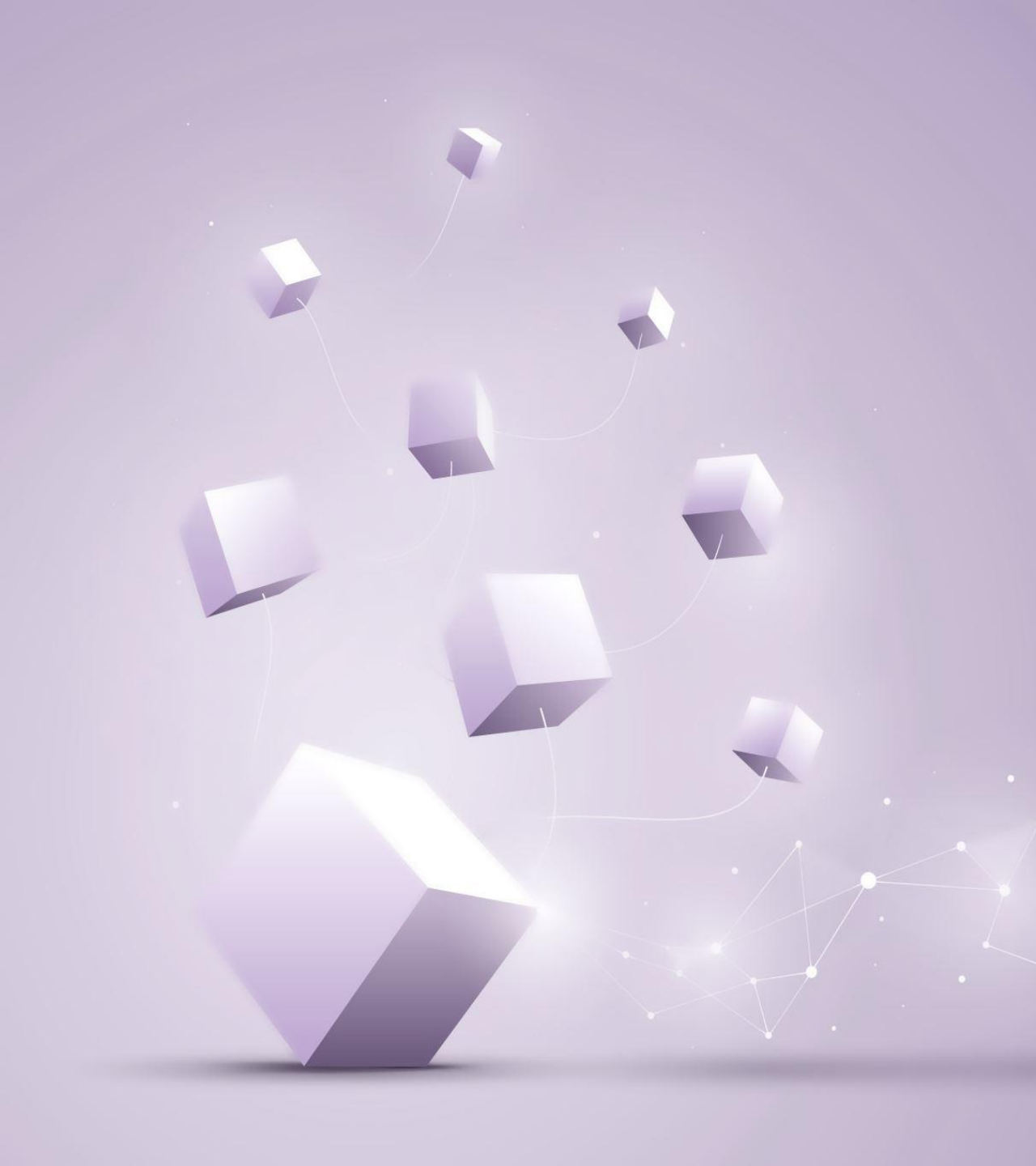




Appeal Procedures in Arbitration

BY

G.DHYANESHWAR

ADVOCATE

Session Objectives



Understand what "appeal" really means in arbitration law — it is narrower than a normal civil appeal



Learn the two-stage challenge route: Section 34 (setting aside) and Section 37 (appeal)



Know the strict timelines involved — missing them can forfeit the department's right to challenge



Understand the 2025 Supreme Court ruling on modification of awards and its relevance to highway contract disputes



Why This Matters to You

Almost every EPC, HAM, and BOT contract carries an arbitration clause (MoRTH/NHAI GCC, State PWD conditions)

When an arbitral award goes against the department, the window to act is short and unforgiving

Engineers on site are often the first to receive the award — delay in forwarding it to the legal cell can cost the department its remedy

Understanding this ladder helps you brief your legal/contracts wing correctly and on time



Recap: What Is Arbitration?

