



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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SUPPLEMENT

PROFESSIONAL PROGRAMME

(ICSI Syllabus 2022)

for

June, 2026 Examination

(Amendments covering June 01, 2025 to November 30, 2025)

ARBITRATION, MEDIATION & CONCILIATION

GROUP 2

ELECTIVE PAPER 7.1

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Students appearing in Examination shall note the following:

Students appearing in June, 2026 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by ICSI, MCA, SEBI, RBI, Central Government and Other Authorities up to 30th November, 2025.

The students are advised to acquaint themselves with the monthly and Regulatory updates published by the Institute.

This supplement is to be read with the study material (Syllabus 2022) of Arbitration, Mediation & Conciliation updated up to May, 2025.

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Lesson 1: Arbitration: Introduction, Agreements and its Institutions

1. Glencore International AG v. M/s. Shree Ganesh Metals and another decided by Supreme Court on 25th August, 2025

In this case the Supreme Court observed that the non-signing of an arbitration agreement is no bar to refer the dispute to arbitration, if the parties have otherwise consented to arbitration.

This appeal was against the Delhi High Court's decision which declined reference to arbitration merely because Respondent No.1 didn't sign the arbitration agreement.

The Court relied on the case of *Govind Rubber Limited vs. Louis Dreyfus Commodities Asia Private Limited 2015 SC*, wherein this Court observed that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it."On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4) (b) or 7(4)(c) or under Section 7(5) of the Act."

"It is clear that for construing an arbitration agreement, the intention of the parties must be looked into. The materials on record which have been discussed hereinabove make it very clear that the appellant was prima facie acting pursuant to the sale contract issued by the respondent. So, it is not very material whether it was signed by the second respondent or not."

The Court also relied on *Caravel Shipping Services Private Limited vs. Premier Sea Foods Exim Private Limited 2019 SC*, in which it had affirmed and reiterated the legal position laid down in *Jugal Kishore Rameshwardas vs. Goolbai Hormusji 1955 SC* to the effect that an arbitration agreement needs to be in writing though it need not be signed. Noting the fact that the requirement of the arbitration agreement being in writing has been continued in Section 7(3) of the Act of 1996, it was observed that Section 7(4) only added that an arbitration agreement could be found in the

circumstances mentioned in the three sub-clauses that make up Section 7(4) but that did not mean that, in all cases, an arbitration agreement needs to be signed. It was held that the only pre-requisite is that it should be in writing, as pointed out in Section 7(3). This legal principle would hold good equally for an arbitration agreement covered by Sections 44 and 45 of the Act of 1996.

In the present case, the court held that , since the Respondent No.1 consented to the contractual terms via email, the High Court's refusal to refer to an arbitration on the ground of non-signing of the arbitration agreement cannot be sustained. Accordingly, the Court allowed the appeal, and the case was restored to the file of the High Court to be referred to an arbitration by the High Court in accordance with law.

For details:

https://api.sci.gov.in/supremecourt/2019/41844/41844_2019_13_1501_63666_Judgement_25-Aug-2025.pdf

2. M/s Alchemist Hospitals Ltd. v. M/s ICT Health Technology Services India Pvt. Ltd. decided by Supreme Court on 6th November, 2025

In this case, the Apex Court has held that the mere use of the word “arbitration” is not sufficient to treat the clause as a valid arbitration agreement Section 7 of the Arbitration and Conciliation Act, 1996, when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing. The A&C Act acknowledges the existence of an arbitration agreement based on its substance rather than its form. Regardless of the formal structure, effect has to be given to an arbitration agreement in essence. Arbitration being the creature of a contract, the ad idem intention of the parties is paramount to determine whether there exists a valid arbitration agreement.

Lesson 3: Arbitration Procedure, Appointment of an Arbitrator and Other Aspects

1. Applicability of provisions relating to Arbitration Council of India (October 13, 2023)

The Central Government has appointed 12th day of October, 2023 as the date on which the provisions of section 10 of the Arbitration and Conciliation (Amendment) Act, 2019 (said Act) has come into force.

Section 10 of the said Act has inserted Part IA containing sections 43A to 43M to the Arbitration and Conciliation Act, 1996, which are relating to the Arbitration Council of India.

Details of Change

Part IA has come into force w.e.f. 12th day of October, 2023.

