

Dispute Resolution Hotline

November 02, 2018

SUPREME COURT OF INDIA 'RULES OUT' THE RULEBOOK IN FAVOR OF SUBSTANTIVE RIGHTS

This article was originally published in the 21st September 2018 edition of



as well as in the August/September issue of

YSIAC's Newsletter

Recently, in the case of *State of Bihar & Ors. v Bihar Rajya Bhumi Vijas Bank Samiti* the Supreme Court of India held that Section 34 (5) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") was a directory, and not a mandatory provision of law. Section 34 (5) of the Arbitration Act requires a party filing an application to set aside an arbitral award, to issue prior notice of such intention to the other party and only thereafter file the application along with an affidavit attesting to compliance with the notice requirement. The Supreme Court held that a failure to provide such notice under Section 34 (5) would not defeat an application to set aside an arbitral award, as such the provision to provide such a notice was only directory. Through this judgment, the Supreme Court of India affirms that procedural provisions of law ought not to defeat substantive rights and that while adherence to procedure is important, administration of justice remains paramount.

In this article (to access click [here](#)), we discuss the SC's observations on mandatory and directory provisions of laws, interpretation of past precedents, with the purpose of analyzing the impact of this judgment on the various new provisions introduced across various statutes in India, such as provisions imposing strict time lines for the resolution of disputes, whether through arbitration, litigation, or corporate insolvency.

– Tanisha Khanna & Siddharth Ratho

You can direct your queries or comments to the authors

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

New Age of Franchising

June 20, 2025

Life Sciences 2025

June 11, 2025

The Tour d'Horizon of Data Law Implications of Digital Twins

May 29, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025