A private dispute resolution mechanism, agreed to in the contract, as an alternative to court litigation

Governed by the Arbitration and Conciliation Act, 1996 (based on the UNCITRAL Model Law)

Ends in an Arbitral Award — intended to be final and binding, with minimal court interference (Section 5)

Court involvement is by design limited — not a fresh trial of the dispute



The Arbitral Award: Presumption of Finality

Section 5: judicial authority shall not intervene except where the Act itself provides

The Act deliberately restricts how much a court can revisit an award

This finality principle is the lens through which both Section 34 and Section 37 must be understood

Key message: challenging an award is not a "second trial" on facts



Section 34: Setting Aside an Arbitral Award



Not technically an "appeal" — it's an application to set aside the award



Filed before the competent Commercial Court / District Court (or High Court, for international commercial arbitration)



The court can only set aside the award or refuse to — it cannot rewrite the merits of the dispute



This is the department's first opportunity to challenge an award it disagrees with

PARTNERSHIP DISPUTE RESOLUTION PROCESS



Section 34(2): Grounds for Challenge

- ▶ Party under incapacity, or the arbitration agreement not valid in law
- ▶ No proper notice of appointment of arbitrator or of the proceedings
- ▶ Award deals with a dispute not contemplated by, or beyond the scope of, the arbitration agreement
- ▶ Composition of the tribunal or procedure not in accordance with the agreement
- ▶ Award is in conflict with the "public policy of India" (fraud, corruption, contravention of fundamental policy, or basic notions of morality/justice)

Section 34(2A): Patent Illegality



Added by the 2015 Amendment — applies only to purely domestic arbitrations (not international commercial arbitration)



Award can be set aside if illegality appears on the face of the award



Important limit: an erroneous application of law, or mere re-appreciation of evidence, is NOT sufficient ground



Courts have repeatedly cautioned against using this ground to re-argue the merits

What Section 34 Is NOT

It is not an appellate review of facts or evidence

The court does not re-assess who was "right" on the engineering or commercial merits

It only tests the award against the narrow statutory grounds

Practical implication: a weak/unreasoned award is challengeable; a well-reasoned award you merely disagree with, often is not

Limitation Period for Section 34 — Strict

Application must be filed within 3 months from receipt of the award

A further 30 days may be allowed if the court is satisfied there was "sufficient cause" for delay

Beyond 3 months + 30 days: no further condonation is possible, even under the general Limitation Act (settled in Union of India v. Popular Construction Co.)

Action point: the moment an adverse award is received, the clock starts — flag it to the legal cell immediately

Section 36: Enforcement and Stay of Award



Once the Section 34 period lapses without challenge, the award becomes enforceable as a decree



Filing a Section 34 application does NOT automatically stay enforcement — a separate stay application is required



Court may grant stay, often on conditions (e.g., deposit of the awarded amount)



2021 Amendment: unconditional stay is available where the court finds a prima facie case that the contract/arbitration agreement/award was induced by fraud or corruption

Section 37: The First Appeal



An appeal (a genuine appeal, unlike Section 34) lies to the court authorized to hear appeals from original decrees



Appealable orders include: refusing to refer parties to arbitration (Sec 8), granting/refusing interim measures (Sec 9), and setting aside/refusing to set aside an award (Sec 34)



Also covers tribunal orders: accepting a jurisdictional plea (Sec 16), and granting/refusing interim measures (Sec 17)



This is an exhaustive list — "and from no others"



Scope of Section 37 Is Confined to Section 34

- ▶ Settled by the Supreme Court in *MMTC Ltd. v. Vedanta Ltd.* (2019): the appellate court's jurisdiction under Section 37 cannot exceed the grounds available under Section 34
- ▶ The appellate court cannot use the "appeal" as a backdoor to re-examine the merits either
- ▶ Where both the Section 34 court and the Section 37 appellate court have upheld an award, higher courts are extremely cautious about disturbing that "concurrent finding"

No Second Appeal

Section 37(3): no second appeal lies from an order passed in appeal under this section

The only further remedy is a Special Leave Petition (SLP) to the Supreme Court under Article 136 of the Constitution

SLP is discretionary — the Supreme Court is not bound to admit it, and typically intervenes only in exceptional cases

Limitation Period for Section 37 Appeals

Unlike Section 34, Section 37 does not prescribe its own limitation period

Section 43 of the Act applies the general Limitation Act, 1963 to arbitration-related court proceedings

Broadly: 90 days for an appeal to a High Court, 30 days for an appeal to other courts (under the Limitation Act's general appeal provisions)

Unlike Section 34, Section 5 of the Limitation Act (condonation of delay for "sufficient cause") is generally available here

Section 34 vs. Section 37 — Quick Comparison

Nature: Section 34 = application to set aside;
Section 37 = statutory appeal

Forum: Section 34 = Commercial/District Court;
Section 37 = Appellate Court (usually High
Court)

