSC 1457* and several others, the Hon'ble Court ruled that the scope of interference under Section 34 of the Arbitration Act was well settled and that an award cannot be interfered with under Section 34 merely for another possible view. It was held that the interpretation of clauses of a contract falls within the exclusive domain of the arbitrator and that the award cannot be interfered with for every legal or factual error unless it is vitiated by perversity.

Thus, the Hon'ble Court upheld the award and ruled that no case was made out for interference under Section 34 of the Arbitration Act.

7.ARBITRAL AWARD MAY BE MODIFIED BY COURTS WHERE SETTING IT ASIDE WOULD CAUSE SIGNIFICANT HARDSHIP AND DELAY: SUPREME COURT OF INDIA [MAY 26, 2026]

Introduction:

The Hon'ble Supreme Court in the case of Bhupesh **Bhayana & Ors. v. Kunal Seth and Ors. [7]**, addressed the scope of judicial intervention in arbitral awards following the Constitution Bench decision in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025) 7 SCC 1*. The Hon'ble Supreme Court examined the distinction between modification and setting aside of arbitral awards, the doctrine of patent illegality under Section 34(2A) of the Arbitration and Conciliation Act, 1996, and the circumstances in which Court may invoke its powers under Article 142 of the Constitution to bring finality to a long-pending arbitral dispute.

Facts:

Late Sudershan Kumar Bhayana and Kiran Bayana ("**Appellant No. 2**") entered into an agreement with late Vinod Seth ("**the Builder**") for reconstruction of an old building belonging to the Bhayanas ("**the Owners**"). Under the Agreement, the Builder was entitled to retain the second floor of the reconstructed building without roof rights and was required to pay Rs. 64,00,000 to the Owners as earnest money and compensation. Clause 7 of the Agreement stipulated that the project was to be completed within 12 months with a grace period of two additional months, failing which the Builder would be liable to pay a penalty of Rs. 10,000 per day for the delayed period. Clause 13 of the Agreement further provided that in the event of breach by the builder, the earnest money and compensation amount would stand forfeited.

The Builder paid only Rs. 45,00,000 out of the agreed amount and abandoned construction in August, 2011 before completion of the project. Consequently, the Owners terminated the agreement in November, 2011. As disputes arose regarding breach of contract and financial liabilities, the matter was referred to arbitration pursuant to the arbitration clause contained in the agreement. The Hon'ble Delhi High Court ("**Hon'ble High Court**") appointed a sole arbitrator in September 2012 to adjudicate the disputes between the parties.

The arbitrator passed an award holding that there was a clear breach of the agreement by the Builder and that the Owners were entitled to payment of penalty @ Rs. 10,000/- per day for a period of two years (the likely completion period. Further, the Builder's counter-claim was partly allowed by directing the Owners to pay a net sum of Rs. 9,92,400 towards construction expenditure and the earnest money and compensation amount already paid under the Agreement.

The builder challenged the arbitral award under Section 34 of the Arbitration Act before the Hon'ble High Court. The Hon'ble Single Judge held that the arbitrator had incorrectly determined the period for which compensation was payable under Clause 7 of the Agreement and consequently modified the award by restricting the compensation period in accordance with the contractual timelines.

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Mr. Sudershan Kumar Bhayana and Mr. Vinod Seth expired and their legal representatives challenged the order of the Hon'ble Single Judge under Section 37 of the Arbitration Act before a Division Bench of the Hon'ble High Court ("**Division Bench**"). The Division Bench opined that the Hon'ble Single Judge had modified the award by substituting her own decision which was fundamentally flawed as the same was beyond the scope of Section 34 of the Arbitration Act. The Division Bench noted that the Owners failed to adduce evidence of the actual damage suffered by them and since the Agreement was terminated prior to the stipulated period, the Owners could not claim damages beyond the termination date. Thus, the Division Bench set aside the award of damages to the Owners.

Aggrieved by the order of the Division Bench, the Owners approached the Hon'ble Supreme Court.

Issue:

Whether courts are empowered to set aside an arbitral award under Section 34(2A) of the Arbitration Act, if the aggrieved party has not challenged the award.

