Chapter 1

Foundations and Scope of Arbitration

This chapter introduces the doctrinal framework of Indian arbitration law under the Arbitration and Conciliation Act, 1996. The questions examine the constitutional foundations, statutory architecture, the scope of judicial intervention under Section 5, and the interface between arbitration and allied legal regimes.

QUESTION 1: Consumer and workman disputes as non-arbitrable

Charusheelvardhan Finance Ltd. ("Charusheel Finance"), a Chennai-based NBFC, extends retail consumer loans to individuals through a standard-form loan agreement. The loan agreement contains a mandatory arbitration clause providing for arbitration at Chennai under DIAC Rules. Two disputes arise:

Dispute 1: Mr. Ananthavardhan Raghavan ("Raghavan"), an individual consumer who took a loan of Rs.12 lakh, has defaulted. Charusheel Finance invokes the arbitration clause. Raghavan seeks to approach the consumer-protection forum under the Consumer Protection Act, 2019, contending that the mandatory arbitration clause is unenforceable.

Dispute 2: Mr. Bhagavadvardhan Subramaniam ("Subramaniam"), a senior technical executive at Charusheel Finance (Grade 6), was terminated. The employment contract contains the same arbitration clause. Subramaniam approaches the Industrial Tribunal, contending that he is a "workman" under the Industrial Disputes Act, 1947 and that the arbitration clause does not apply to industrial disputes. Advise Charusheel Finance on the arbitrability of each dispute.

Statutory anchors

- Arbitration and Conciliation Act, 1996: Section 11 (referral; non-arbitrability scrutiny)
- Section 16 (Tribunal's residual non-arbitrability enquiry)
- Consumer Protection Act, 2019 (statutory rights of consumers; not defeated by mandatory arbitration clause in standard-form contracts)
- Industrial Disputes Act, 1947: Section 2(s) (definition of "workman"; exclusions for managerial/administrative and threshold-supervisory roles)

Advice Note

The present question raises one arbitrability issue across two distinct contexts, namely consumer disputes and employment disputes, both of which engage statutory regimes that operate alongside the contractual arbitration clause. The analysis is best conducted dispute by dispute, after first setting out the framework on arbitrability that SC has developed and applied in the post-2015 jurisprudence.

Certain categories of disputes are non-arbitrable under the framework articulated by SC in *Vidya Drolia v. Durga Trading Corporation* reported as (2021) 2 SCC 1. The fourfold test laid down in *Vidya Drolia* excludes from arbitration: disputes relating to actions in rem and the resulting decisions that affect persons not party to the arbitration; disputes that affect third-party rights or have an erga omnes effect; disputes relating to the inalienable sovereign and public-interest functions of the State; and disputes that are expressly or impliedly non-arbitrable under a mandatory statute. Consumer disputes and workman-employment disputes are prominent non-arbitrable categories that fall within the fourth limb, since both are governed by mandatory statutory regimes that confer rights on parties whom the legislature has identified as structurally weaker and that vest exclusive jurisdiction in specialised statutory forums.

Dispute 1: the consumer dispute (Raghavan).

SC in *Emaar MGF Land Ltd. v. Aftab Singh* reported as (2019) 12 SCC 751 directly addressed this issue and produced the controlling authority. The Court held that consumer-protection rights are statutory rights conferred on individuals by the Consumer Protection Act framework (the predecessor 1986 Act and now the Consumer Protection Act, 2019), and that these rights cannot be defeated by a mandatory arbitration clause in a standard-form contract. The consumer's election to approach the consumer-protection forum is paramount, and the arbitration clause is non-binding on the consumer to the extent of preventing such election.

The Court's reasoning rested on four propositions. First, the Consumer Protection Act provides statutory redress for consumer grievances through a tiered forum structure (district, state, and national commissions, with appellate review to SC in appropriate cases). Second, these are statutorily-conferred rights that operate beyond contractual consent: the legislature has identified consumers as a class requiring statutory protection, and the protection cannot be contracted out of by inclusion of an arbitration clause in a standard-form contract that the consumer has no realistic opportunity to negotiate. Third, mandatory arbitration clauses in consumer contracts cannot displace the statutory forum; they are, on the *Emaar MGF* analysis, asymmetric clauses imposed by the dominant party (the lender, the developer, the service provider) on the structurally weaker party (the borrower, the home-buyer, the service consumer). Fourth, the consumer therefore has the election: the consumer may approach the consumer-protection forum, or, in the alternative, the civil court for general civil remedies, but the consumer cannot be compelled into the contractual arbitration.

Applying *Emaar MGF* to Dispute 1: Raghavan is an individual consumer who took a personal loan of Rs.12 lakh from Charusheel Finance, which is squarely a consumer transaction within the scope of the Consumer Protection Act, 2019. Charusheel Finance's arbitration clause is, on the facts as stated, a mandatory clause in a standard-form loan agreement, with no realistic suggestion that Raghavan negotiated the clause individually. The Consumer Protection Act, 2019 provides Raghavan's statutory forum rights, and the arbitration clause is non-binding on Raghavan to the extent it would prevent his election of the consumer forum. Raghavan may accordingly elect the consumer-protection forum, and Charusheel Finance cannot compel him to arbitrate under the contractual clause.

For Charusheel Finance's purposes, the practical position is that the arbitration cannot be invoked against Raghavan over his objection. If Raghavan approaches the consumer-protection forum, Charusheel Finance must defend there on the merits of the loan default rather than on the arbitrability of the dispute. The defence on the merits will turn on the validity of the loan agreement, the documented default by Raghavan, the fairness of the terms (which the consumer-protection forum will examine more closely than an arbitral Tribunal would), and the proportionality of any recovery sought against him.

Dispute 2: the workman or senior-executive question (Subramaniam).

The Industrial Disputes Act, 1947 defines "workman" in Section 2(s) as follows:

"'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The two carve-outs that matter on these facts are Section 2(s)(iii) (persons mainly in managerial or administrative capacity) and Section 2(s)(iv) (supervisory persons above the wage threshold or exercising mainly managerial functions). For persons within the workman definition, the Industrial Disputes Act vests exclusive jurisdiction in the Industrial Tribunal or Labour Court for the resolution of industrial disputes, and the dispute is non-arbitrable. For persons outside the workman definition (the managerial and senior-executive carve-outs), the Industrial Disputes Act does not apply, and the employment dispute is, in the ordinary course, a contractual dispute that is arbitrable.

SC in *H.R. Adyanthaya v. Sandoz (India) Ltd.* reported as (1994) 5 SCC 737 and the broader line of authority on the workman definition have confirmed the centrality of the role-and-duties analysis: the question is not the formal designation in the employment contract but the actual duties performed by the employee and the nature of the responsibilities exercised. Wage level is one indicium but is not, by itself, dispositive; the duties test is the principal test.

Applying these principles to Dispute 2: Subramaniam is described as a senior technical executive at Grade 6 in Charusheel Finance's hierarchy. The Grade 6 designation, in a corporate hierarchy, typically indicates a senior management or senior specialist role with substantial responsibilities. The duties of a senior technical executive at this grade are, on the ordinary understanding, supervisory at a minimum and very likely managerial or administrative in substance. The Industrial Disputes Act applicability turns on whether Subramaniam's actual duties bring him within or outside the workman definition.

Two scenarios may be distinguished. First, if Subramaniam's role is mainly managerial or administrative (with direct reports, decision-making authority on operational matters, performance-management responsibilities for subordinates, and budget or policy responsibilities at the team or department level), Section 2(s)(iii) carve-out applies, the Industrial Disputes Act does not apply, and the arbitration clause in the employment contract is enforceable. The employment dispute is arbitrable, and Charusheel Finance may invoke the arbitration clause and require Subramaniam to participate. Second, if Subramaniam's role is primarily technical or specialist without significant managerial content (for example, a bench-scientist or a specialist technical contributor without supervisory responsibilities), he may fall within the workman definition notwithstanding the Grade 6 designation, the Industrial Disputes Act applies, the Industrial Tribunal has jurisdiction over the termination dispute, and the arbitration clause is non-enforceable.