For details: <https://egazette.gov.in/WriteReadData/2023/249358.pdf>

<https://legalaffairs.gov.in/sites/default/files/arbitration-and-conciliation%28amendment%29-act-2019.pdf>

2. *Kamal Gupta & Anr. v. M/s L. R Builders Pvt. Ltd. & Anr. decided by Supreme Court on 13th August, 2025.*

Issues

Two questions arose for consideration in these appeals were, (a) Whether it is permissible for a non-signatory to remain present in arbitration proceedings?

b) After appointment of an arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996, whether it is permissible for the Court to issue any further ancillary directions concerning the arbitration proceedings that have commenced?

Judgement

Hon'ble Supreme Court, in this case, held that non-signatories to an arbitration agreement cannot attend arbitration hearing proceedings, as permitting a stranger to do so would result in a breach of confidentiality in arbitral proceedings. The Court further added that when the arbitration proceedings can take place only between parties to an arbitration agreement and Section 35 of the Act does not make the arbitral award to be passed binding on non-signatories to such agreement, the Arbitration Act does not confer any legal right upon a non-party to remain present in arbitration proceedings between signatories.

The Court has thus re-affirmed the confidentiality mandate under Section 42A of the Arbitration and Conciliation Act, 1996. According to section 42A of the Act, the arbitrator, the arbitral institution and the parties to the arbitration agreement have to maintain confidentiality of all arbitral proceedings. The legislative intent behind maintaining confidentiality of information is quite clear. Permitting a stranger to the arbitration proceedings to remain present and observe the said proceedings would result in breach of the provisions of Section 42A of the Act.

Further, the Supreme Court held that once an arbitrator is appointed under a Section 11 application (under the Arbitration and Conciliation Act, 1996), the referring Court becomes *functus officio* and cannot pass any further ancillary directions concerning the arbitration proceedings.

For details:

https://api.sci.gov.in/supremecourt/2025/7529/7529_2025_7_1501_63207_Judgement_13-Aug-2025.pdf

Lesson 5: Preparation and Execution of Arbitral Award

1. Oil and Natural Gas Corporation Ltd. v. M/s G & T Beckfield Drilling Services Pvt. Ltd. decided by Supreme Court on 2nd September, 2025

In this case, the apex court clarified the scope of an arbitral tribunal's authority to grant interest during the pendency of proceedings.

The Court ruled that arbitrators retain their statutory power to award pendente lite interest unless the parties' agreement contains language that either explicitly or through necessary inference removes this authority. A provision simply stating that no interest shall accrue on delayed or disputed payments does not, standing alone, amount to such a restriction.

Examining Clause 18.1 of the contract in question, the Court found no express prohibition against pendente lite interest. The clause merely specified that the Corporation would not pay interest on delayed payments or contested amounts. Critically, it neither restricted the tribunal's authority to grant such interest nor declared that interest would be unavailable under all circumstances. The Court therefore concluded that Clause 18.1 left intact the tribunal's statutory discretion to award interest pending resolution of the dispute.

For details:

https://api.sci.gov.in/supremecourt/2019/22623/22623_2019_13_1502_63893_Judgement_02-Sep-2025.pdf

Lesson 6: Challenge to Award and Appeals

1. M/s Lancor Holdings Limited v. Prem Kumar Menon & Ors. decided by Supreme Court on 31st October, 2025

Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside the award

The Hon'ble Supreme Court in this case has held that delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.

The basis and public policy underlying the process of arbitration is that it is less time-consuming and results in speedier resolution of disputes between the parties, The Court held that if that premise is not fulfilled by an unworkable arbitral award that does not resolve the disputes between the parties, on one hand, leaving them with no choice but to initiate a fresh round of arbitration/litigation but the arbitrator, in the meanwhile, also changed their positions, irrevocably altering the pre-existing balance between the parties prior to the arbitration, then such an arbitral award would not only be in conflict with the public policy of India but would also be patently illegal on the face of it. It would therefore be liable to be set aside under Section 34(2)(b)(ii) and/or Section 34(2A) of the Arbitration and Conciliation Act, 1996.

It was also held that where the conditions for exercise of power under Article 142 of the Constitution are satisfied, such jurisdiction may be justifiably exercised in accordance with the principles laid down in *Gayatri Balasamy v. ISG Novasoft Technologies Limited*, 2025 INSC 605.

For details:

https://api.sci.gov.in/supremecourt/2019/6448/6448_2019_11_1501_65336_Judgement_31-Oct-2025.pdf
