

NON-COMPLIANCE WITH ARBITRAL ORDERS: CONTEMPT CONSEQUENCES UNDER §27(5) OF THE ARBITRATION AND CONCILIATION ACT, 1996

A. INTRODUCTION

In the recent years, arbitration has gained prominence as a preferred dispute resolution method, especially for corporate and commercial transactions. This shift away from conventional civil litigation is driven by multiple factors *inter alia* time efficiency, procedural flexibility and party autonomy, which a regular civil court often fails to provide.

While arbitrations do provide comparatively smoother and efficient dispute resolution mechanism, the ultimate success or failure of an arbitral proceeding largely hinges upon the parties' willingness to adhere to the directions and orders of the arbitral tribunal.

In this backdrop, an important question arises: while arbitral tribunals undoubtedly possess the authority to issue directions and orders, but do they also have the necessary powers to secure compliance with such orders? In case the enforcement powers of an arbitral tribunal are limited, can a party's deliberate non-compliance of a tribunal's order attract the rigours of contempt jurisdiction? Put simply, are the powers conferred upon an arbitral tribunal equivalent to a civil court in ensuring obedience to its directions, or does this apparent limitation risk reducing it to a *toothless tiger* when faced with non-compliant parties.

B. CONTOURS OF CONTEMPT PROCEEDINGS

To understand the issue at hand better, it is necessary to briefly examine the scope of contempt jurisdiction. While the Contempt of Courts Act, 1971 (**COC Act**) recognises both civil and criminal contempt, the present discussion shall be confined to civil contempt only.

As defined under §2(b) of the COC Act, civil contempt refers to the '*wilful disobedience of any judgment, decree, direction, order, writ, or other process of a court, or the wilful breach of an undertaking given to a court*'. Further, under the COC Act, only the concerned high courts are empowered to initiate and adjudicate contempt proceedings for acts committed before them as well as before courts subordinate to their jurisdiction.

C. CONTEMPT ACTION IN ARBITRAL PROCEEDINGS

Under the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), an arbitral tribunal does not, by itself, possess the requisite authority to invoke contempt jurisdiction against a non-complaint party that wilfully disobeys the orders of the arbitral tribunal. However, §27(5) of the Arbitration Act provides that an arbitral tribunal may, by itself or through a party to arbitration proceedings, apply to the court for initiation of contempt proceedings. More specifically, §27(5) provides that '*Persons ... guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages ... as they would incur for the like offences in suits tried before the Court.*'

Initially, there was some uncertainty regarding the scope of contempt jurisdiction enshrined under §27(5) of the Arbitration Act. It was often argued that §27(5)'s application was limited to situations where the court's assistance was sought for taking of evidence, and did not extend beyond such instances. However, this controversy was put to rest by the Hon'ble Supreme Court of India in *Alka Chandewar v. Shamshul Ishrar Khan* (2017) 16 SCC 119 where it was clarified that §27(5) is not confined to a person being guilty of contempt only when failing to attend the proceedings as a witness. Further, it was held that §27(5) could be put to use in any and all cases of disobedience of directions of an arbitral tribunal, including violation of directions passed under §17 of the Arbitration Act.

Subsequently, the Delhi High Court in *Dalmia Family Office Trust v. Getamber Anand* 2024 SCC OnLine Del 7155 while propounding further on the jurisprudence of §27(5) held that ‘any misconduct before an Arbitral Tribunal or a Sole Arbitrator would be liable to be dealt with in accordance with law, if the same constitutes civil law contempt.’.

D. STANDARD OF 'WILFULNESS' AND THE THRESHOLD FOR CONTEMPT BEFORE ARBITRAL TRIBUNAL

As per §2(b) of the COC Act, civil contempt requires proof of ‘wilful disobedience’. Here, it is important to understand that the term ‘wilful’ connotes only deliberate, intentional, and knowing non-compliance with an order, while excluding any non-compliance arising from inability, inadvertence, or *bona fide* actions of the alleged contemnor. In this regard, the Hon’ble Supreme Court in *Ashok Paper Kamgar Union v. Dharam Godha and Ors.* (2003) 11 SCC 1 held that ‘“Wilful” means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.’

In context of arbitral proceedings, a contemptuous action by a party can be construed as an act that ‘tends to bring the administration of justice into disrespect or interference with the administration of justice’, as explained by the Hon’ble Bombay High Court in *Anuptech Equipments Private Ltd. v. Ganpati Co-Operative Housing Society Ltd.*, 1999 SCC OnLine Bom 54. While such actions ordinarily can be subjected to both civil contempt under §2(b) and criminal contempt under §2(c), however the scope of §27(5) the Arbitration Act is presently only limited to civil contempt.