The ideal advise for Charusheel Finance is therefore as follows.

For Dispute 1 (Raghavan, consumer):

First, the practical position must be accepted at the threshold: Raghavan cannot be compelled to arbitrate, and the consumer-forum election is a statutory right that the standard-form arbitration clause cannot displace under *Emaar MGF*. Second, if Raghavan approaches the consumer-protection forum, Charusheel Finance must defend on the merits there. The defence should be structured around the validity of the loan agreement, the documented default with the payment-default trail, the fairness of the loan terms (interest rate, repayment schedule, default-consequence terms in line with industry practice and applicable RBI guidelines), and the proportionality of the recovery sought. The consumer forum will examine the fairness of the terms more closely than an arbitral Tribunal would, and Charusheel Finance's defence should anticipate this. Third, commercial settlement should be considered seriously. Consumer disputes carry reputational risk that goes beyond the immediate financial exposure of the loan, and a quick settlement at a calibrated discount on the principal-plus-interest is often preferable to full adjudication that will, in any case, take eighteen to thirty months at first instance and several years through any appellate stages. Fourth, on future contract drafting, Charusheel Finance should review its standard-form loan agreement template to include clear consumer-rights disclosures, an explicit acknowledgment that statutory consumer-forum rights are preserved notwithstanding the arbitration clause, and an arbitration clause that is expressly subject to the consumer's election to approach the statutory forum. The drafting reflects the *Emaar MGF* principles and reduces the scope for future disputes about the operation of the arbitration clause itself.

For Dispute 2 (Subramaniam, terminated executive):

First, Subramaniam's role must be verified carefully before any procedural step is taken. Counsel should obtain a detailed role description from human resources, review the employment terms in full, assess managerial against non-managerial capacity by reference to the actual duties performed, and consider the wage level and the nature of the functions exercised. The verification exercise is the analytical pivot for the entire dispute. Second, if the verification establishes that Subramaniam was clearly in a senior-managerial role (with managerial responsibilities, substantial compensation, independent decision-making, direct reports, and budget or policy authority at the team or department level), the arbitration clause should be invoked, the arbitration should proceed at Chennai under DIAC Rules as the contract provides, and the Industrial Tribunal's jurisdiction should be challenged on the workman-definition ground. Third, if the verification suggests ambiguity, or if Subramaniam was substantially non-managerial in actual duties, the Industrial Tribunal may have jurisdiction and the arbitration clause may be unenforceable. Charusheel Finance should respond to the Industrial Tribunal proceedings on the merits, and should reserve the arbitration argument as a procedural objection to be tested against the actual facts on the role. Fourth, the evidentiary support for the workman-definition argument should be built carefully: the organisation chart showing Subramaniam's level and reporting line; the role description and the duties actually performed; the direct reports (if any); the decision-making authorities exercised, including any policy or budget authority; the compensation structure including base, variable, and benefits; and any documented instances of managerial functions (performance reviews of subordinates, hiring decisions, disciplinary decisions, departmental budgeting). The cumulative record will determine the workman analysis more reliably than the formal designation alone. Fifth, regardless of the procedural forum, a negotiated settlement should be considered. Termination disputes often involve reputational and cost considerations that favour settlement over contested adjudication, particularly where the executive's role is on the boundary between workman and managerial categories.

Practice Note:- Counsel advising on arbitrability in consumer and employment contexts should recognise consumer-protection rights as statutorily protected under Emaar MGF, with the consumer's election of the consumer-protection forum binding on the counterparty notwithstanding any contractual arbitration clause; apply the Industrial Disputes Act, 1947 Section 2(s) workman test by reference to actual duties performed rather than formal designation; distinguish managerial from non-managerial personnel through careful evidentiary work on role, duties, wage level, and functions; build a clear contemporaneous record on role classification before invoking the arbitration clause; and respect statutory forum elections, since attempts to circumvent protective statutes are themselves additional grounds for reputational and legal exposure. The Consumer Protection Act, 2019 and the Industrial Disputes Act, 1947 are protective statutes that operate alongside, rather than within, contractual freedom. Dispute 1 (Raghavan, consumer) is non-arbitrable; Dispute 2 (Subramaniam) requires verification of senior-managerial capacity on actual duties before the arbitration clause is invoked.

QUESTION 2: Investment arbitration overview

Devnandanavardhan Resources Ltd. ("Devnandan Resources"), an Indian company, holds mining concessions in Zambia. The Zambian Government, in December 2025, enacted a new statute that mandates:

(a) Local Zambian ownership of at least 51 per cent in all mining operations.

(b) Transfer of 30 per cent shareholding to Zambian nationals or entities within 18 months.

(c) Payment of specified transfer-related compensation. Devnandan Resources contends these measures:

  (a) Constitute indirect expropriation of its investment.

  (b) Violate the India-Zambia Bilateral Investment Treaty, 2002 ("the BIT"). Devnandan Resources' commercial team asks:

    (a) What is investment arbitration?

    (b) How does it differ from commercial arbitration under the 1996 Act?

    (c) What forum and framework would apply to Devnandan Resources' BIT claim?

    (d) Can Devnandan Resources enforce an ICSID or UNCITRAL-based investment award in India?

Advise Devnandan Resources.

Statutory anchors

- Arbitration and Conciliation Act, 1996: Part II (Sections 44 to 60) (foreign-award enforcement, including UNCITRAL-based investment-arbitration awards)
- ICSID Convention, 1965 (special enforcement framework for ICSID awards)
- UNCITRAL Arbitration Rules (ad-hoc investment-arbitration framework)
- Bilateral / multilateral investment treaties (protections — expropriation, fair-and-equitable treatment, national treatment, MFN)
- India's Model BIT, 2015 (narrower investment definition; mandatory pre-arbitration administrative procedures; five-year exhaustion of local remedies)

Advice Note

The present question raises one cross-border investment-arbitration issue, namely the framework for Devnandan Resources' potential BIT claim against the Republic of Zambia in respect of the December 2025 Zambian statute mandating local ownership and forced shareholding transfer in mining operations, and the Indian-enforcement implications of any resulting investment award. The analysis is best conducted in four stages: first, the framework of investment arbitration as a distinct dispute-resolution mode; second, the points of distinction from commercial arbitration under the Arbitration and Conciliation Act, 1996; third, the and procedural analysis of Devnandan Resources' claim under the BIT; and fourth, the Indian-enforcement implications of an ICSID or UNCITRAL-based investment award.

Investment arbitration, often referred to as investor-state dispute settlement or ISDS, is a distinct framework from commercial arbitration under the 1996 Act. The principal features of investment arbitration are five.

First, the basis is a bilateral or multilateral investment treaty (BIT or MIT) under which the host state has, by treaty, granted protections to foreign investors and consented to arbitration of disputes arising out of those protections. The consent to arbitration is, in the standard model, found in the BIT itself, with the foreign investor accepting the offer of arbitration by initiating the proceedings. This treaty-based consent is conceptually different from the contract-based consent that anchors commercial arbitration under the 1996 Act.

Second, the parties to an investment arbitration are a foreign investor (typically a private entity, although state-owned enterprises with substantial commercial autonomy may also qualify in appropriate cases) and the host state government, rather than two private commercial parties. The asymmetry of the parties' positions (private investor versus sovereign state) shapes the procedural framework, the conduct of the arbitration, and the enforcement environment.

Third, the forum is typically the International Centre for Settlement of Investment Disputes (ICSID) at Washington DC if the relevant BIT so provides and the host state is a party to the ICSID Convention, or an ad-hoc Tribunal under the UNCITRAL Arbitration Rules (in the 1976 form, the 2010 revised form, or now the 2021 revisions on transparency) where the BIT provides for ad-hoc arbitration. Other institutional frameworks (Stockholm Chamber of Commerce, ICC, LCIA in investment cases) are occasionally invoked depending on the BIT text.

