

DEPOSIT OF THE ENTIRE AWARDED AMOUNT FOR STAY OF AN ARBITRAL AWARD: A CONDITION TOO FAR?

The Arbitration and Conciliation Act, 1996 (“the Arbitration Act”) was enacted to promote arbitration as a speedy and efficient method of dispute resolution with minimum court interference and maximum party autonomy. At the same time, the Arbitration Act recognizes that arbitral awards are not immune from errors. Therefore, section 34 of the Arbitration Act provides a remedy to challenge arbitral awards on limited grounds such as incapacity of a party, invalidity of the arbitration agreement, lack of proper notice or inability of a party to present its case, the award dealing with disputes beyond the scope of submission to arbitration, conflict with the public policy of India, patent illegality appearing on the face of the award, etc. Since the grounds for challenging an award are limited, if the court admits a petition under section 34 of the Arbitration Act, it would mean that the court has found substance and merit in the challenge which would need to be examined.

However, in recent years, a troubling judicial trend has emerged. Courts have increasingly begun directing the party challenging an arbitral award to deposit 100% of the awarded amount, along with interest, as a condition for granting stay on enforcement of the award under Section 36(3) of the Arbitration Act, and often without any reason as to why such a condition has been imposed. It places an enormous financial burden on the party challenging the award and raises a fundamental question i.e., if the court has found merit in the challenge to the award which would need to be examined, why is the party challenging the award being burdened with a condition to deposit the entire

awarded amount for a stay on the enforcement of the arbitral award? In the circumstances, does the statutory right under section 34 of the Arbitration Act have any real meaning?

The Statutory Language of Section 36(3) of the Arbitration Act

Section 36 of the Arbitration Act deals with enforcement of arbitral awards. After the amendment to the Arbitration Act in the year 2015, the law changed significantly. Earlier, filing a challenge under section 34 of the Arbitration Act automatically stayed enforcement of the award. The amendment removed this automatic stay and provided that enforcement would continue unless the court grants a stay under section 36(3) of the Arbitration Act. However, the provision does not impose any fixed rule regarding deposit. Instead, section 36(3) of the Arbitration Act clearly states that the court may grant stay “subject to such conditions as it may deem fit.” This language is important because it gives discretion to the court. It allows the court to consider the facts and circumstances of each case and decide appropriate conditions.

The proviso to section 36(3) of the Arbitration Act further states that the court shall have “due regard” to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (“CPC”). The words “due regard” are important. They do not mean that CPC provisions must be followed strictly. They only mean that CPC provisions may be considered as guidance. If Parliament wanted courts to follow CPC provisions strictly, it would have used the words “in accordance with.” The deliberate use of flexible language shows that Parliament intended to



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preserve judicial discretion.

The Arbitration Act is a self-contained Act

The Arbitration Act is recognized as a self-contained Act governing arbitration proceedings. Section 5 of the Arbitration Act states that courts cannot intervene except where the Arbitration Act allows them to do so. The Supreme Court clarified this position in *Pam Developments Pvt. Ltd. v. State of West Bengal (2019) 8 SCC 112* wherein it was held that reference to CPC in section 36 of the Arbitration Act cannot be construed in such a manner that it takes away the power conferred in the Arbitration Act itself. It is to be taken as a general guideline which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as a guidance whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.

Section 34 Proceedings Are Not Appeals

Under section 34 of the Arbitration Act, a court does not re-examine the merits of the dispute or reassess the evidence on record. Its jurisdiction is confined to examining the

arbitral award only on the limited grounds provided in the said section itself. This statutory framework reflects the legislative intent that proceedings under section 34 of the Arbitration Act are not appellate proceedings but are proceedings aimed at ensuring that the arbitral award complies with the standards of legality.

