ARBITRATION & DISPUTE RESOLUTION

Can Arbitration Proceedings Be *Reopened Midstream?*

Procedural Finality, Belated Evidence and the Limits of Judicial Intervention?

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Introduction

Arbitration is intended to provide a procedure that is flexible, efficient and responsive to the requirements of the dispute. Unlike ordinary civil litigation, an arbitral tribunal is not bound by the technical rules of procedure contained in the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. Section 19 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") expressly recognises this flexibility by permitting the arbitral tribunal to determine its own procedure, subject to the parties' agreement and the statutory requirement of fairness.

This flexibility, however, does not mean that an arbitration can be procedurally reopened whenever a party considers it advantageous to introduce further material. Once pleadings have crystallised, procedural orders have prescribed timelines, affidavits of evidence have been filed and cross-examination has substantially progressed, a competing consideration emerges: procedural finality. The question is therefore not whether an arbitral tribunal possesses power to permit additional evidence, it ordinarily does, but whether that power can be exercised in a manner that deprives the opposing party of a fair opportunity to meet the case or permits a party to cure deficiencies in its own evidence.

The better view emerging from Indian arbitration jurisprudence is that procedural finality is not an absolute bar to reopening, but neither is procedural flexibility a licence for a party to reconstruct its case midstream. The decisive consideration is the distinction between a genuine procedural correction and an attempt to introduce a new or improved substantive case after the opportunity to do so has substantially passed.

The Statutory Balance: Sections 18, 19, 23 and 24

The statutory framework reflects this balance. Section 18 requires equal treatment of the parties and mandates that each party be given a full opportunity to present its case. Section 19 gives the tribunal considerable autonomy in determining the procedure. Sections 23 and 24 deal with pleadings and hearings and provide the framework within which the respective cases of the parties are presented and adjudicated.

These provisions must operate together. Section 19 cannot be read in isolation so as to override Section 18. A tribunal may depart from a procedural timetable where justice requires it, but the departure must remain consistent with equal treatment and a fair opportunity to respond.

The distinction is particularly important when additional documents are sought. A document which merely supports an existing pleaded case is materially different from a document which introduces a new factual foundation. Similarly, evidence genuinely arising in response to the opponent's case stands on a different footing from evidence which was available from the beginning but was deliberately or negligently withheld.

Thus, the relevant inquiry is not simply whether the document is "relevant". Relevance is only the starting point. The tribunal must consider the reason for the delay, the stage of proceedings, prior opportunities available to the party, the effect upon cross-examination, the nature of the proposed material and whether the opposing party can fairly respond to it.

Procedural Reopening Versus Reconstruction of the Case

A useful conceptual distinction is between reopening the procedural stage and reopening the substantive case.

The first may occur where, for example, an important document has subsequently come into existence, an issue has emerged from cross-examination which could not reasonably have been anticipated, or a party has genuinely been denied an opportunity to address material necessary for determination of the dispute. In such circumstances, an arbitral tribunal may legitimately reopen or supplement the evidentiary process.

The second is substantially more problematic. If a party seeks to introduce documents which were available before pleadings or evidence were closed, seeks to file an additional affidavit after its witness has substantially undergone cross-examination, or attempts to introduce a new factual defence through an "additional evidence" application, the application may effectively amount to an amendment of the party's case under another name.

The procedural label attached to the application should therefore not determine its substance.

In ***Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd.*, (2020) 15 SCC 706**, the Supreme Court emphasised the legislative policy of minimal judicial intervention in arbitral proceedings. The Court held that although constitutional jurisdiction under Article 227 is not extinguished by Section 5 of the 1996 Act, interference in arbitral matters must be extremely circumspect and confined to exceptional circumstances, particularly orders suffering from patent lack of inherent jurisdiction.

This principle has direct significance for procedural orders concerning additional evidence. A party dissatisfied with the tribunal's refusal to reopen evidence ordinarily cannot convert every procedural disagreement into an immediate judicial challenge. Intervention at the interlocutory stage risks interrupting the very proceedings that arbitration is intended to expedite.

The Supreme Court's decision in ***Alpine Housing Development Corporation (P) Ltd. v. Ashok S. Dhariwal*, (2023) 19 SCC 629**, although concerning production of additional evidence at the Section 34 stage rather than during the arbitration itself, reinforces the importance of the arbitral record and the exceptional nature of additional evidence. The Court held that proceedings under Section 34 are summary in nature and that additional evidence cannot ordinarily be introduced as a matter of right.

The decision is significant because it demonstrates that the statutory scheme does not contemplate a continuous evidentiary process in which material can simply be introduced at every subsequent stage. Where an evidentiary opportunity existed before the tribunal, the party ordinarily cannot assume that the same opportunity will be recreated later.

Prejudice Is Central, But Not Necessarily Irremediable

Prejudice should not, however, be treated mechanically. The fact that additional material is late does not automatically require exclusion.

Where the material is genuinely necessary and the delay is satisfactorily explained, prejudice may potentially be addressed by procedural safeguards—such as granting the opposing party additional time, permitting further cross-examination, allowing rebuttal evidence or imposing costs.

The crucial question is whether the prejudice is curable without fundamentally disrupting the arbitration.

For example, a subsequently discovered document directly responsive to an issue raised for the first time by the opposing party may justify limited reopening. Conversely, documents that were available to the applicant throughout the proceedings, but were withheld until cross-examination exposed weaknesses in its evidence, present a substantially different case.

The tribunal must therefore distinguish between new material necessitated by the development of the proceedings and new material necessitated by deficiencies in a party's own case.

Judicial Intervention and Section 34

Procedural orders concerning evidence ordinarily do not constitute independent grounds for immediate judicial intervention. Section 5 embodies the policy of minimal judicial interference, while Section 37 provides a limited statutory appellate mechanism.

Consequently, the proper approach is generally deferential: courts should not substitute their own case-management preferences for those of the arbitral tribunal. The question becomes more serious at the Section 34 stage if the procedural decision ultimately results in a party being genuinely unable to present its case.

The distinction is therefore between incorrect procedural discretion and serious procedural unfairness. Not every procedural error justifies setting aside an award. But where the procedure adopted effectively deprives a party of a reasonable opportunity to present material essential to its case, Section 34(2)(a)(iii) may become relevant.

Conclusion

The emerging position is best expressed through a calibrated principle: arbitration permits procedural flexibility, but not procedural opportunism.

An arbitral tribunal retains significant power under Section 19 to regulate its procedure and, where necessary, reopen an evidentiary stage. Section 18 nevertheless requires that such power be exercised consistently with equality and fairness. The tribunal should consider the explanation for delay, the availability of the material earlier, the stage of proceedings, the status of pleadings and cross-examination, the materiality of the evidence, the prejudice caused to the other party and whether such prejudice can realistically be cured.

The critical threshold is therefore not simply whether the proposed material is relevant. It is whether permitting it would facilitate fair adjudication of the existing dispute or instead permit a party to repair, expand or reconstruct its case after the procedural opportunity for doing so has substantially passed.

Where reopening is necessary to cure genuine procedural unfairness, flexibility serves the purpose of arbitration. Where reopening merely enables a party to fill evidentiary lacunae, introduce a new factual case or disrupt a procedure deliberately established by the tribunal, procedural finality becomes essential. The role of the court, correspondingly, is not to micro-manage that distinction during the arbitration, but to intervene only within the narrow statutory and supervisory limits recognised by Indian arbitration law.