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Supreme Court of India clarifies that failure to issue notice under Section 21 of the Arbitration and Conciliation Act, 1996 is not fatal

The Supreme Court of India (“**Supreme Court**”), in *Bhagheeratha Engineering Limited vs. State of Kerala*¹, has clarified that Section 21 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) is procedural in nature and serves only to determine the commencement of arbitral proceedings for the purpose of limitation. The Supreme Court has held that non-issuance of a separate notice under Section 21 of the Arbitration Act is not fatal where the disputes are otherwise arbitrable and validly placed before the Arbitral Tribunal (“**Arbitral Tribunal**”).

Brief facts

1. Bhagheeratha Engineering Limited (“**Appellant**”) was awarded 4 (four) road maintenance contracts under the Kerala State Transport Project for development of roads in Kerala.
2. The contracts contained an escalatory dispute resolution mechanism under the General Conditions of Contract (“**GCC**”), requiring disputes to be referred first to the engineer, then to the adjudicator, and thereafter to arbitration.
3. The Appellant quantified its claims and submitted them to the executive engineer. Upon failure of the engineer to decide the claims, the Appellant approached the adjudicator with 4 (four) disputes relating to price adjustment, escalation, interest on delayed payments, and related issues.
4. The adjudicator decided disputes 1 and 3 in favour of the Appellant and disputes 2 and 4 against the Appellant.
5. The respondent/the State of Kerala did not accept the adjudicator’s decision on dispute 1 and expressed its intention to refer the matter to arbitration. The Arbitral Tribunal was constituted on January 11, 2005. The Arbitral Tribunal held that the arbitration clause was wide enough to cover all disputes arising out of the contract.
6. By an award dated June 29, 2006, the Arbitral Tribunal allowed all 4 (four) claims in favour of the Appellant and awarded a sum of Rs. 1,99,90,777 (Indian Rupees one crore ninety-nine lakh ninety thousand seven hundred and seventy-seven) with post-award interest at 18% p.a.
7. The respondent challenged the award under Section 34 of the Arbitration Act. The District Judge set aside the award and restored the adjudicator’s decision.
8. The High Court of Kerala, in appeal under Section 37 of the Arbitration Act, upheld the order setting aside the arbitral award. It held that the arbitral reference was confined only to dispute 1 since the State had challenged only part of the adjudicator’s decision and no separate Section 21 notice was issued for disputes 2 to 4. Therefore,

¹ 2026 SCC OnLine SC 5 (decided on January 6, 2026)

the arbitral proceedings for those claims had not validly commenced. Accordingly, the Arbitral Tribunal lacked jurisdiction to decide disputes 2 to 4, and the restoration of the adjudicator's decision was affirmed.

9. Aggrieved, the Appellant approached the Supreme Court.

Issues

The judgment deals with the following issues:

1. whether the High Court was justified in holding that the Arbitral Tribunal had jurisdiction only over dispute 1 and not disputes 2 to 4 (because a notice under Section 21 of the Arbitration Act was not issued for the latter)?
2. whether non-issuance of a notice under Section 21 of the Arbitration Act by the Appellant was fatal to its claims before the Arbitral Tribunal?

Findings and analysis

Re: Jurisdiction of the Arbitral Tribunal

1. The Supreme Court held that the High Court erred in concluding that the Arbitral Tribunal was constituted only to adjudicate dispute 1.
2. The arbitration clause under clause 25.3 of the GCC was found to be widely worded, covering “*any dispute or difference arising out of or connected with the agreement*”. The Supreme Court observed that the respondent itself sought a declaration before the Arbitral Tribunal that the adjudicator's decision was null and void, thereby indicating its intention to reopen all 4 (four) disputes. Once the respondent reopened the entire controversy, it could not subsequently contend that the Arbitral Tribunal lacked jurisdiction to decide disputes 2 to 4.
3. Relying on the principle laid down in *State of Goa vs. Praveen Enterprises*², the Supreme Court reiterated that where an arbitration clause provides for reference of *all disputes*, the appointment of the Arbitral Tribunal itself constitutes an implied reference of all such disputes, unless the agreement expressly restricts the scope of reference.
4. The Supreme Court further held that, having regard to the conduct of the parties, the entire dispute stood thrown open before the Arbitral Tribunal, and therefore, the Tribunal did not exceed its jurisdiction in adjudicating all 4 (four) disputes.

