

THE APPOINTMENT OF ARBITRATORS—INDIA’S SECTION 11 ‘GATEWAY’ JURISPRUDENCE*(June 2026)*

The provision for courts appointing arbitrators is a part of the standard mechanics of modern arbitration statutes (see, Art. 11(4) UNCITRAL Model Law on International Commercial Arbitration). However, the standard of review to be applied by an appointing court remains an intractable ‘gateway’ issue and differs across jurisdictions in doctrine and practice. In the UK, under the English Arbitration Act 1996, courts look to a ‘good arguable case’ that an arbitration agreement exists (see *Noble Denton Middle East v. Noble Denton International*, England & Wales High Court 2010). In Singapore, under the International Arbitration Act 1994 and the Arbitration Act 2001, the power to appoint arbitrators is statutorily delegated to the President of the Court of Arbitration of the Singapore International Arbitration Centre—to be exercised in an ‘administrative’ capacity based on a ‘prima facie’ finding of the parties’ intention to arbitrate (see *K.V.C. Rice Intertrade v. Asian Mineral Resources*, Singapore High Court 2017).

In India, under the Arbitration Act 1996 (section 11), the early legal standard came to be based on the appointing court’s ‘prima facie’ satisfaction regarding the existence of an arbitration clause and understood as an exercise undertaken by courts in an ‘administrative’ capacity (see *Konkan Railway Corporation v. Rani Constructions*, Supreme Court 2002). Under that standard, enquiries into contentious preliminary issues by appointing courts were uniformly denounced, leaving them for the arbitral tribunal (see *Konkan Railway Corporation v. Mehul Constructions*, Supreme Court 2000). However, that legal position was overturned in 2005 (see *SBP & Co. v. Patel Engineering*, Supreme Court 2005), and the power to appoint came to be framed as an exercise in ‘judicial’ capacity—providing imprimatur to assess a variety of questions at the appointment stage, including arbitrability and the ‘validity’ of the arbitration clause.

Over successive cases, that broadened power of scrutiny front-loaded jurisdictional issues at the appointment stage, turning Section 11 proceedings into ‘mini-trials’ and delaying the arbitral process (see, for example, *National Insurance Company v. Boghara Polyfab*, Supreme Court 2009). In 2015, via an amendment to the Arbitration Act 1996, that position was reversed, and the amended statute required that appointing courts limit their enquiry to determining the ‘existence’ of an arbitration agreement (see, Section 11(6A) Arbitration Act 1996). In the years following the amendment, the Indian Supreme Court explained the amended statute to imply that ‘all that the Courts need to see is whether an arbitration agreement exists—nothing more, nothing less’ (see *Duro Felguera S.A. v. Gangavaram Port Ltd.*, Supreme Court 2017).

However, in 2021, the Supreme Court broadened the scope of the enquiry at the appointment stage and ruled that an appointing court could examine (on a ‘prima facie’ and ‘narrow’ basis) both the ‘existence’ and the ‘validity’ of the arbitration agreement (see *Vidya Drolia & Ors. v. Durga Trading Corporation*, Supreme Court 2021). The Supreme Court’s introduction of narrow doctrinal exceptions to filter ‘deadwood’ cases came to be used in several successive instances to find, among others, manifestly time-barred claims (*HPCL Bio-Fuels v. Shahaji Bhanudas Bhad*, Supreme Court 2024), and a particular version of an arbitration agreement involving a public entity as violating the constitutional guarantee against arbitrariness (*Lombardi Engineering v. UK Jal Vidyut Nigam*, Supreme Court 2024). In practice, the gradual expansion of the ‘deadwood’ exceptions enabled referral courts to entertain a broader range of factual and jurisdictional objections—even if they were now framed as an ‘ex facie’ enquiry.

In the latest turn, in 2023, the Supreme Court critiqued the broadening of ‘ex facie’ enquiries by appointing courts and ‘clarified’ that its 2021 ruling in *Vidya Drolia* confined an appointing court’s role to examining only the ‘existence’ and ‘formal validity’ of an arbitration agreement (see *In re: Interplay Between Arbitration Agreements under the Arbitration Act 1996 and the Stamp Act 1899*, Supreme Court 2023). The Supreme Court added, for good measure, that all questions of substantive validity would fall to the arbitral tribunal under its powers to determine its own competence. This legal position was actively affirmed by the Supreme Court via a 2025 decision where it declined to consider, as the appointing court, arguments on whether a non-signatory corporate affiliate could be impleaded as a party to an arbitration (see *ASF Builtech Pvt. Ltd. v. Shapoorji Pallonji and Company Pvt. Ltd.*, Supreme Court 2025).

Overall, in India, while jurisdictional enquiries by appointing courts at the referral stage have narrowed substantially over the past decade, courts continue to exercise a practical vetting of arbitration agreements. That is demonstrated by several recent examples. For instance, in 2026, the Supreme Court found that a general reference to tender documents in a ‘Letter of Intent’ did not imply that the arbitration clause had been incorporated by reference (see *Maharashtra State Electricity Distribution Company v. R.Z. Malpani*, Supreme Court 2026). In another instance, the Supreme Court found an arbitration agreement to be invalid and vitiated by fraud (*Rajia Begum v. Barnali Mukherjee*, Supreme Court 2026). In another recent example, the Supreme Court denounced the attempted revival of a previously abandoned arbitration, via a Section 11 appointment request, as an abuse of process (see *Rajiv Gaddh v. Subodh Prakash*, Supreme Court 2026).