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Message by patrons in chief



S.B upadhyay
Sr Advocate



Pawan Upadhyay
Senior partner

At the heart of UNUC Legal LLP lies a legacy built on pioneering vision and relentless pursuit of excellence. Shri S.B. Upadhyay, Senior Advocate, whose commitment to institutional legal reform and jurisprudential development remains unparalleled, laid the foundation of UNUC Legal LLP with a single goal—to provide strategic, insightful, and client-first legal services in the most complex commercial and infrastructure disputes.

This vision was inherited and expanded by Advocate Pawan Upadhyay, under whose leadership UNUC Legal LLP has scaled new heights.

The firm today commands the trust of some of India's leading conglomerates and PSUs, having steered infrastructure arbitration disputes cumulatively valued at over Rs. 2,500 crores.

Beyond private litigation, both patrons-in-chief have played an instrumental role in shaping the Arbitration and Conciliation Act, 1996, laying the very framework on which the present Indian arbitration regime stands.

From the hallowed halls of the Supreme Court to various High Courts across the country, UNUC Legal LLP has led arguments in over 5,000 cases—spanning commercial, civil, and criminal domains—with several matters contributing directly to the evolution of modern Indian jurisprudence. It is in continuation of this tradition of thought leadership that we are proud to inaugurate the first edition of our arbitration-focused newsletter. This platform shall serve as both a repository of advanced legal analysis and a source of practical insight for in-house legal professionals navigating the complexities of commercial arbitration.

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Message by editors in chief



Sharmila upadhyay
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It is with great pleasure that we present the fifth edition of our newsletter, a publication designed to deliver high-quality, practice-oriented insights into the continually evolving field of arbitration and infrastructure law in India.

This edition explores a diverse set of contemporary issues that define the modern arbitral and contractual landscape. From the Supreme Court's calibrated intervention in the Waqf Amendment Case, which reaffirms the delicate balance between judicial oversight and legislative policy, to the rise of virtual hearings and procedural innovation in the post-pandemic era, we examine how procedural adaptability continues to reshape arbitral efficiency and accessibility.

Further, this issue turns a focused lens on Engineering, Procurement and Construction (EPC) contracts, analyzing the legal framework that governs them and the complex challenges encountered in their execution — from risk allocation and performance delays to dispute resolution mechanisms. Complementing this is a discussion on overhead contracts and the increasing emphasis on precision, compliance, and accountability within the infrastructure sector.

Each article in this edition blends jurisprudential depth with practical insight, grounded in statutory interpretation, case law analysis, and procedural experience. Our objective remains to move beyond mere documentation of developments, to provide readers with informed, solution-oriented perspectives that aid in navigating the realities of practice.

As India continues to refine its dispute resolution and infrastructure frameworks, we hope this publication contributes meaningfully to the dialogue surrounding efficiency, predictability, and fairness in commercial practice.

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India's New Labour Reforms: A Modern Approach to Worker Welfare and Industrial Growth

Introduction

In November 2025, India implemented one of the most significant overhauls in its labour law framework by bringing four consolidated labour codes into force — the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020. Together, these laws have replaced 29 existing labour legislations, simplifying compliance and addressing the evolving needs of a modern workforce.

These reforms are designed to balance two key objectives — protecting workers' rights and promoting ease of doing business. The focus is to ensure fair wages, social protection, digital governance, flexibility in industrial relations, and improved safety at workplaces.

1. Uniform Minimum Wage and Timely Payment

The Code on Wages marks a historic shift in ensuring that every worker in India — irrespective of industry, sector, or skill level — receives a minimum wage. Earlier, only certain scheduled industries were entitled to minimum wages, leaving large sections of the workforce unprotected. The new Code extends this right to all employees, ensuring uniformity across states and industries.

