



LEGAL UPDATE

SUPREME COURT LAYS DOWN THAT AN ARBITRATOR'S ORDER REJECTING A PLEA BASED ON LIMITATION CANNOT BE CHALLENGED UNTIL AFTER THE FINAL AWARD HAS BEEN RENDERED

The Hon'ble Supreme Court in the case of MCM Worldwide Pvt. Ltd. v Construction Industry Development Council (2026 INSC 425) has laid down that an arbitrator's order under section 16 of the Arbitration Act, rejecting a plea based on limitation cannot be challenged until after the final award has been rendered.

The Supreme Court has clarified the misunderstanding which had cropped up based on the case of Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products, (2018 (2) SCC 534) viz that even the rejection of a plea under section 16(2) of the Arbitration Act would be treated as an interim award and the same can be challenged under section 34 of the Arbitration Act.

The Supreme Court analysed Section 16 and Section 37 in relation to the scheme of the Arbitration Act in its decision. The Court laid down that accepting such a construction would do violence to the very scheme of the Arbitration Act and render Section 37(2) superfluous, as it is only an order accepting the plea of lack of jurisdiction under section 16(2) or (3) that is amenable to appeal directly, without going through the process under section 34. In essence "piecemeal" challenges to interim awards have been held to be valid only after the final award has been rendered by the Arbitral Tribunal.





2026 INSC 425

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2026
(@ SLP (C) No. 33075 of 2025)

M/s. MCM Worldwide Private Limited

... Appellant

versus

M/s. Construction Industry Development Council

... Respondent

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.
2. During the arbitral proceedings between the parties, a fundamental legal aspect came to be glossed over on a patent misunderstanding of a decision of this Court. Hence, this order, to clarify the legal position.
3. Arbitration commenced between the parties upon appointment of a sole Arbitrator by the Delhi High Court in the context of the disputes arising under their Memorandum of Understanding (MoU) dated 02.03.2006 read with the Memorandum of Understanding (MoU) dated 05.05.2008 of the respondent, M/s. Construction Industry Development Council, with

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babita pandey
Date: 2026.04.28
17:18:20 IST
Reason:

**Employment Generation and Marketing Mission, Department of Rural
Development, Government of Andhra Pradesh.**

4. The appellant, M/s. MCM Worldwide Private Limited, had earlier filed a suit in CS DJ No. 428 of 2018 for recovery of its alleged dues before the learned District & Session Judge, South-East, Saket Courts, New Delhi, but the respondent filed an application therein under Section 8 of the Arbitration and Conciliation Act, 1996¹, to refer the parties to arbitration in terms of the arbitration clause in the MoU dated 05.05.2008, read with Clause 4 of the MoU dated 02.03.2006. On 03.08.2019, the suit was disposed of on this premise. However, as the respondent failed to agree to the appointment of an arbitrator, the appellant approached the Delhi High Court by way of a petition under Section 11(6) of the Arbitration Act, resulting in the appointment of a sole arbitrator by the High Court by order dated 27.09.2021, which was thereafter confirmed on 11.10.2021.

5. While so, at the stage of framing of issues by the learned Arbitrator, the respondent filed an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the appellant's claim petition on the ground that its claims were barred by limitation. However, the learned Arbitrator dismissed the application on merits, by order dated 16.04.2022. Assailing the said order, the respondent filed OMP (Comm.) No. 24 of 2022, an application under Section 34 of the Arbitration Act, before the learned District Judge (Comm.), South-East, Saket Courts,

¹ For short, 'the Arbitration Act'

New Delhi. The application was rejected by the learned District Judge on 11.11.2022, holding that the said order was not amenable to challenge under Section 34 of the Arbitration Act. The respondent assailed this order before the Delhi High Court in FAO (Comm.) No. 50 of 2023. The High Court dismissed the same on 24.02.2023 but granted liberty to the respondent to file an application before the learned Arbitrator under Section 16 of the Arbitration Act.

6. Pursuant to such liberty, the respondent filed an application before the learned Arbitrator under Section 16 of the Arbitration Act with the following prayer: -

‘Dismiss the present statement of claim as the same is not maintainable since the Ld. Sole Arbitrator does not possess jurisdiction to entertain the same due to barred by limitation.’

This application was dismissed by the learned Arbitrator on 19.05.2023. Aggrieved thereby, the respondent again filed an application under Section 34 of the Arbitration Act in OMP (Comm.) No. 64 of 2023 before the learned District Judge (Commercial Court-01), South-East, Saket Courts, New Delhi. Significantly, the appellant raised the issue of maintainability of this application under Section 34 of the Arbitration Act against an order passed under Section 16 thereof. The specific contention of the appellant was that, in the scheme of the Arbitration Act, an order rejecting the contention that the arbitrator lacked jurisdiction could only be assailed after the award was made by the arbitrator, upon conclusion of

the arbitral proceedings, and not prior thereto. While so, the respondent placed reliance on the decision of this Court in ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products***² and the appellant conceded, on the strength thereof, that the application under Section 34 of the Arbitration Act was maintainable.