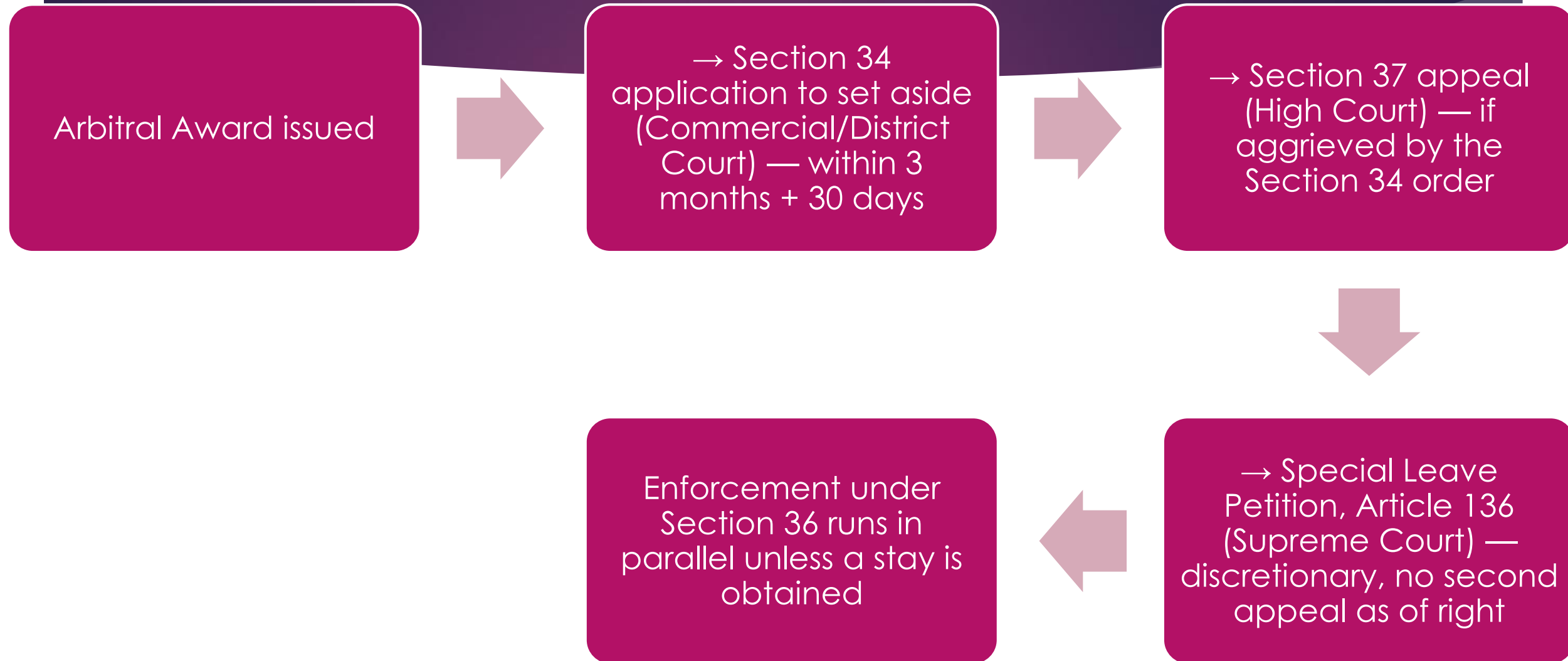
Limitation: Section 34 = 3 months + 30 days, no
further condonation; Section 37 = governed by
Limitation Act, condonation possible

Further remedy: Section 34 order can be
appealed under Section 37; Section 37 order
can only go to the Supreme Court by SLP

2025 Landmark: Gayatri Balasamy v. ISG Novasoft

- ▶ Supreme Court Constitution Bench (5 judges), decided 30 April 2025, by 4:1 majority
- ▶ Question: do courts have the power to modify an arbitral award under Sections 34/37, or only to set it aside?
- ▶ Held: courts have a limited power to modify — where the award is severable, to correct clerical/computational/typographical errors, and to adjust post-award interest
- ▶ Relevance flagged by legal commentators specifically for infrastructure and NHAI land-acquisition arbitration disputes, where interest and severable-claim issues are common
- ▶ Note: this is a significant and still-developing area of law — always confirm current position with your legal cell before relying on it

The Appeal Ladder — Visual Summary



Practical Implications for Highway Department Contract Management



Log the date of receipt of every arbitral award immediately — this date triggers the Section 34 clock



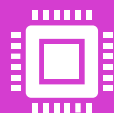
Route adverse awards to the legal/contracts cell without delay — do not wait for administrative approvals to forward the document



Preserve all site records, correspondence, and measurement books — these often decide whether a "patent illegality" or "public policy" ground can be argued



Coordinate with legal counsel before deciding whether to seek a stay of enforcement under Section 36



Do not expect a Section 34/37 court to re-open engineering or quantum findings — build your case at the arbitration stage itself

Key Takeaways

Section 34 is a challenge on limited grounds, not a re-trial of the dispute



Section 34 timelines are strict and unforgiving — 3 months + 30 days, full stop



Section 37 is a genuine appeal but confined to Section 34 grounds; no second appeal exists



Recent Supreme Court rulings (like Gayatri Balasamy) show this is a live, evolving area — always get current legal advice, don't rely on memory of old positions



Fast internal reporting of awards to the legal cell is the single biggest lever engineers control