It also mandates the timely payment of wages, preventing delays and arbitrary deductions. This directly reinforces Article 43 of the Indian Constitution, which directs the State to secure a living wage and decent working conditions for all citizens. For employers, this simplifies payroll management and reduces the multiplicity of wage-related laws. For workers, it guarantees a fair and consistent income floor, contributing to better living standards and financial security.

2. Social Security for All Workers

One of the most progressive aspects of the new framework is the Code on Social Security, 2020, which extends social protection to gig workers, platform workers, and unorganized sector workers — a first in Indian labour history. This recognition reflects the changing structure of the labour market, where digital platforms and informal employment have become increasingly common. Under this Code, workers in these categories can now access benefits such as:

- Provident Fund (PF) for retirement savings,
- Gratuity, even for fixed-term employees,

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- Maternity benefits,
- Employee State Insurance (ESI), and
- Pension and disability cover under government schemes.

By integrating these benefits under a single code, the government aims to create a more inclusive and secure social safety net, ensuring that even non-traditional workers receive protection from economic vulnerabilities. For employers, this Code promotes accountability and uniformity in employee welfare contributions, while for workers, it brings dignity, stability, and protection against uncertainty.

3. Simplified Compliance

The older system of labour regulation in India was widely criticized for being bureaucratic, overlapping, and difficult to navigate. The new labour codes address this issue by replacing multiple registers, returns, and licenses with digital platforms and unified compliance systems.

Through the introduction of online registration, single-window returns, and centralized inspection systems, employers can now fulfill their legal obligations more efficiently. This reform not only enhances transparency and accountability but also reduces corruption and administrative delays. For small and medium enterprises (SMEs), this simplification is particularly valuable, as it reduces compliance costs and encourages formalisation of employment.

In short, the shift toward digital governance transforms labour compliance from a complex paperwork-heavy process to a streamlined, technology-driven mechanism.

4. Industrial Relations Flexibility

The Industrial Relations Code, 2020 modernizes India's approach to employment relationships by balancing industrial flexibility with worker security. One of the key changes is the increase in the layoff and retrenchment threshold — establishments with up to 299 employees can now lay off or close operations without prior government approval, an increase from the earlier limit of 100. This provision aims to give industries greater freedom to restructure their workforce in response to market conditions, while still ensuring that affected employees receive due compensation and notice. At the same time, the Code emphasizes negotiation, conciliation, and arbitration as preferred methods of resolving industrial disputes, promoting industrial harmony over confrontation.

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For employers, this reform offers operational flexibility and faster decision-making. For employees, it ensures that rights to fair compensation, timely notice, and representation remain intact.

5. Improved Workplace Safety

The Occupational Safety, Health and Working Conditions Code, 2020 is a significant step towards ensuring the well-being, dignity, and safety of workers across all sectors. It consolidates and rationalizes multiple safety laws and sets uniform standards for working conditions.

Some of its major features include:

- **Standardized working hours:** A maximum of 48 hours per week, with overtime provisions and mandatory rest intervals.
- **Health and safety obligations:** Employers are now legally responsible for maintaining hygiene, ventilation, clean drinking water, and sanitation facilities.
- **Welfare measures:** Facilities such as canteens, first-aid rooms, and crèches are mandatory in establishments above specified employee thresholds.
- **Women's safety and equality:** The Code allows women to work night shifts, subject to adequate safety measures, promoting gender equality in employment.

This Code not only improves the physical and mental well-being of employees but also enhances productivity and job satisfaction, contributing to a safer, more responsible industrial culture.

Conclusion

India's new labour reforms represent a paradigm shift in the relationship between employers, employees, and the State. By combining protection with flexibility, the four labour codes strive to create a modern framework that aligns with global standards while addressing the realities of India's diverse workforce. The Uniform Minimum Wage ensures fairness, the Social Security Code ensures inclusion, Simplified Compliance enhances efficiency, Industrial Relations

flexibility promotes growth, and Workplace Safety guarantees dignity. However, the true success of these reforms will depend on effective implementation, coordination between states and the Centre, and awareness among both employers and workers. If executed well, this unified framework could reshape India's labour landscape — empowering workers, supporting businesses, and strengthening the nation's economic foundation.