7. In the light of the parties being *ad idem* on the maintainability of the application, the learned District Judge considered the matter on merits and dismissed the respondent's application under Section 34 of the Arbitration Act, by order dated 26.03.2024. This order was challenged by the respondent before a Division Bench of the Delhi High Court, by way of an appeal under Section 37 of the Arbitration Act, in FAO (Comm.) No. 83 of 2024. Notably, the Division Bench did not choose to consider the maintainability of either the application filed under Section 34 of the Arbitration Act or the appeal filed before it under Section 37 thereof, in the context of an order passed by the learned Arbitrator, rejecting the plea of lack of jurisdiction under Section 16 of the Arbitration Act. The judgment dated 08.05.2025 of the Division Bench, allowing the appeal, focused on the merits, without addressing the essential issue as to whether the case was proceeding on the right track. The said judgment is called in question before us in this appeal.

² (2018) 2 SCC 534

8. Having given our earnest consideration to the matter, we are of the opinion that neither the learned District Judge nor the Division Bench were correct in entertaining the matters brought before them, i.e., under Section 34 and, thereafter, under Section 37, of the Arbitration Act. In this regard, we may note that Section 16 of the Arbitration Act is titled 'Competence of arbitral tribunal to rule on its jurisdiction' and Section 16(1) provides that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement. Section 16(2) states that a plea that the arbitral tribunal does not have jurisdiction should be raised not later than the submission of the statement of defence, but a party would not be precluded from raising such a plea merely because he has appointed or participated in the appointment of the arbitrator. Section 16(3) states that a plea that the arbitral tribunal is exceeding the scope of its authority should be raised as soon as the matter alleged to be beyond the scope of such authority is raised during the arbitral proceedings. Section 16(4) stipulates that, in either of the cases referred to in Section 16(2) or (3), the arbitral tribunal may admit a later plea, if it considers the delay justified. Section 16(5) categorically mandates that once the arbitral tribunal decides on a plea raised under Section 16(2) or (3) and where the arbitral tribunal rejects such plea, it shall continue with the arbitral proceedings and make an arbitral award. Section 16(6) states that the party aggrieved by such an arbitral award

may then make an application for setting it aside in accordance with Section 34 of the Arbitration Act. It is also relevant to note that Section 37 of the Arbitration Act, titled 'Appealable orders', provides for an appeal being filed only in the event an arbitrator upholds the plea of lack of jurisdiction under Section 16(2) or (3), i.e., where the arbitrator puts an end to the arbitration proceedings by accepting the plea that he/she has no jurisdiction to proceed further.

9. This being the scheme of the Arbitration Act, the crucial question that arises in the present scenario is whether the respondent was entitled to file an application under Section 34 of the Arbitration Act against the learned Arbitrator's order dated 19.05.2023 under Section 16(2), rejecting the plea that she lacked jurisdiction to continue with the arbitral proceedings. Though an issue in that regard was not raised before the Delhi High Court, the Division Bench ought to have been mindful of the scheme of the Arbitration Act and should have applied its mind to this basic and foundational aspect.

10. At this stage, it would be apposite to take note of what this Court had held in ***Indian Farmers Fertilizer Cooperative Limited*** (*supra*), the decision cited before the learned District Judge during the hearing of the application under Section 34 of the Arbitration Act. This decision did not relate to an order passed under Section 16 of the Arbitration Act. It recorded that an interesting question arises as to whether an award

delivered by an arbitrator, which decides the issue of limitation, can be said to be an interim award and whether such an interim award can be set aside under Section 34 of the Arbitration Act. The background of that case was that, after initiation of arbitral proceedings, the learned Arbitrator therein deemed it fit to take up the issue of limitation first. Thereupon, the issue was decided in favour of the claimant, holding that the claims were not time-barred. This decision came to be challenged by way of an application under Section 34 of the Arbitration Act, by styling it as a 'First Partial Award'. The learned District Judge before whom the application was filed dismissed it, stating that he lacked jurisdiction as the decision could not be said to be an interim award for the purposes of Section 34 of the Arbitration Act. The High Court agreed with this view and the matter came before this Court.