Fourth, the protections under the BIT typically include prohibitions on direct expropriation (formal taking of the investment) and indirect expropriation (measures that have an effect equivalent to expropriation through their impact on the investment's value); fair-and-equitable treatment, which is the most expansively litigated of the BIT protections and which encompasses elements such as legitimate-expectations protection, due-process requirements, and protection against arbitrary or discriminatory measures; national treatment, requiring that foreign investors be treated no less favourably than domestic investors in like circumstances; most-favoured-nation treatment, requiring that foreign investors be treated no less favourably than investors from third states under other BITs to which the host state is a party; and, in older BITs, umbrella clauses bringing contractual obligations of the host state into the treaty framework.

Fifth, the procedural framework is governed by the ICSID Rules where ICSID arbitration applies, or by the UNCITRAL Arbitration Rules where the arbitration is ad-hoc. Both frameworks contemplate three arbitrators in the standard case (one appointed by each party, with the chair appointed by mutual agreement or by institutional appointment). The proceedings are typically conducted in writing with limited oral hearings on key issues, and the Tribunal renders a reasoned final award after the merits phase concludes.

The points of distinction from commercial arbitration under the 1996 Act are correspondingly clear. Commercial arbitration under the 1996 Act involves private-private disputes, contractually consented to under Section 7, conducted under the procedural framework of Part I (for India-seated arbitrations) with The substantive law of the parties' choice under Section 28(1)(b) for ICAs or Indian law under Section 28(1)(a) for domestic arbitrations. International commercial arbitration under Section 2(1)(f) covers foreign-element commercial disputes, but the disputes are still private-private in character. Investment arbitration, by contrast, covers investor-state treaty-based disputes, with the substantive law being BIT provisions read with customary international law rather than private commercial law, and with the enforcement framework being ICSID (for ICSID awards) or the New York Convention (for UNCITRAL-based awards) rather than Section 36 of Part I.

India's BIT framework underwent a significant reform with the Model BIT, 2015. The reformed framework is calibrated to address the criticism that earlier BITs exposed India to unduly broad investor-state claims. The principal features of the 2015 Model BIT are a narrower definition of "investment" (excluding portfolio investments and certain pre-establishment investments); a limited MFN clause; mandatory pre-arbitration administrative procedures including a five-year exhaustion of local remedies in domestic courts before any arbitration may be initiated; arbitration only after such exhaustion has been completed without resolution; and a narrower scope of protections, with fair-and-equitable treatment delineated more tightly than the customary-international-law standard. India has concluded only a limited number of new BITs on the 2015 Model BIT terms, and a substantial number of pre-2015 BITs, including the India-Zambia BIT, 2002, remain in force on their original terms with broader protections.

The India-Zambia BIT, 2002 (the precise text of which Devnandan Resources should obtain from the Ministry of External Affairs or the Ministry of Finance for the analysis) typically contains, on the standard pre-2015 model: protection against direct and indirect expropriation with a requirement of prompt, adequate, and effective compensation for the market value of the investment immediately before the measure became known; fair and equitable treatment; national treatment; most-favoured-nation treatment; and a dispute-resolution clause typically providing for ICSID arbitration where Zambia is a party to the ICSID Convention, or for ad-hoc arbitration under UNCITRAL Rules as an alternative.

Applying these to Devnandan Resources' potential claim:

Analysis.

The indirect-expropriation argument turns on whether the Zambian measures (mandatory 51 per cent local ownership and forced 30 per cent shareholding transfer within 18 months) materially diminish the value of Devnandan Resources' investment in a manner that crosses the indirect-expropriation threshold. The case-law on indirect expropriation, developed across ICSID and UNCITRAL tribunals over the past three decades, examines factors including the economic impact of the measure, the degree of interference with reasonable investment-backed expectations, the character of the measure (regulatory or specifically targeting the foreign investor), and the proportionality of the measure to its stated public-interest objective. The Zambian measures are, on the face of the description, substantial in their economic impact and amount to a forced reorganisation of the ownership structure of the investment; if the transfer-related compensation is below market value, the measures are likely to cross the indirect-expropriation threshold.

The fair-and-equitable-treatment argument turns on whether the forced transfer at below-market-value compensation breaches the FET standard under the BIT. The FET standard, as developed in Tribunal jurisprudence, includes protection of legitimate investment-backed expectations (which mining-concession holders typically have in respect of the ownership and operation of their concessions), due-process protections, and protection against arbitrary or discriminatory measures. The retroactive application of the new statute to existing concessions is itself a factor that tribunals have repeatedly held to weigh in favour of FET breach.

The national-treatment and MFN arguments turn on comparison: whether Zambian domestic mining enterprises face similar local-ownership obligations (if they do not, there is at least a prima facie discrimination argument), and whether comparable foreign investors from third states (including states that are parties to other Zambian BITs that may contain more favourable dispute-resolution or provisions) are treated more favourably. The MFN argument, where available, allows the investor to import more favourable provisions from other Zambian BITs into the India-Zambia framework, although the scope of MFN importation is itself contested in Tribunal jurisprudence.

Procedural analysis.

The first step is review of the India-Zambia BIT, 2002 to identify the specific dispute-resolution clause. The BIT will typically require a notice of dispute to be served on the Zambian Government, an administrative consultation period of six to twelve months during which the parties attempt to resolve the dispute amicably, and only thereafter the right to initiate arbitration. The forum (ICSID or UNCITRAL ad-hoc) and the rules will be specified in the BIT, and the Tribunal will be constituted under the relevant rules with three arbitrators in the standard case (one appointed by each party, with the chair appointed by mutual agreement or by institutional appointment in default).

Indian-enforcement implications.

If Devnandan Resources obtains an investment award against Zambia, the enforcement considerations are four. First, Zambia is a party to the ICSID Convention (as is typical for African states with significant resource industries). Devnandan Resources can accordingly seek ICSID enforcement in any ICSID member state where Zambia has assets, with the ICSID Convention's automatic-recognition framework being significantly more favourable than the New York Convention's grounds-for-refusal framework. Second, if the BIT award is rendered under the UNCITRAL framework rather than under ICSID, the award may be enforceable in India as a foreign award under Section 44 of the 1996 Act read with the New York Convention, although the practical engagement of Zambian assets located in India is likely to be limited. Third, sovereign immunity considerations apply to Zambia's state-enterprise assets, and the commercial-activity exception under customary international law and under Indian law (the Foreign Sovereigns Immunity framework) generally permits enforcement against commercial assets but not against assets used for sovereign functions. Fourth, the BIT itself may provide additional enforcement mechanisms or waivers of sovereign immunity that should be examined in the BIT text.

The advice to Devnandan Resources may be set out in five steps.

First, on preliminary assessment, the India-Zambia BIT text should be obtained from the Ministry of External Affairs or the Ministry of Finance, and the protections and procedural requirements should be reviewed paragraph by paragraph by counsel familiar with BIT interpretation. The Zambian measures should be evaluated against each protection (expropriation, FET, national treatment, MFN, umbrella clause if any), with the strength of each line of argument assessed by reference to the controlling Tribunal jurisprudence. The investment value should be quantified, and the potential damages should be calculated on each available methodology (market-value pre-measure, discounted cash flow, comparable-transactions).

Second, on legal representation, the matter requires specialist investment-arbitration counsel. India-based investment-arbitration counsel from a limited specialist panel, international counsel typically based at London or Washington DC for the cross-border dimensions, and Zambian-law counsel for the local-law analysis should all be engaged in a coordinated team. Investment arbitration is a specialised practice area, and the fee profile is correspondingly substantial; the engagement should be structured with clear scope and budgeting at the threshold.

Third, on procedural steps, a formal notice of dispute should be served on the Zambian Government through the prescribed BIT channel (typically the Attorney General or the Ministry of Justice of Zambia), the administrative exhaustion or consultation period under the BIT should be observed (typically six to twelve months), and arbitration should be initiated thereafter under the relevant institutional or ad-hoc framework. The constitution of the Tribunal under the chosen rules will follow.