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Understanding Labeling and Liability in Cosmetic Manufacturing under India's Legal Framework

Introduction

In India's rapidly evolving cosmetic industry, compliance with labelling and manufacturing regulations has become critical for brand owners, manufacturers, and contract producers alike. A recurring legal question concerns whether a brand can appear as the "Manufacturer" on the product label when the actual production takes place at another licensed facility.

A recent legal opinion issued by UNUC Legal LLP provides valuable insight into this question under the Cosmetics Rules, 2020, framed under the Drugs and Cosmetics Act, 1940, and guided by CDSCO (Central Drugs Standard Control Organization) notifications and FAQs.

Legal Framework The Cosmetics Rules, 2020 serve as the governing legislation for the manufacturing, loan-licensing, and labeling of cosmetic products in India. These rules consolidate earlier fragmented laws and establish a uniform compliance framework for the sector.

Under these rules: - **Loan Licences:** A licensee may manufacture cosmetics at another's licensed site, provided the relevant loan licence (Form COS-8 or COS-9) is obtained.

- **Labelling Requirement:** Every cosmetic must bear on its label the name and address of the actual manufacturer and the premises where the product is physically produced.

Rule 34(1)(b) specifically mandates that no cosmetic shall be sold or distributed unless this disclosure is made. Thus, even in cases of brand ownership or third-party manufacturing, the actual manufacturer's details must appear on the label.

CDSCO Guidance and Clarifications

According to CDSCO's published guidance on labeling and loan-licensing procedures, the Registrar or State Licensing Authority must be kept informed of all approved licenses and labeling changes. The guidance also clarifies that while the term "Manufactured by" must display the true manufacturer's name and address, it is permissible for the brand owner to add an additional phrase such as "Marketed by" before their own brand name. However, the brand cannot lawfully substitute its name in place of the manufacturer's details.

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2. Administrative Sanctions:

Authorities can suspend or cancel manufacturing and loan licences if the manufacturer fails to truthfully disclose its identity or misleads consumers.

3. Commercial and Contractual Risk:

Mislabeling also carries reputational and contractual risks. Clients, suppliers, and regulatory bodies may view such actions as violations of trust, leading to breach of contract, non-payment disputes, or reputational damage in the market. **Practical Steps and Alternatives for Compliance** To mitigate legal and commercial risks while accommodating brand partners, UNUC Legal LLP recommends several compliance-oriented strategies:

- **Strict Labeling Compliance:**

Always insist on accurate labeling showing the Uttarakhand factory (the license-holder) as “Manufactured by” and the client as “Marketed by”.

- **Formal Licensing Requests:**

If the client desires brand concealment, they must apply to the State Licensing Authority for a unique code or alternate identification number—only permissible with written approval.

- **Contractual Safeguards:**

Manufacturers should incorporate strong indemnity clauses in contracts, ensuring the client bears liability for any regulatory or reputational damage caused by mislabeling.

Conclusion

India’s Cosmetics Rules, 2020, mark a significant step toward ensuring consumer safety, transparency, and accountability in cosmetic manufacturing. The rules make it clear that manufacturing identity cannot be concealed or misrepresented, even in contract manufacturing or private label arrangements.

By adhering to lawful labeling practices, maintaining robust documentation, and securing formal approvals where needed, businesses can protect themselves from regulatory penalties and build credibility in a sector where compliance increasingly defines brand reputation.

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THE DOCTRINE OF JURISDICTIONAL NULLITY AND ITS CHALLENGEABILITY UNDER SECTIONS 34 AND 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996

The Indian arbitral jurisprudence has undergone a marked doctrinal evolution in distinguishing between an invalid award and a non-existent award. Courts have increasingly recognised a category of “jurisdictional nullities”, purported awards rendered without adherence to mandatory statutory requirements, without a valid arbitral process, or by authorities lacking jurisdiction. This article undertakes a comprehensive analysis of the challengeability of such nullity awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 (“the Act”).

