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BEYOND MECHANICAL ENFORCEMENT: A CASE FOR AN EXPANSIVE INTERPRETATION OF SECTION 36(1) IN THE ENFORCEMENT OF ARBITRAL AWARDS

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Introduction

The question of the maintainability of objections to an arbitral award at the stage of enforcement has been the subject of considerable judicial scrutiny and debate. The controversy turns on the interpretation of Section 36(1) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), which contemplates the enforcement of an arbitral award in accordance with the provisions of the Code of Civil Procedure, 1908 ("**CPC**"), as if it were a decree of the court. Various High Court decisions have diverged on whether Section 36(1) permits the maintainability of objections to in the nature of Section 47 of the CPC to assail an arbitral award at the stage of enforcement, which has resulted in competing interpretations as to the true scope of the provision.

Against this backdrop of judicial inconsistency, the Hon'ble Supreme Court's ruling in *Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd.* ("**Electrosteel**"), which has been recently reaffirmed in *MMTC Ltd. v. Anglo American Metallurgical Coal Pvt. Ltd.* ("**Metallurgical Coal**"), marks a significant attempt to reconcile this tension and harmonise the law governing the enforcement of arbitral awards. The decision has clarified the contours of the enforcement court's role by endorsing an expansive reading of Section 36(1) and permitting limited objections relating to inherent lack of jurisdiction to be raised at the stage of enforcement of an arbitral award.

This article critically analyses the core reasoning and underlying premises of the competing interpretive approaches reflected in the divergent High Court decisions. Building on this analysis, this article argues that the expansive interpretation of Section 36(1), as endorsed in *Electrosteel*, represents the more cogent and principled approach by exposing the doctrinal infirmities inherent in the restrictive interpretation of Section 36(1), and demonstrating that the expansive reading is more consistent with both the plain language and the fundamental objectives of the Arbitration Act.

Divergent Judicial Interpretations of Section 36(1)

Section 36(1) engrafts a legal fiction by equating an arbitral award with a decree for the purposes of enforcement. In *Government of India v. Vedanta Ltd.*, the Hon'ble Supreme Court clarified that this deeming fiction is limited in nature and operates solely for the purpose of enforcement. However, despite the limited nature of the deeming fiction, considerable judicial divergence has emerged on whether Section 36(1) permits objections in the nature of Section 47 of the CPC to be raised at the enforcement stage.

The reasoning adopted in various High Court decisions on this issue can broadly be crystallised into two competing interpretive approaches: first, a restrictive interpretation of Section 36(1), which excludes any objections to the arbitral award during enforcement; and secondly, an expansive interpretation, which permits narrow objections during enforcement. It is apposite to first examine the restrictive interpretation, which evolved through a line of High Court decisions.

The Delhi High Court in *Hindustan Zinc Ltd. v. National Research Development Corporation* held that once the Arbitration Act provides a specific mechanism under Section 34 for assailing an arbitral award, no collateral challenge can be mounted at the enforcement stage. It further reasoned that an importation of various provisions of the CPC to enforcement actions would run contrary to the express provisions and underlying legislative policy of the Arbitration Act. Consequently, the Court concluded

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that objections premised on nullity or illegality under Section 47 of the CPC ("**Section 47**") are not maintainable to assail an arbitral award at the stage of enforcement.

The Allahabad High Court also reinforced this restrictive understanding of Section 36(1) in *State of Uttar Pradesh v. Raj Veer Singh*, reasoning that the maintainability of objections in the nature of Section 47 would undermine the binding nature of arbitral awards and subject their enforcement to the delays which are ordinarily associated with court proceedings.

Proceeding on similar lines, the Tripura High Court in *State of Tripura v. Shri Ashes Deb*, opined that objections to an arbitral award cannot be maintained under Section 47 on the ground that Section 5 of the Arbitration Act implies that the only recourse available to an aggrieved party against an arbitral award lies under Section 34 of the Act.

In contrast, the expansive interpretation of Section 36(1), which holds that Section 47 objections are maintainable during enforcement, primarily draws support from a literal interpretation of the statutory framework. The Delhi High Court in *Khanna Traders v. Scholar Publishing House (P) Ltd.* held that in the absence of an express statutory bar under the Arbitration Act, jurisdictional objections at the stage of enforcement of arbitral awards under Section 47 would remain maintainable.