Fourth, on case preparation, the expropriation analysis should be supported by valuation evidence, with expert witnesses on industry valuation, investment economics, and damages methodology engaged at the threshold. The fair-and-equitable-treatment analysis should be supported by documentation of the legitimate expectations on which Devnandan Resources operated, including the original concession-grant documents, the regulatory environment at the time of investment, and the specific representations made by the Zambian Government to the investor. The damages calculation should produce a structured quantum claim that the Tribunal can grant on multiple alternative methodologies.

Fifth, on parallel commercial management, operational continuity should be maintained during the dispute (the existing mining operations should continue under the existing ownership structure to the extent the local statute permits, with appropriate compliance steps for any interim regulatory requirements that cannot be deferred); stakeholder communication should be coordinated (with internal management, the Indian Government through the Ministry of External Affairs, and the broader investor community); and settlement negotiations with the Zambian Government should be opened in parallel, with creative structures explored that may satisfy the local-content objective without requiring full compulsory transfer (joint-venture arrangements with Zambian nationals at calibrated equity levels, shareholder agreements with reserved-matter protections, and economic-benefit sharing arrangements that achieve the policy objective without the formal transfer).

Practice Note:- Counsel advising on investment-arbitration matters should analyse the specific BIT text rather than working from generic frameworks, distinguish investment arbitration from commercial arbitration with care, engage specialist counsel for both the international-law and host-state law dimensions, plan parallel diplomatic and commercial strategies since investor-state disputes are rarely resolved by arbitration alone, and consider enforcement in multiple jurisdictions at the threshold since awards against host states are typically enforced against commercial assets located outside the host state. A careful pre-investment review of the host-state BIT framework, including alternative protective structures such as routing the investment through a third-state holding company in a jurisdiction with a more favourable BIT, is materially less expensive than addressing the framework reactively after a dispute arises. Devnandan Resources' potential claim is an investment-arbitration matter under the India-Zambia BIT, 2002; the analysis turns on indirect expropriation, fair-and-equitable treatment, and national-treatment or MFN comparison, with enforcement under the ICSID Convention or the New York Convention read with Part II of the 1996 Act.

QUESTION 3: Limitation framework under the 1996 Act

Trilochanvardhan Construction Ltd. ("Trilochan Construction"), a Chennai-based construction firm, and Udayavardhan Infrastructure Ltd. ("Udaya Infrastructure"), a Hyderabad-based infrastructure developer, executed a Construction Agreement dated 14 March 2019 ("the Agreement"). Contract value Rs.82 crore. Clause 34 provides for New Delhi-seated arbitration. Disputes arose over completion timelines. The relevant chronology is as follows:

(a) 22 December 2020: Trilochan Construction issues final invoice claiming Rs.14.8 crore.

(b) 14 February 2021: Udaya Infrastructure refuses payment and disputes the invoice.

(c) 18 September 2021: Last meeting between the parties attempting amicable settlement.

(d) 28 March 2026: Trilochan Construction, facing financial pressure, issues a Section 21 notice invoking arbitration. Udaya Infrastructure objects to the Section 21 notice:

  (a) The claim is time-barred under the Limitation Act, 1963.

  (b) Five years have elapsed since the invoice refusal.

  (c) Section 43 of the 1996 Act applies the Limitation Act to arbitrations.

  (d) The limitation period for commercial-contract disputes is three years from breach or discovery. Trilochan Construction contends:

    (a) Settlement negotiations until September 2021 extended the limitation period.

    (b) The commercial context (a construction dispute) warrants longer consideration.

    (c) Trilochan Construction's financial difficulties warrant condonation. Advise the parties on the limitation framework and the viability of Trilochan Construction's claim.

Statutory anchors

- Arbitration and Conciliation Act, 1996: Section 21 (commencement of arbitration)
- Section 43 (Limitation Act applies to arbitration as it applies to court proceedings)
- Limitation Act, 1963: Article 137 (residual three-year period; right to apply accrues)
- Section 18 (acknowledgement of liability extending limitation; written and signed before expiration)
- Section 5 (general condonation; not available for special-Act limitation)

Advice Note

The present question raises one limitation-framework issue, namely whether Trilochan Construction's Section 21 notice of 28 March 2026 is within the applicable limitation period for its Rs.14.8 crore claim against Udaya Infrastructure, given the dispute chronology that runs from December 2020 to September 2021. The analysis is best conducted in three stages: first, the framework of Section 43 of the 1996 Act and its incorporation of the Limitation Act, 1963; second, the controlling authorities on cause-of-action accrual and on the effect of settlement negotiations; and third, the application of those principles to the facts.

Section 43 of the 1996 Act incorporates the Limitation Act, 1963 into the arbitration framework. The provision reads:

> *"(1) The Limitation Act, 1963 (36 of 1963) shall, subject to the provisions of this section, apply to arbitrations as it applies to proceedings in court."*

Section 43(2) deems the arbitration to have commenced, for limitation purposes, on the date determined under Section 21 of the 1996 Act, which is the date on which the request for the dispute to be referred to arbitration is received by the respondent. The Section 21 notice is therefore the operative limitation-stopping event.

Article 137 of the Schedule to the Limitation Act, 1963 supplies the residual limitation period for any application for which no specific period is provided elsewhere in the Schedule. The article reads:

"Any other application for which no period of limitation is provided elsewhere in this Division. Three years. When the right to apply accrues."

For arbitration purposes, the three-year period under Article 137 runs from the date on which the right to apply accrues, namely the date on which the cause of action arose. The cause-of-action accrual date is, accordingly, the analytical pivot for any limitation enquiry under the 1996 Act.

SC in *Panchu Gopal Bose v. Board of Trustees for Port of Calcutta* reported as (1993) 4 SCC 338 established the framework on cause-of-action accrual. The Court held that the cause of action for arbitration arises when there is a denial by the other party of the claim, or when the claim is not satisfied within a reasonable period. The limitation begins to run from that date. SC in *Bihar State Electricity Board v. P. N. Construction* reported as (2008) 5 SCC 345 reinforced the three-year framework and applied it in the public-sector contract context.

The Hon'ble Supreme Court in *B and T AG v. Ministry of Defence reported as* (2024) 5 SCC 358 held that mere negotiations do not postpone the cause of action for the purpose of limitation, and that time runs from the breaking point at which a reasonable party would have abandoned settlement efforts and sought arbitration. It is pertinent to note that an acknowledgement, to extend limitation under Section 18 of the Limitation Act, 1963, must be in writing and signed, as held by the Hon'ble Supreme Court in *Khan Bahadur Shapoor Fredoom Mazda v. Durga Prosad Chamaria reported as* AIR 1961 (SC) 1236. The proposition is reflective of the broader doctrinal position that limitation runs unless interrupted by a specific statutory event, and that the parties' continued engagement at the negotiation table is not, of itself, such an event.

Section 18 of the Limitation Act, 1963 supplies the written-acknowledgement framework:

"Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

Three requirements are decisive. First, the acknowledgement must be made before the expiration of the original limitation period. Second, the acknowledgement must be in writing. Third, the acknowledgement must be signed by the party against whom the claim is made (or by a person through whom that party derives liability). Oral settlement discussions, however prolonged or apparently constructive, do not satisfy the Section 18 requirements, and do not have the effect of restarting the limitation clock.

On the question of condonation under Section 5 of the Limitation Act, 1963, the position requires careful articulation. Section 5 permits the court to condone delay where sufficient cause is shown for not making the application within the prescribed period. SC in *Union of India v. Popular Construction Co.* reported as (2001) 8 SCC 470 has held that Section 5 does not apply to the specific limitation periods built into the 1996 Act itself, including Section 34(3)'s three-month period for setting-aside applications. For the arbitration-general limitation under Article 137 read with Section 43, the doctrinal position is that Section 5 may, in principle, apply, since Section 43(1) incorporates the Limitation Act subject only to the specific modifications in Section 43 itself. The practical scope for Section 5 condonation in the arbitration context is, however, narrow: financial difficulties of the claimant are not, as a general rule, sufficient cause for condonation; nor are general commercial pressures, internal restructuring, or change in management. Sufficient cause requires identifiable circumstances that genuinely prevented timely action, and the condonable period is, in any case, calibrated to short delays rather than to multi-year overruns.