This distinction has important consequences. An arbitral award challenged under section 34 of the Arbitration Act has not yet undergone judicial scrutiny and its validity remains open to examination. The award cannot be presumed to be correct or final until the challenge is decided. Requiring the challenging party to deposit the entire awarded amount as a condition for stay assumes the correctness and enforceability of the award even when the court has admitted the petition challenging its legality. Such an approach undermines the purpose of section 34 of the Arbitration Act and risks reducing the remedy to a mere formality.

High Courts' Practice of Directing Full Deposit

Despite the discretionary language of section 36(3) of the Arbitration Act, several High Courts have directed deposit of the entire awarded amount as a condition for granting stay on enforcement of arbitral awards. This practice appears to have developed through judicial practice rather than any requirement under the Arbitration Act. For instance, in *Power Mech Projects Ltd. v. Sepco Electric Power Construction Corporation 2020 SCC OnLine Del 2049*, the Delhi High Court directed deposit of 100% awarded amount. Similarly, in *Parvati Devi Khemka & Ors. v. JJ Grihanirman Pvt. Ltd., C.O. No. 4242/2018*, the Calcutta High Court required deposit of the entire awarded sum for grant

of stay of an arbitral award. In *Director, Land Records & Surveys Govt. of Odisha & Anr v. Sylvesa Infotech Pvt. Ltd. W.P.(C) No.21111 of 2025*, the Orissa High Court imposed a similar condition for grant of stay of an arbitral award.

These orders show that full deposit has often been treated as a standard condition. However, section 36(3) of the Arbitration Act does not mandate any full deposit. Treating full deposit as a default requirement converts a discretionary power into a mandatory rule which is contrary to the statutory language.

Supreme Court Orders

In *SREI Infrastructure Finance Ltd. v. Candor Gurgaon Two Developers and Projects Pvt. Ltd., SLP (C) No. 20895-20897/2018*, the Supreme Court permitted deposit of only 60% of the awarded amount, while allowing bank guarantee for the remaining amount. In *Toyo Engineering Corporation v. Indian Oil Corporation Ltd., Civil Appeal Nos. 4549-4550/2021* and *Manish v. Godawari Marathwada Irrigation Development Corporation, SLP (C) No.(s) 11760-11761/2018*, the Supreme Court directed deposit of the awarded amount. However, in both cases, the arbitral awards had already been upheld under Section 34 of the Arbitration Act and the matter was pending in appeal under section 37 of the Arbitration Act. These orders were passed at the appellate stage, after judicial scrutiny of the award, and cannot be treated as laying down a rule for deposit at the section 34 stage.

In *Mumbai Metro Rail Corporation Limited v. L&T-STEEL JV Mumbai, Civil Appeal No. 14483 of 2025*, the Supreme Court set aside the direction passed by the Bombay High Court directing deposit of the entire awarded amount as a condition for deciding the section

34 challenge. The Supreme Court held that there is no legal necessity to require deposit of the entire decretal amount as a condition precedent for deciding proceedings under section 34 of the Arbitration Act. Instead, the Supreme Court permitted the appellant to furnish an undertaking supported by details of immovable properties owned by it.

Conclusion

A conspectus of the aforesaid discussion shows that courts cannot insist on deposit of the entire awarded amount as a condition precedent to deciding section 34 proceedings. Such a requirement assumes the correctness of the award even while admitting that grounds for judicial review are made out. The proper approach for courts would be to exercise discretion based on the facts and circumstances of each case. The quantum of deposit, if any, must be determined on a case-by-case basis, taking into account relevant factors such as the *prima facie* merits of the challenge, the financial position of the parties and the need to secure the interests of the award holder. Courts may accept alternative safeguards also such as bank guarantees, undertakings or property disclosures instead of insisting on full deposit of the awarded amount. This ensures fairness to both parties while preserving the effectiveness of judicial review. Treating full deposit as a mandatory condition is inconsistent with the statutory framework. Judicial discretion must be exercised in a manner that protects the right to challenge arbitral awards and preserves the purpose of the Arbitration Act. The remedy under section 34 must remain real and effective and cannot be rendered illusory by imposing onerous financial conditions not contemplated by the Arbitration Act.