E. PROCEDURE TO INITIATE CONTEMPT ACTION IN ARBITRAL PROCEEDINGS

The procedure for initiation of contempt proceedings set out under §27(5) is neither a self-executing remedy nor one that can be directly triggered by an alleged aggrieved party without the intermediation of the arbitral tribunal. §27(5) unambiguously states that liability to ‘disadvantages, penalties and punishments’ is activated ‘by order of the court on the representation of the arbitral tribunal.’ This phrase is of critical procedural significance establishing the gateway to contempt jurisdiction in arbitration proceedings.

Quite clearly, an aggrieved party cannot bypass the tribunal and directly approach the court in its own name. This position has also been settled by the Hon’ble Telangana High Court in *V. Sreenivas Reddy v. B.L. Rathnamma* MANU/TL/1303/2024 wherein it was held that ‘Section 27 (5) contemplates such a complaint/action only being initiated by the Arbitral Tribunal in the form of a representation to the Court. The exclusivity given to the Arbitral Tribunal to make such a representation would be clear from the language of section 27(5) omitting the party to make such a representation’.

Ergo, it is only when an arbitral tribunal makes a representation as required under §27(5) to the competent court, that the court is empowered to initiate contempt proceedings, as though it had occurred in a suit tried before the court itself.

A further procedural question of significant practical importance concerns the identity of the court before which §27(5) proceedings must be initiated. Since §27(5) operates through the mechanism of contempt, and since high courts are empowered under §10 of the COC Act to punish contempt of subordinate courts and tribunals within their jurisdiction, the natural forum for §27(5) proceedings is the respective high court. This position was also clarified by the Hon’ble Calcutta High Court in *Emami Foundation v. RG Scientific Enterprises Pvt Ltd* AP-COM/95/2025, while relying on §10 of the COC Act.

F. ALTERNATIVE RECOURSES AVAILABLE FOR VIOLATION OF ORDER PASSED UNDER §17 OF ARBITRATION ACT

In addition to §27(5) of the Arbitration Act, an arbitral tribunal and/or the aggrieved party also have recourse against a non-compliant party in case of any violation of an order passed under §17 of the Arbitration Act.

Such mechanism is now expressly provided under §17(2) of the Arbitration Act, which states that any order passed by an arbitral tribunal shall be deemed to be an order of a civil court and shall be enforceable under the Code of Civil Procedure, 1908. Pertinently, §17(2) was introduced by the Arbitration and Conciliation (Amendment) Act, 2015. While suggesting the foregoing changes in §17, the Law Commission of India Report No. 246 stipulated that the efficacy of §17 was seriously compromised due to absence of any statutory mechanism ensuring enforcement of such orders. It was further emphasised that there was a need to provide *teeth* to interim orders of arbitral tribunals.

Prior to the 2015 amendment, there was no effective statutory mechanism for enforcing interim measures granted by an arbitral tribunal under §17. This lacuna often rendered such orders nugatory in practice. In an attempt to address this gap, the Hon'ble Delhi High Court in *Sri Krishan v. Anand* OMP No. 597/2008 interpreted §17 in conjunction with §27(5) to enable enforcement through contempt proceedings. This approach was subsequently affirmed in *Indiabulls Financial Services Ltd. v. Jubilee Plots & Housing (P) Ltd* 2009 SCC OnLine Del 2458 and thereafter considered in the Law Commission of India Report No. 246 as well.

G. CONCLUSION

The foregoing analysis clarifies that §27(5) of the Arbitration Act is not a dormant or narrowly applicable provision. Rather, it constitutes a progressively expanding mechanism for enforcing the authority of arbitral tribunals against non-complaint parties. The courts have time and again rejected a restrictive reading of §27(5). Rather, the courts have held that §27(5) addresses both non-compliance with interim orders and broader misconduct before the tribunal, making it a practical and indispensable tool for arbitrators. Thus, the concern that an arbitral tribunal, lacking direct contempt powers, may risk becoming a '*toothless tiger*' in the face of deliberate non-compliance is misplaced. Further, the 2015 amendment also provides alternative remedies against a party in breach of directions passed under §17 of the Arbitration Act, which further provides adequate powers to an arbitral tribunal in securing compliance of its interim directions passed under §17.

For the Indian arbitration ecosystem to realise its full potential as a credible and internationally respected forum for dispute resolution, the robust enforcement of tribunal orders through mechanisms such as §27(5) and §17(2) is not merely desirable but essential. Courts must continue to adopt a liberal and purposive approach to this provision, ensuring that the institutional credibility of arbitration is not undermined by the deliberate non-compliance of parties. Only then can arbitration truly deliver on its promise of being an effective, efficient, and authoritative alternative to conventional civil litigation.