Applying these principles to the Trilochan Construction and Udaya Infrastructure dispute:

First, the cause-of-action accrual date. Two candidate accrual dates are presented on the facts. The first is 22 December 2020, when Trilochan Construction issued the final invoice claiming Rs.14.8 crore. The second is 14 February 2021, when Udaya Infrastructure formally refused payment and disputed the invoice. The *Panchu Gopal Bose* framework points to the latter date as the stronger accrual point: the cause of action arises at the denial of the claim, and 14 February 2021 is the date on which the denial occurred. The earlier date (22 December 2020) is the date on which the claim was crystallised by the issuance of the invoice; it is when Trilochan Construction's right to be paid arose contractually, but not necessarily when the cause of action for arbitration accrued, since arbitration accrues on denial rather than on the unfulfilled obligation itself. On the facts as stated, the operative accrual date is 14 February 2021, although the analytical conclusion does not change materially even if the earlier date is taken.

Second, the calculation of the three-year period. From 14 February 2021, the Article 137 three-year period expires on 14 February 2024. From the alternative earlier date of 22 December 2020, the period expires on 22 December 2023. The Section 21 notice of 28 March 2026 is approximately two years and one month past the later of the two deadlines, and approximately two years and three months past the earlier of the two.

Third, the effect of settlement negotiations. The settlement discussions until 18 September 2021 do not extend the limitation period under the *Vardhaman Cables* line of authority. The facts as stated do not indicate that any written acknowledgement was executed during the negotiations; the discussions were verbal and exploratory, and there is no suggestion of a signed written document from Udaya Infrastructure acknowledging liability. Section 18 is therefore not engaged, and the limitation period continued to run notwithstanding the negotiations.

Fourth, the condonation question. Even on the assumption that Section 5 of the Limitation Act applies to arbitration-general limitation under Article 137, Trilochan Construction's "financial difficulties" are not sufficient cause for condonation of a delay of approximately two years. The condonation jurisdiction is calibrated to short delays explained by identifiable circumstances, not to multi-year overruns explained by the claimant's general commercial pressures. Trilochan Construction's contention on this ground is unlikely to succeed.

The cumulative effect is that Trilochan Construction's claim is, on the facts as stated, time-barred under Article 137 of the Limitation Act, 1963 read with Section 43 of the 1996 Act. The Section 21 notice of 28 March 2026 is well outside the three-year period from either of the candidate accrual dates, the settlement-negotiation extension is unavailable in the absence of a written acknowledgement, and the financial-difficulty condonation argument is unlikely to assist.

The ideal advise for the parties is therefore as follows.

For Trilochan Construction:

First, the limitation issue should be acknowledged candidly with the management and the board. The claim is, on the controlling authority, time-barred under Article 137 read with Section 43, and pursuing the arbitration on the existing facts will, in the ordinary course, result in a successful preliminary objection by Udaya Infrastructure with adverse cost consequences for Trilochan Construction. Second, limited alternative pathways should be explored before any arbitration is initiated. The first is a careful investigation of the documentary record between February 2021 and February 2024 to identify any written communication from Udaya Infrastructure that may, on the *Vardhaman Cables* framework, constitute a Section 18 acknowledgement. Such communications might include partial-payment correspondence, account reconciliation statements that include the disputed amount, settlement-proposal correspondence that admits liability subject to quantum, or audit-confirmation responses to Trilochan Construction's auditors that include the disputed receivable. Where any such document is found and meets the Section 18 requirements (in writing, signed, before the expiration of the original period), the limitation period restarts from the date of acknowledgement, and a fresh three-year window may be available. The second alternative is a commercial settlement notwithstanding the legal position. Udaya Infrastructure's negotiation posture during 2021 suggests an openness to a structured resolution, and a settlement at a calibrated discount on the principal (perhaps in the range of fifty to seventy percent of the original claim) may be commercially preferable to a contested arbitration that the claimant is unlikely to win. The third alternative is a careful examination of any subsequent events between 2021 and 2026 (further invoices, sub-contract claims, warranty-related claims, or other distinct causes of action) that may be within limitation in their own right. Third, on internal financial management, Trilochan Construction should engage with its restructuring counsel on whether the operational difficulties warrant an insolvency process, a workout proposal with creditors, or a structured restructuring; not all dispute-recovery is through litigation, and where the limitation has expired, the operational-restructuring track may be the more productive use of management attention. Fourth, on future compliance, Trilochan Construction should institutionalise a rolling limitation register for outstanding disputes, with clear triggers for arbitration notices to be filed within the second year (so that the third year is buffer for procedural readiness), and a discipline of obtaining written settlement documents signed by both parties whenever negotiations progress beyond preliminary engagement.

For Udaya Infrastructure:

First, the limitation defence should be asserted robustly through a preliminary objection at the earliest stage. The cause of action arose on 14 February 2021 when payment was refused; the three-year period under Article 137 expired on 14 February 2024; and Trilochan Construction's Section 21 notice of 28 March 2026 is approximately two years out of time. The preliminary objection should be framed clearly with the controlling authorities (*Panchu Gopal Bose*, *B and T AG*, *Bihar State Electricity Board*) and the documentary chronology. Second, Trilochan Construction's three contentions should be addressed individually. The settlement-negotiation contention fails under *B and T AG* in the absence of a written acknowledgement; Udaya Infrastructure should confirm internally that no document was issued during 2021 that could be construed as a Section 18 acknowledgement, and the documentary record should be preserved. The commercial-context contention is doctrinally without foundation, since the three-year Article 137 period applies uniformly to commercial-contract disputes and does not vary by the nature of the contract. The financial-difficulty condonation contention is unlikely to succeed even if Section 5 applies, since financial difficulties are not, as a general rule, sufficient cause for condonation of a multi-year delay. Third, the cost-effective response is to file a formal reply to the Section 21 notice raising the limitation objection, to file a preliminary objection at the arbitration Tribunal once it is constituted, and to preserve the documentary evidence of the 2020 to 2021 chronology for the limitation determination. Fourth, on the broader commercial consideration, Udaya Infrastructure should evaluate whether a calibrated settlement at a steep discount is commercially preferable to a contested limitation defence, since reputational considerations and the relationship-preservation value of avoiding extended dispute proceedings often warrant a settlement even where the legal position is strong.

Practice Note:- Counsel advising on limitation issues in arbitration should identify the cause-of-action accrual date precisely, with the Panchu Gopal Bose framework focused on the date of denial rather than the date of the underlying obligation; apply the Article 137 three-year framework as the residual limitation period for arbitration applications; investigate the documentary record for written acknowledgements within the meaning of Section 18 of the Limitation Act, 1963 since such acknowledgements restart the limitation clock; recognise that settlement discussions, however prolonged, do not extend the limitation period absent written acknowledgement on the B and T AG line; and advise on commercial alternatives where limitation has expired. Commercial parties should maintain rolling limitation registers, written acknowledgement of claims at the earliest opportunity, and prompt arbitration initiation within the second year of accrual so that the third year is buffer for procedural readiness. Trilochan Construction's claim is time-barred under Article 137 read with Section 43 of the 1996 Act; the alternative pathways must be considered before initiation.

QUESTION 4: 1996 Act scope and structure

Dhanurvardhan Enterprises Ltd. ("Dhanur Enterprises"), a Mumbai-based financial-services group, is preparing four prospective commercial arrangements for its 2026 operations:

(i) An Indian-domestic arbitration with a Pune-based supplier under DIAC Rules.

(ii) An India-seated ICA with a Singapore-based distributor under MCIA Rules.

(iii) A Singapore-seated ICA with a UAE-based holding company under SIAC Rules.

(iv) A structured conciliation under Part III of the 1996 Act with a Mumbai-based joint-venture partner. Dhanur Enterprises' General Counsel has asked for a mapped analysis of which Parts of the 1996 Act apply to each arrangement and the principal consequences that follow. The counsel also asks which Schedules of the 1996 Act are engaged by each arrangement. Advise Dhanur Enterprises on the mapping.