Held:

The Hon'ble Supreme Court examined the factual matrix and reviewed the decisions of the arbitrator, the Hon'ble Single Judge and the Division Bench and held that the power of the courts to set aside an arbitral award in exercise of jurisdiction under Section 34 and thereafter Section 37 of the Arbitration Act is circumscribed by the grounds set out in Section 34. The Hon'ble Supreme Court held that a domestic award may be set aside under Section 34 (2A) of the Arbitration Act, if the court finds that it is vitiated by patent illegality appearing on the face of it.

The Hon'ble Supreme Court referred to its decision in the case of *Gayatri Balasamy v. ISG Novasoft Technologies Limited (2025) 7 SCC 1* wherein it was held that modification and setting aside of an arbitral award have different consequences as the former alters the award while the latter annuls it. In the aforestated case, the Hon'ble Supreme Court ruled that a modification would not inevitably lead to examination of merits of the dispute and would depend on the extent of the modification made. It was further held that modification was a limited nuanced power in comparison to annulment which would entail the award being violated in toto. It was also held that appellate jurisdiction under Section 37 of the Arbitration Act was coterminous with and as broad as the jurisdiction of the court under Section 34.

After considering the present matter in light of the aforementioned edict, the Hon'ble Supreme Court opined that the Division Bench's conclusion about the disentitlement of the Owners to damages was not correct.

It was observed that in his written statement, the Builder asserted that the Owners vacated the building one month after the agreement was executed, following which the Builder demolished the building. These facts were reiterated in the Builder's counter claim and were not rebutted by the Owners. It was noted that admittedly, the Owners terminated the Agreement after construction stopped and therefore, the Builder could not have continued construction. The Hon'ble Supreme Court opined that after termination, the Owners could not seek compensation under the contractual clause which provided for payment of penalty for the delayed period. It was observed that the Owners failed to adduce independent evidence of the damages suffered by them due to the Builder's breach in terms of either increase in construction cost or loss of revenue. It was ruled that in these circumstances, the Owner's claim for penalty could be only till the date of termination.

The Hon'ble Supreme Court held that when the agreement stipulated timelines for the commencement and completion of construction and the consequences that were to follow thereupon, it was not necessary for the Owners to adduce evidence separately proving actual damage suffered by them due to breach by the Builder. It was ruled that the Division Bench erred in holding that the Owners were not entitled to compensation due to the failure to adduce evidence.

The Hon'ble Supreme Court held that the award was patently illegal under Section 34(2A) of the Arbitration Act since the arbitrator ought not to have denied the Owners their just deserts i.e. penalty and forfeiture. However, since the Owners did not challenge this aspect under Section 34, the award attained finality as regards that issue. It was further noted that the Builder's entitlement to refund of the earnest money, compensation and cost of construction was confirmed as the Owners did not challenge the same.

Though the award was patently illegal and deserved to be set aside under Section 34(2A) of the Arbitration Act, the Hon'ble Supreme Court opined that doing so would not be in the interest of justice since the parties were litigating since the year 2012. The Hon'ble Supreme Court noted the ruling in case of Gayatri Balasamy, that it could be open to the court to modify the award within the guardrails stipulated in the said judgment and further that the Hon'ble Supreme Court's power under Article 142 of the Constitution can be used to effect substantial justice between the parties instead of relegating them to fresh rounds of litigation. In this view of the matter, the Hon'ble Supreme Court exercised their power under Article 142 to give a quietus to the dispute and held that the Owners were entitled to the penalty and the Builder was entitled to the refund.

8.TIME SPENT CHALLENGING AN AWARD BEFORE THE WRONG FORUM WILL BE EXCLUDED UNDER SECTION 14, LIMITATION ACT ONLY IF THE PARTY ACTED WITH DUE DILIGENCE: CALCUTTA HIGH COURT [MAY 20, 2026]

Introduction:

In the case of **Kamlesh Kumar Agarwala v. The Estate of Manjan Devi Patni, Represented by Nirmal Kumar Jain [8]** the Hon'ble Calcutta High Court ("Hon'ble High Court") held that the time spent by a litigant challenging an award under Section 34 of the Arbitration Act can be excluded only if the party has acted with due diligence and bona fide reasons. If a party knowingly pursues proceedings before an incorrect forum, the benefit under Section 14 of the Limitation Act, 1963 ("**Limitation Act**") cannot be claimed.