Drawing upon the Hon’ble Supreme Court’s seminal pronouncement in Jharkhand Urja Vikas Nigam Ltd. as well as multiple High Court rulings, the article demonstrates that nullity awards invite a qualitatively different judicial response: one that transcends the narrow confines of the Section 34 grounds and procedural limitations such as pre-deposit requirements under the MSMED Act. The jurisprudence establishes that courts must first determine whether the impugned decision is an “award” at all; if it is not, the procedural architecture of the Act does not apply.

The architecture of the Arbitration and Conciliation Act, 1996, is premised upon minimal judicial interference. Yet the fundamental assumption of this architecture, that a valid arbitral award has been rendered, has increasingly come under scrutiny. Judicial forums are confronted with cases where the so-called “award” is produced either by a body that never transitioned from conciliation to arbitration, by an arbitrator appointed in a manner prohibited by statute, or by a tribunal structurally lacking jurisdiction.

Such cases expose the doctrinal tension between the finality of awards and the necessity of jurisdictional legitimacy. Indian courts have responded by drawing a sharp distinction between an irregular award and a nullity award. The latter, in the eyes of the law, is no award at all.

The jurisprudence on arbitral challenges increasingly distinguishes between defective awards and nullity awards. A nullity is not an irregular award; it is a decision rendered without jurisdiction, without statutory compliance, or without a valid arbitration process. Such a decision is not an “award” at all and therefore cannot attract the procedural rigours of Sections 34 or 37 of the Arbitration and Conciliation Act, 1996. Recent decisions, particularly in the MSME context and cases involving unilateral appointments, have significantly expanded this doctrine.

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The Hon'ble Supreme Court's ruling in *Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan* (2021) 19 SCC 206 provides the foundation for the nullity principle. The Court held that failure to conduct mandatory conciliation under Section 18(2) MSMED Act renders the Council's order "a nullity" and that "there is no arbitral award in the eye of law." Conciliation and arbitration cannot be clubbed, and absent initiation of arbitration as per Part I of the Act, the resulting decision is without jurisdiction and incapable of attracting Section 34.

The Jharkhand High Court in *G.P.T. Infraprojects Ltd. v. State of Jharkhand* (2016) SCC Online Jhar 1004, reinforced that if the award is a nullity, all other objections, including pre-deposit or coram challenges, are secondary. The Court held that jurisdictional issues must be determined at the threshold because they decide whether an award legally exists at all.

Similarly, in *Dodal Electro Instruments v. MSEFC*, 2025 SCC Online Bom 3353, the Bombay High Court held that the MSME Council's failure to terminate conciliation or commence arbitration under Section 18(3) resulted in an order "denuded of the character of an arbitration award." The Council could not simultaneously act as conciliator and arbitrator, and its decision could not trigger Section 34 or Section 19 MSMED Act.

The Delhi High Court's judgment in *Babu Lal v. Cholamandalam Investment and Finance Company Ltd.*, FAO (Comm.) 135 of 2023, expanded the nullity doctrine to the domain of arbitrator eligibility. The Court held that an award passed by a unilaterally appointed arbitrator, barred under Section 12(5), is void ab initio. The Section 34 court erred by ignoring this foundational illegality. This underscores that a tribunal must be legally constituted before its decision can qualify as an award.

Scope of Section 34

Section 34 is limited to challenges against valid arbitral awards and enumerates specific grounds such as procedural unfairness, excess of jurisdiction, patent illegality, and public policy violations. These grounds presuppose the existence of a lawful arbitration. When the impugned decision is a nullity due to lack of conciliation, absence of jurisdiction, or illegal tribunal composition, the court must first decide whether an award exists before applying Section 34. A Section 34 court cannot avoid this threshold inquiry by invoking pre-deposit requirements under the MSMED Act, because Section 19 applies only to valid awards rendered under Section 18(3).