Statutory anchors

- Arbitration and Conciliation Act, 1996: Part I (Sections 1 to 43) (domestic arbitration; India-seated arbitrations including India-seated ICA)
- Part II (Sections 44 to 60) (recognition and enforcement of foreign awards)
- Part III (Sections 61 to 81) (conciliation; settlement-agreement framework)
- Part IV (Sections 82 to 86) (supplementary provisions)
- Section 2(1)(f) (ICA definition)
- Section 11 (appointment; ICA routed to the Supreme Court)
- Section 28(1)(b) (choice of foreign substantive law in ICA)
- Section 73 read with Section 74 (settlement agreement enforceable as award on agreed terms)
- First Schedule (text of the New York Convention)
- Fourth, Fifth, Sixth and Seventh Schedules (fees; disclosure; ineligibility)

Advice Note

The present question raises one structural issue, namely the mapping of Dhanur Enterprises' four arrangements to the four-Part architecture of the Arbitration and Conciliation Act, 1996, the applicable Schedules under each arrangement, and the commercial consequences that follow. The analysis is best conducted arrangement by arrangement, after first setting out the structural design of the 1996 Act so that the mapping that follows has its proper anchor.

The 1996 Act is a comprehensive consolidating statute that addresses four related but distinct subject-matters within a single four-Part architecture, each Part with a discrete scope and a discrete operational framework.

Part I (Sections 1 to 43A) covers domestic arbitrations and International Commercial Arbitrations seated in India. The Part addresses, inter alia, the arbitration agreement (Section 7), appointment of arbitrators (Section 11), interim measures by the court (Section 9) and by the Tribunal (Section 17), conduct of proceedings (Sections 18 to 27), the arbitral award and its corrections (Sections 31, 32 and 33), setting aside (Section 34), finality and enforcement (Sections 35 and 36), appeals (Section 37), and related administrative provisions including confidentiality (Section 42A) and protection of arbitrators (Section 42B).

Part II (Sections 44 to 60) covers the recognition and enforcement of foreign awards. Chapter I of Part II (Sections 44 to 52) implements the New York Convention, 1958, and Chapter II (Sections 53 to 60) implements the Geneva Convention, 1927. Foreign awards are enforceable in India through the machinery of Part II, subject to the limited grounds for refusal of enforcement set out in Section 48 (for New York Convention awards) and Section 57 (for Geneva Convention awards).

Part III (Sections 61 to 81) covers conciliation. Part III provides a statutory conciliation framework that is distinct both from arbitration (governed by Parts I and II) and from mediation (now governed by the Mediation Act, 2023). The settlement agreement reached under Section 73 has the status of an arbitral award on agreed terms under Section 74 read with Section 30, and is enforceable as a decree of the court.

Part IV (Sections 82 to 86) contains supplementary provisions: High Court rule-making power (Section 82), removal of difficulties (Section 83), the Central Government's rule-making power (Section 84), repeal and savings of the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961 (Section 85), and repeal of the antecedent ordinance (Section 86).

The Schedules to the 1996 Act, which the General Counsel has specifically asked about, are as follows. The First Schedule reproduces the text of the New York Convention, 1958 and is read with Sections 44 to 52. The Second Schedule reproduces the Geneva Protocol, 1923. The Third Schedule reproduces the Geneva Convention, 1927 and is read with Sections 53 to 60. The Fourth Schedule, inserted by the 2015 Amendment, prescribes a model fee structure for tribunals. The Fifth Schedule, also inserted by the 2015 Amendment, lists the categories of relationship which may give rise to justifiable doubts about an arbitrator's independence or impartiality and, read with Section 12(1), grounds the disclosure obligation. The Sixth Schedule prescribes the form in which the disclosure under Section 12(1) is to be made. The Seventh Schedule, again inserted by the 2015 Amendment, lists the categories of relationship which render a person ineligible for appointment as arbitrator and, read with Section 12(5), operates as a bright-line rule that may be waived only by an express written agreement after the dispute has arisen. The Eighth Schedule, which had been inserted by the 2019 Amendment to specify arbitrator qualifications, was omitted by the 2021 Amendment, and the qualification framework is now to be addressed through such regulations as the Arbitration Council of India may notify.

SC in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* reported as (2012) 9 SCC 552 ("BALCO") established the seat-based scope of Part I, and SC in *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.* reported as (2021) 7 SCC 1 confirmed that a foreign-seated arbitration between two Indian parties is permissible and that Part II applies for enforcement of the resulting foreign award. SC in *Perkins Eastman Architects DPC v. HSCC*

(India) Ltd. reported as (2020) 20 SCC 760 and the line of cases that has followed it inform the appointment-neutrality framework that the Fifth and Seventh Schedules implement. SC in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* reported as (2022) 1 SCC 209 confirmed the enforceability of emergency-arbitrator orders in India-seated arbitrations under Section 17(2), which is relevant to the urgent-relief design of Arrangement (ii).

Applying these principles to Dhanur Enterprises' four arrangements:

Arrangement (i), the domestic arbitration with the Pune supplier under DIAC Rules.

Classification: domestic arbitration. Both parties are Indian and the seat is in India (Delhi, under the DIAC framework). Applicable framework: Part I in its entirety, read with Part IV as applicable. Schedules engaged: the Fourth Schedule on Tribunal fees (where the parties or the institution adopt the Fourth Schedule baseline), the Fifth Schedule on disclosure, the Sixth Schedule on the disclosure form, and the Seventh Schedule on ineligibility. Operational consequences: Section 11 appointment proceeds through DIAC as the appointing institution, which addresses the *Perkins Eastman* and *CORE* concerns on neutrality of appointment; Section 9 interim relief lies before the competent court at Delhi; Section 17 Tribunal interim relief is available once the Tribunal is constituted; the Section 29A twelve-month mandate runs from the constitution of the Tribunal and is extendable by mutual consent or by the court; Section 34 governs setting aside; and Section 36 governs enforcement of the resulting award as a decree of the court.

Arrangement (ii), the India-seated International Commercial Arbitration with the Singapore distributor under MCIA Rules.

Classification: International Commercial Arbitration under Section 2(1)(f), seated at Mumbai, the foreign element being the Singapore distributor. Applicable framework: Part I with the ICA-specific modifications, read with Part IV as applicable. The principal modifications are that the Section 11 appointment route lies to the Supreme Court of India (or to a designate of the Chief Justice of India) rather than to the concerned High Court, and that Section 28(1)(b) permits the parties to choose a foreign substantive law. Schedules engaged: the Fourth Schedule on Tribunal fees, although MCIA fees may exceed the Fourth Schedule baseline by agreement; the Fifth, Sixth and Seventh Schedules on disclosure and ineligibility. Operational consequences: Section 9 interim relief lies before the competent court at Mumbai; the Tribunal's emergency-arbitrator framework operates under MCIA Rules and is enforceable through Section 17(2) following *Amazon v. Future Retail*; and enforcement of the resulting award proceeds in India under Part I, since the seat is at Mumbai.

Arrangement (iii), the Singapore-seated International Commercial Arbitration with the UAE holding company under SIAC Rules.

Classification: foreign-seated International Commercial Arbitration. Applicable framework: at the seat, the Singapore International Arbitration Act read with SIAC Rules; for enforcement in India, Part II Chapter I (Sections 44 to 49) read with the First Schedule reproducing the New York Convention. The proviso to Section 2(2) of the 1996 Act, inserted by the 2015 Amendment, preserves the limited applicability of Sections 9, 27, 37(1)(a) and 37(3) for foreign-seated International Commercial Arbitrations unless the parties have expressly excluded them. Schedules engaged: the First Schedule for the New York Convention text relevant to enforcement; the Fifth, Sixth and Seventh Schedules retain limited operational relevance to the extent the parties have preserved Part I provisions. Operational consequences: enforcement in India proceeds under Section 47 (filing requirements) and Section 48 (grounds for refusal); Section 9 interim relief from an Indian court is available for the preservation of Indian-located assets, provided Part I has not been excluded; and, since Section 17 is a Part I provision that the proviso to Section 2(2) does not preserve for a foreign-seated arbitration, an emergency-arbitrator order made at the SIAC seat is not enforceable in India under Section 17(2); the route to protect Indian-located assets is a fresh application to the Indian court under Section 9, which the proviso does preserve. Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. concerned an India-seated arbitration and does not carry a foreign-seat emergency order into Section 17(2).