Facts:

Disputes arose between the Appellant, Kamlesh Kumar Agarwala ("**Appellant**"), and the Estate of Manjan Devi Patni (represented by Nirmal Kumar Jain) ("**Respondents**") concerning certain immovable properties situated in Kolkata. At the behest of the Respondents, there was an arbitral reference which culminated in an arbitral award. Vide the said award, the Appellant was directed to pay Rs. 1,10,00,000/- along with interest thereon and to deliver possession of the disputed property together with all related documents to the Respondents.

Prior to the publication of the award, the Respondents had successfully obtained an order from the Hon'ble High Court under Section 29A of the Arbitration Act, extending the time for making and publishing the award. Thereafter, the Appellant challenged the award under Section 34 of the Act before the Hon'ble District Judge at Alipore ("Hon'ble District Judge") on the ground that the property forming the subject matter of the dispute was situated within that court's territorial jurisdiction.

The Respondents objected to the maintainability of the challenge by relying upon Section 42 of the Arbitration Act, contending that since the Hon'ble High Court had earlier entertained the Section 29A application, all subsequent applications arising out of the arbitration could be filed only before that Court. Accepting the objection, the Hon'ble District Judge returned the Section 34 application for presentation before the competent court. The Appellant challenged the order of the Ld. District Judge in a Civil Revision Application under Article 227 of the Constitution of India, before a Single Judge of the Hon'ble High Court ("**Hon'ble Single Judge**") which was dismissed. Thereafter, the Appellant filed a fresh Section 34 application before the Hon'ble High Court. The Hon'ble Single Judge dismissed the challenge as being barred by limitation, holding that the Appellant was not entitled to exclusion of time under Section 14 of the Limitation Act. Aggrieved, the Appellant preferred the appeal under Section 37 of the Arbitration Act before a Division Bench of the Hon'ble High Court ("**Division Bench**").

Issues:

1.Whether the Appellant was entitled to exclusion of time under Section 14 of the Limitation Act while computing the limitation period prescribed under Section 34(3) of the Arbitration Act;

2.Whether the Appellant had prosecuted the proceedings before the Hon'ble District Judge, Alipore and the subsequent Civil Revision proceeding with the due diligence and bona fide required for invoking Section 14 of the Limitation Act.

Held:

The Division Bench noted that nothing had been placed on record suggesting that the Appellant had raised an objection to the jurisdiction of the Hon'ble High Court to entertain the application under Section 29A of the Arbitration Act. In view of the same, the Division Bench opined that the Hon'ble District Judge lost jurisdiction to entertain the application under Section 34 in terms of Section 42 of the Arbitration Act. The Division Bench further noted that the Appellant failed to provide an explanation for the delay occurring between the passage of the Hon'ble High Court order on the Appellant's Civil Revision Application and the fresh application under Section 34 of the Arbitration Act.

The Division Bench reviewed a catena of judgments and noted that in order to avail the benefits under Section 14 of the Limitation Act, the party claiming benefit must establish that there was observance of due diligence by such party in pursuing the proceedings in the wrong forum. It was further noted that in an order passed by the Hon'ble Supreme Court between the same parties, it was observed that even if the proceedings before the Hon'ble District Judge were instituted bona fide, there could be no bona fide reason for pursuing the Civil Revision Application from the reasoned order of the Hon'ble District Judge instead of re-filing the application under Section 34 of the Hon'ble High Court.

In view of the observations made by the Hon'ble Supreme Court, the Division Bench dismissed the Appeal and ruled that the Appellant did not act with requisite bona fide as contemplated under Section 14 of the Limitation Act in pursuing the Civil Revision Application. Therefore, the Division Bench upheld the order of the Hon'ble Single Judge.

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ANM Global is pleased to have represented Applause Entertainment Private Limited, successfully advising on the transaction, including structuring, negotiation and finalisation of the S&P and revenue agreements for the series.

ANM Global is pleased to have represented RTake Studios Private Limited, successfully advising on the transaction, including drafting, negotiation and execution of the agreements for the production and exploitation/distribution of the film.