Similarly, the Gujarat High Court, in *Samunnati Finance Pvt. Ltd. v. Ramdev International Castor Products Pvt. Ltd.*, underscored that an executing court does not discharge merely a ministerial function, but is under a judicial obligation to ensure that the award sought to be enforced does not suffer from an inherent lack of jurisdiction. Consequently, the court held that an arbitral award arising from the unilateral appointment of an arbitrator can be declared *non-est* by the executing court under Section 36(1).

These divergent lines of reasoning adopted by the High Courts have resulted in considerable uncertainty regarding the scope of enforcement proceedings in respect of arbitral awards, which has in turn created ambiguity for stakeholders and undermined the uniformity of the enforcement framework. It is in this backdrop that the judgment of the Hon'ble Supreme Court in *Electrosteel* assumes considerable significance, as it seeks to resolve this divergence and bring much needed clarity and coherence to the law.

Supreme Court Guidance

Marking a significant development, the Hon'ble Supreme Court in *Electrosteel* authoritatively ruled that objections under Section 47 are maintainable in enforcement proceedings under the Arbitration Act, on the narrow grounds of lack of jurisdiction and nullity. The Court's core reasoning rested on a conjoint textual reading of Section 36(1) and Section 47.

The Court also emphasised that enforcement-stage objections under Section 47 are autonomous and independent of setting-aside proceedings under Section 34 of the Arbitration Act, and may therefore be raised even where no challenge under Section 34 has been raised. The decision thus clarifies that Sections 34 and 36(1) operate in distinct spheres, premised on a conceptual separation between award-validity review under Section 34 and enforceability review under Section 36(1). The doctrinal significance of this position is further reinforced by its reaffirmation in *Metallurgical Coal*, wherein the Supreme Court, placing reliance on *Electrosteel*, entertained a plea of fraud raised at the stage of enforcement of the arbitral award.

Against this backdrop, the following analysis demonstrates that the expansive interpretation of Section 36(1) endorsed in *Electrosteel*, is doctrinally sound, both because it exposes the conceptual flaws underlying the restrictive interpretation of Section 36(1), and because it more faithfully accords with the text, structure, and underlying purpose of the Act.

Doctrinal Flaws in the Restrictive Interpretation of Section 36(1)

The restrictive interpretation of Section 36(1) proceeds on the foundational premise that a challenge under Section 34 constitutes the sole and exclusive recourse for assailing an arbitral award. This premise, however, is misconceived, as it overlooks the fundamental distinction between a challenge to the validity of an award under Section 34 and an objection to its very enforceability under Section 47. This distinction between the notion of illegality and unenforceability was succinctly explained by the Hon'ble Supreme Court in *Rafique Bibi v. Sayed Waliuddin* ("**Rafique Bibi**"), wherein the Court observed that an illegal decree passed by a court of competent jurisdiction cannot be assailed in collateral proceedings, whereas a decree passed by a forum lacking inherent jurisdiction is a nullity and, consequently, can be challenged even in collateral proceedings, including execution.

Viewed through this doctrinal lens, Section 34 tests the legal validity of an arbitral award on the grounds specifically enumerated therein, whereas Section 47 permits only limited objections directed towards examining the legal existence of the decree. The two inquiries are therefore, fundamentally distinct in nature and purpose.

To treat Section 34 as an exhaustive code for all conceivable objections to an arbitral award is therefore, conceptually flawed, as it obliterates the settled distinction between the invalidity and unenforceability of the arbitral award. It necessarily follows that even where no challenge under Section 34 has been raised by the award-debtor, objections under Section 47 must remain maintainable, as they operate independently of setting-aside proceedings under Section 34 and serve the distinct function of safeguarding against the enforcement of manifestly void arbitral awards during execution.

Moreover, the assertion that permitting such objections at the stage of enforcement would reintroduce delays ordinarily associated with court proceedings, or result in a second round of merits review, is equally misplaced. The scope of inquiry under Section 47 is exceedingly narrow. As laid down in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman* and *Rafique Bibi*, the executing court cannot go behind the decree, and the inquiry at the execution stage under Section 47 is confined solely to jurisdictional defects that are apparent on the face of the record. It does not extend to a reconsideration of the merits of the dispute.