Re: Section 21 notice serves to commence arbitration, not to restrict or defeat valid claims

1. The Supreme Court clarified that the object of Section 21 of Arbitration Act is limited to determining the commencement of arbitral proceedings for the purpose of limitation, and that the provision is procedural in nature and not jurisdictional.
2. Relying upon *ASF Buildtech Private Limited vs. Shapoorji Pallonji and Co. Private Limited*³, the Supreme Court held that issuance of a notice under Section 21 of the Arbitration is not a mandatory requirement which must precede arbitration in all cases. The absence of such notice does not denude the Arbitral Tribunal of jurisdiction where the disputes are otherwise arbitrable.
3. The Supreme Court further held that failure to issue a notice under Section 21 of the Arbitration Act is not fatal, provided the claims are otherwise valid and the disputes fall within the scope of the arbitration agreement. In this

² (2012) 12 SCC 581

³ (2025) 9 SCC 76

context, reliance was also placed on *State of Goa vs. Praveen Enterprises*⁴, wherein it was held that non-inclusion of certain disputes in a notice under Section 21 of the Arbitration Act affects only the computation of limitation and does not bar such claims from being raised before the Arbitral Tribunal.

4. Section 21 of the Arbitration Act does not restrict the jurisdiction of the Arbitral Tribunal only to those disputes which are expressly mentioned in the notice of invocation. Once the Arbitral Tribunal is constituted, the claimant is entitled, under Section 23 of the of the Arbitration Act, to file a statement of claim raising all disputes covered by the arbitration agreement. Such claims need not mirror the disputes referred to in a notice under Section 21 of the Arbitration Act.
5. Further, the contention that only the party issuing a notice under Section 21 of the Arbitration Act can be termed a 'claimant' was rejected as legally untenable. The Supreme Court held that the designation of claimant and respondent is a matter of procedural convenience and flows from who files the statement of claim first, a principle consistent with Section 23 and reinforced by the decision in *Indian Oil Corporation Limited vs. Amritsar Gas Service*⁵.

Conclusion

The Supreme Court held that a notice under Section 21 of the Arbitration Act is not a mandatory precondition but merely marks the commencement of arbitral proceedings. The Supreme Court further held that failure to issue such notice is not fatal where disputes are otherwise valid and arbitrable.

The Supreme Court's judgment demonstrates a pro-arbitration approach, as it has rejected a technical objection raised by a party to defeat arbitration. However, it must also be highlighted that in a prior decision, the Supreme Court (in *Adavya Projects Private Limited vs. Vishal Structurals Private Limited*⁶) had held that issuance of a Section 21 of the Arbitration Act notice is mandatory as: (a) it fixes the date of commencement of arbitration; (b) determines limitation period; and (c) is a prerequisite for filing an application under Section 11 of the Arbitration Act.

This divergence creates uncertainty and ambiguity regarding the procedural framework governing the commencement of arbitral proceedings. Considering the significance of Section 21 of the Arbitration Act as the initiating step in arbitration, clarification by a larger bench of the Supreme Court would be necessary. This would ensure consistency, certainty, and uniform application of the law. Until such resolution, the mandate of Section 21 of the Arbitration Act is likely to remain a subject of continued judicial debate.

⁴ (2012) 12 SCC 581

⁵ (1991) 1 SCC 533

⁶ 2025 INSC 507

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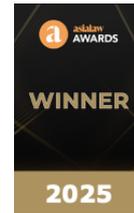
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