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Ms. Anushree Rauta – Litigation Star (Intellectual Property)
Mr. Rahul Dhote – Litigation Star (Intellectual Property)

These recognitions are a testament to the firm's continued commitment to excellence and the trust reposed by its clients.

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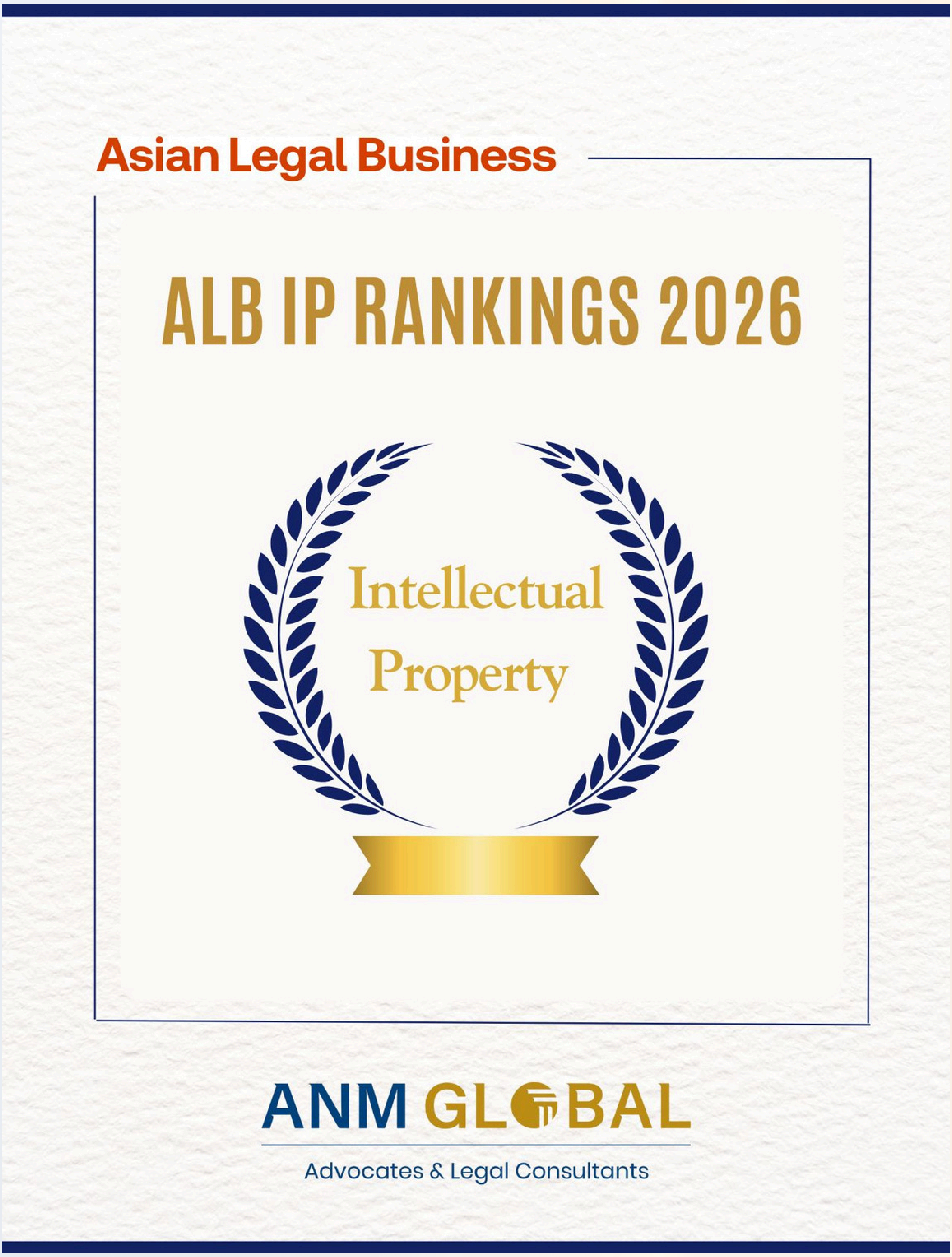

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