11. In this factual milieu, this Court opined that, in the event a decision is made by an arbitrator determining one issue between the parties, it would have to be treated as an interim award as such issue stood finally determined between them and could not be re-adjudicated before the arbitrator again. Reference was made to case law in support of the proposition that an interim award or partial award would be a final award on matters covered therein, made at an intermediate stage of the arbitral proceedings. This Court opined that, as it was clear that the arbitrator had disposed of one matter between the parties, i.e., the issue of limitation

finally, that decision would be an interim award within the meaning of Section 2(1)(c) of the Arbitration Act and would be subsumed within the expression 'Arbitral Award' and could, therefore, be challenged under Section 34 thereof. Significantly, this Court observed as follows:

'30. In our view, therefore, it is clear that the award dated 23-7-2015 is an interim award, which being an arbitral award, can be challenged separately and independently under Section 34 of the Act. We are of the view that such an award, which does not relate to the Arbitral Tribunal's own jurisdiction under Section 16, does not have to follow the drill of Sections 16(5) and (6) of the Act. Having said this, we are of the view that Parliament may consider amending Section 34 of the Act so as to consolidate all interim awards together with the final arbitral award, so that one challenge under Section 34 can be made after delivery of the final arbitral award. Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense.'

12. We may note that this Court specifically held that a decision of the arbitrator on limitation, taken up as a preliminary issue, would amount to an interim award which would be amenable to challenge under Section 34 of the Arbitration Act. This is logical as that issue, once it stands decided, would no longer figure for consideration before the arbitrator and would, therefore, not be dealt with again in the final award that would be passed by the arbitrator. Unless such decision is treated as an interim award, there would be no scope for the party aggrieved thereby to challenge the correctness thereof.

13. However, if an arbitrator deals with the very same issue of limitation on an application filed under Section 16 of the Arbitration Act,

on the ground that the arbitrator lacks jurisdiction on that count, it would be traceable to Section 16(2) of the Arbitration Act and if the arbitrator rejects that plea, Sections 16(5) and Section 16(6) would apply. In that situation, there is no option for the party aggrieved by the decision of the arbitrator upon the application filed under Section 16 except to wait till the conclusion of the arbitral proceedings and then raise that issue by way of an application under Section 34 against the final award.

14. Though the final award, even in this situation, would not focus upon the issue of limitation as it already stood decided by the rejection of the application filed under Section 16(2) of the Arbitration Act, the scheme of Section 16 and, more particularly, Sections 16(5) and 16(6), would keep the issue alive and enable the party aggrieved to challenge the validity of the rejection order under Section 16 at the final stage, even after the passing of the final award.

15. However, the scheme of Sections 16(5) and 16(6) would not apply if the arbitrator deals with limitation as a preliminary issue and makes a decision thereon in favour of the claimant. That is the reason why this Court observed that, in such a situation, the drill of Sections 16(5) and 16(6) would not have to be followed. This Court went on to observe that even such interim awards should be made amenable to challenge under Section 34 of the Arbitration Act after the passing of the final award, instead of going in for 'piecemeal' challenges.

16. The exclusion of an order passed by an arbitrator under Section 16(2), rejecting the plea of lack of jurisdiction is, therefore, manifest from the aforesaid observations of this Court, but this decision has now been misunderstood to imply that, even the rejection of a plea under Section 16(2) of the Arbitration Act must be treated as an interim award and the same can be subjected to challenge under Section 34 of the Arbitration Act. This understanding on the part of the learned District Judge, which seems to have found favour with the Division Bench of the Delhi High Court, is erroneous and unsustainable. Accepting such a construction would do violence to the very scheme of the Arbitration Act and render Section 37(2) thereof superfluous, as it is only an order accepting the plea of lack of jurisdiction under Section 16(2) or (3) that is amenable to appeal directly, without going through the process under Section 34 thereof. This crucial aspect of the matter was entirely lost sight of.

17. On the above analysis, the respondent was not entitled to file an application under Section 34 of the Arbitration Act against the order dated 19.05.2023 passed by the learned Arbitrator rejecting its plea of lack of jurisdiction on the ground of limitation. As the said application was not even maintainable, the question of an appeal under Section 37 of the Arbitration Act being entertained against the decision passed thereon did not arise. The Delhi High Court erred in overlooking this

crucial aspect and in deciding the appeal on merits. The judgment dated 08.05.2025 passed by the Division Bench of the Delhi High Court in FAO (Comm.) No. 83 of 2024 is, accordingly, set aside. It would be open to the respondent to test the validity of the order dated 19.05.2023 passed by the learned Arbitrator only after passing of the final award and if the situation so warrants, by way of an application under Section 34 of the Arbitration Act.

The appeal is allowed in the aforesaid terms.

Parties shall bear their own costs.

.....J

[SANJAY KUMAR]

.....J

[K. VINOD CHANDRAN]

**New Delhi;
April 21, 2026.**