Consequently, where a jurisdictional objection necessitates the re-appreciation of evidence, adjudication of disputed questions of fact, or examination of extrinsic material, such an objection would fall outside the permissible ambit of enforcement proceedings. Only those objections that are apparent on the face of the record and do not require any further evidentiary inquiry can be entertained by the executing court. This narrowly tailored safeguard preserves the limited gatekeeping function of the executing court while simultaneously ensuring that the enforcement inquiry remains summary in nature and does not degenerate into a disguised merits review. Far from frustrating the objective of expeditious enforcement, such limited scrutiny instead serves as an essential safeguard against the mechanical enforcement of awards that are manifestly void in the eyes of law.

Why *Electrosteel* Reflects the more coherent interpretation of Section 36(1)

Allowing the maintainability of objections under Section 47 during enforcement of awards is not only doctrinally sound, but also accords with the express text of Section 36(1) for two fundamental reasons. First, Section 36(1) contemplates recourse to the CPC in mandatory terms for the purposes of enforcement. Second, nothing in its text suggests any legislative intent to selectively apply certain provisions of the CPC while excluding others in the enforcement of arbitral awards.

The first proposition is reinforced by the legislature's use of the word "shall" in Section 36(1), which ordinarily conveys a mandatory legislative command and leaves no scope for treating recourse to the CPC as merely discretionary. This view is further fortified by the textual contrast embodied in Section 36(3) of the Arbitration Act, where the legislature employs the phrase "have due regard to the provisions for grant of stay of a money decree under the provisions of the CPC", which demonstrates that wherever Parliament intended to confer merely discretionary guidance with respect to the CPC, it did so in express terms.

Equally significant is the fact that Section 36(1) draws no distinction between the different provisions of the CPC governing execution, nor does it selectively incorporate some while excluding others. Rather, the provision, in its unqualified terms, evidences a clear legislative intent to incorporate the entire execution framework of CPC. Once the legislature has deemed an arbitral award to be a decree for the purposes of enforcement, that legal fiction must be carried to its logical conclusion. It would therefore be impermissible to import the coercive incidents of enforcement while excluding the jurisdictional safeguards inherent in that very framework.

Further, if one would examine the Statement of Objects and Reasons of the Arbitration Act, it would become clear that among the principal objectives of the Act is the establishment of an arbitral framework that is fair, efficient, and capable of ensuring that "the arbitral tribunal remains within the limits of its jurisdiction." This legislative mandate demonstrates that the jurisdictional competence of the arbitral tribunal is not merely any peripheral consideration, but the very bedrock of the arbitral process itself. In the absence of inherent jurisdictional competence, the entire arbitral process would stand in derogation of the foundational principles of party autonomy, consent, and procedural fairness.

Given that the inquiry under Section 47 remains narrowly circumscribed and confined solely to cases involving patent lack of inherent jurisdiction apparent on face of the record, permitting such objections would serve as an indispensable safeguard against the enforcement of arbitral awards that are manifestly void, a nullity, or coram non judice, which would advance the legislative purpose underlying the Act.

On the other hand, a purely mechanical approach to enforcement, which compels the executing court to enforce every arbitral award, would fundamentally undermine the aforenoted objective by risking the enforcement of awards that lack inherent jurisdiction - a risk that becomes particularly pronounced where no challenge under Section 34 has been raised.

Therefore, it is both textually and purposively sound that where such manifest defects of jurisdiction are apparent on the face of the record, the executing court ought not to be constrained by a hyper-technical approach that disables it from declaring the award a nullity.

Conclusion

Ultimately, the finality of arbitral awards cannot be regarded as an end in itself, as it derives its force only from a process that is jurisdictionally legitimate. Howsoever desirable, finality to arbitral awards cannot be imposed in derogation of foundational legal norms. The expansive interpretation of Section 36(1), as endorsed in *Electrosteel* therefore reflects the more principled doctrinal approach, which safeguards not only the efficiency of award enforcement, but also the legitimacy upon which award finality ultimately rests.

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