



VARDHARMA CHAMBERS

Arbitration

Vardharma Chambers

Six judicial decisions and three regulatory developments shaped India's arbitration landscape in May 2026. Revenue overreach in cross-border enforcement was decisively curtailed, the seat-venue distinction was reaffirmed by the Supreme Court, and a 2018 award was set aside eight years after it was made, not on the merits, but because an appointment clause had been non-compliant since 2015.

This issue covers what each development means in practice.

JUDICIAL OVERVIEW

Judicial Updates Index: May 2026

- **GST on Award Enforcement:** Revenue overreach in cross-border enforcement decisively curtailed.
- **Seat vs. Venue:** Contractual seat operates as exclusive jurisdiction clause.
- **Consent Award Obligations:** Immediate and non-deferrable. Plain language governs.
- **Section 16 Challenges:** No mid-stream challenge; objection reserved for Section 34 stage.
- **Institutional Appointments:** Strong presumption of validity; execution stage challenges foreclosed.
- **Incorporation of Clauses:** General terms incorporated language carries arbitration clause across agreements.

REGULATORY OVERVIEW

Regulatory Updates Index: May 2026

- India and Denmark Arbitration Corridor launched via tripartite MOU, a practitioner-built bilateral dispute resolution framework.
- NHAI Circular removes arbitration for disputes exceeding Rs 10 crore, mandating conciliation followed by civil court adjudication.

- Samsung and PTC (Delhi HC): a 2018 award set aside in 2026 for Section 12(5) non-compliance, a systemic warning for legacy contracts.

BOMBAY HIGH COURT

Revenue Cannot Tax Enforcement of an Arbitral Award

Tata Sons Pvt. Ltd. v. Union of India | WP No. 4914 of 2022 | 30 April 2026

Court quashed a DGGI demand of Rs 1,524.35 crore in integrated GST on payments made in discharge of a foreign arbitral award. Revenue argued NTT Docomo's withdrawal of overseas enforcement proceedings constituted a taxable supply of services, an agreement to tolerate an act. Court held: no independent bargain, no separate consideration, no supply. A party that withdraws enforcement proceedings upon satisfaction of an award is doing what the law requires, not rendering a service.

Key Takeaway: Compliance with an arbitral award is not a taxable event. The ruling closes a significant avenue of revenue overreach in cross-border enforcement.

SUPREME COURT

The Seat Is the Juridical Home; Venue Is Only Geography

J&K Economic Reconstruction Agency v. Rash Builders India Pvt. Ltd. | 2026 INSC 368 | 15 April 2026

Reaffirms that a contractually designated seat of arbitration operates as an exclusive jurisdiction clause. All supervisory jurisdiction vests in courts at the seat. Irrelevant factors: where hearings are conducted, where the award is signed, and what the award recites about the location of proceedings.

Key Takeaway: Parties must designate seat with precision. Ambiguity between seat and venue remains the single most litigated drafting failure in Indian arbitration agreements.

SUPREME COURT

Consent Award Obligations Are Immediate and Non-Deferrable

VPS Healthcare and Medeor Hospitals v. Prabhat Kumar Srivastava and Rishi Srivastava | CA No. 2026 (arising from SLP (C) No. 23869 of 2023)

Reversed Delhi High Court's holding that indemnity obligations in a SIAC consent award matured only upon final appellate confirmation of liability. Former promoters of Rockland Hospitals were required to indemnify acquirers against third party claims, including an approximately Rs 10 crore Ernst and Young award, immediately upon crystallisation. Court: an immediately worded obligation cannot be read as contingent; deferral until final appeal renders the obligation practically meaningless.

Key Takeaway: Courts must give effect to the plain language of consent awards. Promoters and acquirers must negotiate indemnity trigger language with precision.

SUPREME COURT

No Mid-Stream Challenge to a Section 16 Ruling

MCM Worldwide Pvt. Ltd. v. Construction Industry Development Council | CA arising from SLP (C) No. 33075 of 2025 | April 2026

A party whose Section 16 jurisdictional objection is dismissed by the tribunal must continue in the proceedings and reserve its challenge for the Section 34 stage. No intermediate mechanism exists for challenging an adverse Section 16 ruling mid-proceedings.