Arrangement (iv), the conciliation with the Mumbai joint-venture partner under Part III.

Classification: conciliation under Part III of the 1996 Act. Applicable framework: Part III (Sections 61 to 81). Schedules engaged: none of the arbitration-specific Schedules are directly engaged; the operative framework is Section 73 (settlement agreement) read with Section 74 (status of settlement agreement as an arbitral award on agreed terms). Operational consequences: the conciliator is appointed under Section 64; the procedure is governed by Sections 65 to 72; the settlement agreement under Section 73 has the status of an arbitral award on agreed terms under Section 74 read with Section 30, and is enforceable as a decree of the court under Section 36. Confidentiality of conciliation proceedings is statutorily protected under Section 75.

The ideal advise for Dhanur Enterprises is therefore as follows. First, each arrangement must be classified at the drafting stage itself, since clarity on which Part of the 1996 Act applies will drive every subsequent drafting choice, including appointment, seat, governing law, and enforcement design. Second, the clauses for each arrangement should be designed in arrangement-specific terms rather than from a generic template: Arrangement (i) should adopt a standard DIAC-anchored India-domestic clause; Arrangement (ii) should adopt a MCIA-anchored India-seated ICA clause with an express Section 28(1)(b) foreign-substantive-law option; Arrangement (iii) should adopt a SIAC-anchored foreign-seated ICA clause with express preservation of the proviso to Section 2(2) and an express Part II enforcement anchor; and Arrangement (iv) should adopt a Part III conciliation clause with the Section 73 settlement-framework anchored in the body of the clause itself. Third, on operational coordination, Dhanur Enterprises' General Counsel should maintain a compliance checklist for each arrangement: for (i) and (ii), the Section 29A timeline and the emergency-arbitrator window; for (iii), the Part II enforcement strategy and the asset-mapping exercise across India, the UAE, and Singapore; and for (iv), the Part III confidentiality framework and the formalities of the Section 73 settlement agreement. Fourth, on documentation protocols, arrangement-specific record-keeping should be maintained: the Section 21 notice of commencement of arbitration for (i) and (ii); the Section 47 and Section 48 enforcement bundle for (iii); and the Section 62 invitation to conciliate together with the written settlement agreement under Section 73 for (iv). Fifth, on strategic framework, Dhanur Enterprises should develop portfolio-wide arbitration-readiness protocols so that the General Counsel's office can respond promptly across all four arrangement types when a dispute crystallises, rather than scrambling for a framework that should have been pre-designed.

Practice Note:- Counsel advising on multi-arrangement portfolios must classify each arrangement by reference to the applicable Part of the Act at the drafting stage, apply Part-specific drafting rather than a single template adapted ad hoc, identify the Schedules engaged by each arrangement, and coordinate enforcement planning across arrangements where multi-jurisdictional asset exposure is foreseeable. For a Part II arrangement (foreign-seated ICA with cross-jurisdictional exposure), asset-mapping across the relevant jurisdictions should precede the crystallisation of any dispute, and the timing of pre-award attachment applications and Section 9 interim relief in India should be coordinated with parallel applications at the seat. Each arrangement is a distinct compliance and enforcement track from the date of execution.

QUESTION 5: UNCITRAL inspiration and comparative framework

Eshithaarvardhan Infrastructure Ltd. ("Eshithaar Infrastructure"), a Bengaluru-based infrastructure company, and Horikoshi Metal Co. Ltd. ("Horikoshi Metal"), a Tokyo-based Japanese manufacturer, are negotiating a Technology Licence and Supply Agreement dated 18 February 2026 ("the TLSA"). Contract value is USD 32 million over five years. During negotiations, Horikoshi Metal's Japanese counsel raises a framework concern:

(a) The proposed Indian-seated arbitration under the 1996 Act is acceptable in principle.

(b) However, Horikoshi Metal is more familiar with arbitration under the UNCITRAL Model Law, 1985, which is the framework Japanese courts apply.

(c) Horikoshi Metal seeks assurance that the 1996 Act's framework is equivalent to the UNCITRAL Model Law so that the procedural and outcome of an Indian arbitration would be comparable to a UNCITRAL-framework arbitration. Eshithaar Infrastructure's counsel has been asked to prepare a framework comparison. Advise Eshithaar Infrastructure, explaining:

  (a) The relationship between the 1996 Act and the UNCITRAL Model Law.

  (b) Key areas of alignment and divergence.

  (c) Drafting recommendations to bridge any gaps for the TLSA.

Statutory anchors

- Arbitration and Conciliation Act, 1996: Preamble and statutory architecture (UNCITRAL Model Law inspiration)
- Section 7 (form and validity of arbitration agreement)
- Section 9 / Section 17 (interim measures)
- Section 16 (kompetenz-kompetenz)
- Section 18 (equal treatment) and Section 19 (procedural autonomy)
- Section 11 (court-routed appointment — divergence from Model Law)
- Section 29A (twelve-month mandate — divergence)
- Section 29B (fast-track procedure — divergence)
- Section 31 (form of award)
- Section 31A (costs regime — divergence)
- Section 34(2)(a) and (b) (setting-aside grounds; aligned with Model Law)
- Section 34(2A) (patent illegality for domestic awards — divergence)
- Section 42A (statutory confidentiality — divergence)
- Seventh Schedule (arbitrator ineligibility — divergence in prescriptiveness)

Advice Note

The present question raises one comparative-framework issue, namely the relationship between the Arbitration and Conciliation Act, 1996 and the UNCITRAL Model Law on International Commercial Arbitration, 1985, and what drafting responses can bridge any gaps for the cross-border comfort of a Japanese counterparty negotiating an Indian-seated arbitration. The analysis is best conducted in three stages: first, the origin of the 1996 Act in the Model Law framework and the resulting alignment; second, the specific areas of divergence; and third, the drafting bridges that follow for the TLSA.

The 1996 Act was drafted on the lines of the UNCITRAL Model Law, 1985. The Preamble to the 1996 Act records:

"Whereas the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985... Whereas the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations..."

This genetic link has been read by SC as a binding interpretive anchor whenever a provision of the 1996 Act calls for construction. SC in *Enercon (India) Ltd. v. Enercon GmbH* reported as (2014) 5 SCC 1 observed that "the 1996 Act having been drafted on the lines of the UNCITRAL Model Law, one must look to the UNCITRAL Model Law whenever there is any difficulty in interpreting the provisions of the 1996 Act." The same approach informs SC's reasoning in *Sundaram Finance Ltd. v. NEPC India Ltd.* reported as (1999) 2 SCC 479 and in *Konkan Railway Corporation Ltd. v. Rani Construction Pvt. Ltd.* reported as (2002) 2 SCC 388.

The Model Law framework, as further amended in 2006 to introduce a more elaborate Chapter IV-An on interim measures, has been adopted by or has influenced the arbitration legislation of approximately eighty-five jurisdictions, including India, Japan, Singapore, Germany, and most major trading nations. This produces substantial cross-jurisdictional comparability and is the structural reason why an Indian-seated arbitration is, on the substance, recognisable to a Japanese counterparty.

The areas of alignment between the 1996 Act and the Model Law are wide. The core definitions in Section 2 of the 1996 Act correspond to Article 2 of the Model Law (arbitration, arbitration agreement, arbitral Tribunal, and arbitral award). Section 7 corresponds to Article 7 in defining the arbitration agreement, the writing requirement, the form, and the rules on incorporation. Section 16 corresponds to Article 16 in embodying the kompetenz-kompetenz doctrine, that is, the Tribunal's power to rule on its own jurisdiction. Section 17 corresponds to Article 17 in conferring on the Tribunal the power to order interim measures. Section 18 corresponds to Article 18 in laying down the equal-treatment principle. Section 19 corresponds to Article 19 in setting out the procedural-autonomy framework. Section 31 corresponds to Article 31 in prescribing the form of the award (writing, signature, reasons subject to the parties' agreement, date and place). Section 34(2)(a) and (b) correspond closely to Article 34(2) of the Model Law on the grounds for setting aside.