Key Takeaway: Respondents who disagree with a tribunal's assertion of jurisdiction have one option i.e. to preserve the objection, and raise it in a challenge to the final award. Tactical exits are not available.

RAJASTHAN HIGH COURT

Institutional Appointments Withstand Execution Stage Challenge

Sundaram Finance Ltd. v. Hanuman Prasad and Another | 24 April 2026

Execution court had declined to proceed, characterising an arbitrator appointed by the Madras Chamber of Commerce and Industry as a unilateral appointment. High Court rejected this comprehensively: an appointment by an independent, established institution under its own administered rules is not unilateral within the statutory meaning. Objections under Sections 12 and 13 must be raised during the arbitration. They cannot be resurrected at the execution stage.

Key Takeaway: Institutional appointments carry a strong presumption of validity. Execution stage challenges to arbitrator eligibility are foreclosed where objections were not raised in time.

Arbitration Clause Incorporated Body and Soul Into Later Agreements

Hirani Developers v. Nehru Nagar Samruddhi Co-operative Housing Society Ltd. | 2026 INSC 484 | 13 May 2026

Where a subsequent agreement states that all terms of an earlier agreement shall form part of and shall be binding, this constitutes a complete incorporation of the earlier agreement's arbitration clause. Clause 14 of the Permanent Alternate Accommodation Agreements unambiguously incorporated Clause 36 of the original Development Agreement. Court set aside Bombay High Court's refusal to appoint an arbitrator. This was a deliberate and complete adoption, fully satisfying Section 7(5) of the Arbitration Act.

Key Takeaway: A general terms incorporated clause is sufficient to carry an arbitration clause across agreements, but only where the language is deliberate and comprehensive and is not used as a mere passing reference.

REGULATORY UPDATE

India and Denmark Arbitration Corridor: A New Bilateral Framework

On 14 May 2026, the Danish Institute of Arbitration, the Indo Danish Business Council, and Trust Legal, Advocates and Consultants signed a tripartite MOU at the Embassy of India in Copenhagen. Commitments include model arbitration clauses for Indo-Danish transactions, arbitrator training, and SME-focused guidelines across a trade relationship valued at USD 19 billion.

Unlike government-led reform initiatives, this is a practitioner-built framework that is also an usable dispute resolution architecture without dependence on legislative action. If the model proves functional, it is replicable across other bilateral corridors, making it one of the more consequential contributions to India's dispute resolution infrastructure in the current period.

REGULATORY UPDATE

NHAI Circular: Arbitration Removed for High-Value Infrastructure Disputes

Pursuant to the Ministry of Finance's June 2024 procurement guidelines, NHAI's circular of 12 January 2026 is now embedded in active contract templates. Disputes exceeding Rs 10 crore: conciliation followed by civil court adjudication, with arbitration removed entirely.

For domestic contractors, significant disputes now travel through civil courts and rational responses are to price delay risk into bids or reduce participation in public procurement. For foreign investors, arbitration is not a procedural preference but the instrument through which jurisdictional neutrality and enforcement certainty are secured. Its removal introduces precisely the legal risk international capital is least willing to absorb.

Status as of May 2026: No rollback announced. No carve-out for institutional arbitration introduced.

REGULATORY UPDATE

Samsung and PTC: Unilateral Appointment Voids a 2018 Award

PTC Techno Pvt. Ltd. v. Samsung India Electronics Pvt. Ltd. | 2026 LLBiz HC (DEL) 429 | Delhi High Court

Award set aside. The Arbitrator appointed by a Samsung official, an employee of a party renders the appointment void ab initio under Section 12(5) of the Arbitration Act (as amended in 2015). A 2018 award set aside in 2026 means the defect was present at inception, survived the entirety of proceedings undetected, and became apparent only at enforcement, where it could not be corrected. The party that obtained the award lost it entirely, not on the merits, but because the appointment clause had been non-compliant since 2015.

Practice Alert: Any company whose commercial contracts predate the 2015 amendment and have not since been reviewed carries this same exposure today. Appointment clause audits are not optional.

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