The areas of divergence, by contrast, are specific and identifiable, and it is here that Horikoshi Metal's concern is to be addressed. First, on appointment, Section 11 of the 1996 Act routes appointment, in default of agreement, through the Supreme Court (for ICA) or the High Court (for domestic arbitration), rather than through the Model Law's default appointing-authority framework. The institutional bridge is, however, substantial: where the parties have chosen an institutional rules-set, the institution acts as the appointing authority and the court route does not arise. Second, Section 34(2A) of the 1996 Act, inserted by the 2015 Amendment, introduces "patent illegality" as an additional setting-aside ground for domestic awards, with no Model Law equivalent. Crucially, this ground is not available for international commercial arbitration awards, and so does not engage the TLSA. Third, the Seventh Schedule of the 1996 Act, read with Section 12(5), is more prescriptive than Article 12 of the Model Law: it sets out a list of relationships that render a person ineligible for appointment, and that ineligibility may be waived only by an express written agreement after the dispute has arisen. Fourth, Section 29A, inserted by the 2015 Amendment, introduces a twelve-month mandate for the Tribunal (extendable by mutual consent for six months and thereafter by the court for sufficient cause), an Indian innovation with no Model Law equivalent. Fifth, Section 31A, inserted by the 2015 Amendment, contains a structured costs regime which has no direct Model Law counterpart. Sixth, Section 29B, inserted by the 2015 Amendment, provides a statutory fast-track procedure that is distinct from the expedited procedures available under institutional rules. Seventh, Section 42A, inserted by the 2019 Amendment, places a statutory baseline of confidentiality on the arbitrator, the parties, and the institution. Eighth, Section 11(6A), inserted by the 2015 Amendment, prescribes a narrow enquiry by the appointing court at the appointment stage. SC in *SBI General Insurance Co. Ltd. v. Krish Spinning* reported as 2024 INSC 532 has now given that narrow enquiry its post-2015 controlling articulation.

For an India-seated International Commercial Arbitration of the kind contemplated by the TLSA, the practical impact of these divergences is limited to three points: the appointment stage, where institutional appointment under MCIA or DIAC mitigates the divergence; the Section 34 challenge, where the patent-illegality ground does not engage an ICA award; and the timeline, where Section 29A applies but is extendable by consent and through the institutional framework.

The drafting bridges for the TLSA are accordingly five.

Bridge 1, institutional framework. The TLSA should adopt MCIA Rules for a Mumbai-seated arbitration, or SIAC Rules for a Singapore-seated arbitration if the parties prefer a foreign seat. Institutional rules provide a UNCITRAL-aligned procedural backbone and reduce direct reliance on Section-specific provisions of the 1996 Act.

Bridge 2, language and forum neutrality. The clause should specify English as the language of the arbitration, which is standard across both Indian and Japanese cross-border practice. The seat should be either Mumbai (for India-seated arbitration) or Singapore (as a neutral seat for foreign-seated arbitration), depending on Horikoshi Metal's commercial preference.

Bridge 3, governing-law bifurcation. Following SC's guidance in *Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.* reported as (2020) 5 SCC 399, the clause should expressly bifurcate the substantive law of the contract (the parties' commercial choice, whether Indian, English, Japanese, or neutral), the law of the arbitration agreement (aligned with the seat), and the curial law (aligned with the seat).

Bridge 4, emergency relief. An institutional emergency-arbitrator framework (the MCIA emergency-arbitrator provisions for an India-seated arbitration, or SIAC Schedule 1 for a Singapore-seated arbitration) should be expressly engaged. This delivers Model Law-compatible urgent-relief access without requiring the parties to navigate the Section 9 court route in either jurisdiction.

Bridge 5, enforcement anchor. The clause should anchor enforcement planning in Part II of the 1996 Act read with the New York Convention for any foreign-seated outcome, and in Part I of the 1996 Act for an India-seated outcome. The New York Convention is the common ground that ensures cross-border recognition and enforcement on a Model Law-compatible basis.

The ideal advise for Eshithaar Infrastructure is therefore as follows. First, communicate to Horikoshi Metal the substantial Model Law alignment of the 1996 Act, supported by the Preamble to the Act, the *Enercon* line of authority, and the wide range of Sections that correspond directly to Model Law Articles. Horikoshi Metal's familiarity with Model Law arbitration translates to Indian-seated arbitration. Second, highlight the institutional bridge. Indian institutional frameworks (MCIA in particular) are closely modelled on SIAC, ICC, and UNCITRAL frameworks, which delivers further Model Law alignment at the procedural level. Third, address Horikoshi Metal's specific concerns directly: appointment will proceed through the MCIA Council and not through the Indian court, which avoids the procedural unfamiliarity of Section 11; the patent-illegality ground in Section 34(2A) is statutorily limited to domestic awards and does not engage an ICA; and the Section 29A timeline is extendable by mutual consent and the institutional framework manages the timeline in any case. Fourth, propose a specific clause for the TLSA, namely a MCIA-administered Mumbai-seated arbitration in English with three arbitrators and institutional appointment, English law as the substantive law (or Japanese law if Horikoshi Metal so prefers), the law of the arbitration agreement aligned with the seat, an emergency-arbitrator provision under MCIA Rules, and Part I enforcement for the Mumbai-seated outcome (with Part II as the alternative if the parties ultimately prefer Singapore). Fifth, on operational framework, Eshithaar Infrastructure should maintain a foreign-counterparty outreach package that explains the 1996 Act's Model Law genesis, the limited divergences, and the institutional bridges, since negotiation friction on procedural-framework concerns is most efficiently dissolved by an one-page comparator delivered at the right time.

Practice Note:- Counsel advising on cross-border negotiations involving an Indian counterparty should highlight the Act's Model Law genesis, identify the specific divergences relevant to the foreign counterparty (typically Section 11 appointment, Section 34(2A), and Section 29A mandate), propose institutional-framework bridges (MCIA, DIAC or, where appropriate, SIAC), and bifurcate the governing laws expressly under the Mankastu Impex three-laws framework. India has not adopted the 2006 Model Law revisions wholesale, so interim-measures recognition warrants flagging at the negotiation table; institutional emergency-arbitrator reliance minimises the divergence in practice. An one-page outreach package on these recurring concerns saves negotiation time, since the same set of questions arises in every cross-border arbitration negotiation.

QUESTION 6: Part I vs Part II demarcation (BALCO framework)

Garuvardhan Commodities Ltd. ("Garu Commodities"), a Delhi-based commodities trader, and Manhattan Commodities Corp. ("Manhattan Commodities"), a New York-based trading house, executed a Commodity Supply Agreement dated 12 December 2010 ("the CSA"). Contract value USD 18 million. Clause 42 of the CSA provides for SIAC arbitration seated at Singapore. A dispute arose in 2014 (before the 2015 Amendment). Manhattan Commodities obtained a SIAC award on 18 August 2015 for USD 6.2 million against Garu Commodities. Manhattan Commodities now (February 2026) seeks enforcement in India under Part II (Sections 47 to 49). Garu Commodities resists enforcement and separately files a Section 34 challenge before the Delhi High Court, arguing:

(a) The SIAC award is not binding in India because the CSA was executed before BALCO (2012) and under the Bhatia International framework, which permitted Part I challenge to foreign-seated awards.

(b) The pre-BALCO framework governs because the CSA predates BALCO.

(c) The Section 34 challenge is maintainable. Manhattan Commodities contends:

(a) The CSA dispute arose in 2014; the SIAC arbitration proceeded in 2014 to 2015.

(b) Under BALCO (2012), Part I does not apply to foreign-seated arbitrations prospectively.

(c) The SIAC award (2015) post-dates BALCO.

(d) The Section 34 challenge is not maintainable; Part II enforcement should proceed. Advise the Delhi High Court on the correct framework.