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Scope of Section 37

Section 37 provides an appellate remedy against an order “refusing to set aside an arbitral award.” The Supreme Court in *Punjab State Civil Supplies Corp. v. Sanman Rice Mills*, 2023 SCC Online SC 802, held that a Section 37 court may examine whether the Section 34 court “failed to exercise jurisdiction,” even where the dismissal was on procedural grounds. Thus, a mechanical dismissal for non-deposit or technical defects cannot bar appellate scrutiny.

The scope of Section 37 was further clarified by the Supreme Court in *Chintels India Ltd. v. Bhayana Builders Pvt. Ltd.* 2021 4 SCC 602 (“Chintels”). Although Chintels primarily addressed whether an order refusing condonation of delay in filing a Section 34 petition is appealable, the Court adopted a broad and purposive interpretation of Section 37. It held that the expression “refusing to set aside an arbitral award” in Section 37(1)(c) includes any order that effectively results in the dismissal of the Section 34 petition, whether on merits or on threshold/procedural grounds.

In line with this reasoning, the Allahabad High Court in *Docket Care Systems v. Hariwill Electronics*, AIR 2024 All 156, held that dismissal of a Section 34 petition for non-deposit under Section 19 MSMED Act is appealable under Section 37 because it constitutes a refusal to set aside the award. The appellate forum must therefore examine the jurisdictional foundation of the impugned award.

Conclusion

Taken together, these decisions establish a coherent principle: Sections 34 and 37 apply only to valid arbitral awards. Courts must first determine whether the impugned decision is an award at all. Where mandatory statutory requirements are violated, conciliation is not terminated, arbitrators are illegally appointed, or the tribunal lacks jurisdiction, the resulting order is a nullity. Section 34’s limitations and procedural requirements, including deposit obligations, cannot bar the adjudication of such foundational defects. Critically, Chintels ensures that Section 37 remains available to correct any refusal, whether procedural or substantive, to adjudicate nullity challenges. This jurisprudence collectively preserves the integrity of the arbitral system by ensuring that the shield of finality protects only lawful awards, not jurisdictionally void acts.

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Contractual Employment and Regularisation: The Legal Tightrope for Government Entities

Government and public sector organisations, including entities such as NHSRCL, frequently engage personnel on contractual terms to meet project-specific requirements. While this model offers flexibility, the practice of extending contracts repeatedly over several years introduces substantial legal risk under the evolving jurisprudence governing public employment.

The Legal Foundation: Uma Devi Remains the Cornerstone

The Constitution Bench judgment in *Secretary, State of Karnataka v. Uma Devi* continues to form the foundation of the law on regularisation. The Supreme Court categorically held that appointments made on temporary, ad-hoc, daily-wage, or contractual bases cannot lead to permanent government employment unless made in accordance with the prescribed recruitment rules and through open competition.

In essence, temporary or irregular appointees cannot claim regularisation solely based on the duration of their service. Sympathy, equity, or long tenure cannot override the constitutional guarantees of equality under Articles 14 and 16. The Court further clarified that while the principle of “equal pay for equal work” may apply in limited circumstances, it does not create an entitlement to regularisation or permanent appointment.

The Post-Uma Devi Evolution: Restricting the Scope of Contractual Exploitation

Recent judgments, including *Jaggo & Anita v. Union of India* (2024) and *Shripal v. Nagar Nigam* (2025), have reinforced and refined the principles set out in *Uma Devi*. The Supreme Court has observed that while the State cannot regularise illegal appointments, it equally cannot misuse temporary or contractual arrangements to indefinitely fill roles that are permanent or perennial in nature.

These rulings emphasise that:

- Long-term engagement of contractual workers performing duties identical to those of regular employees invites judicial scrutiny.
- Terminations during maternity leave, medical absence, or pending proceedings are viewed as arbitrary and retaliatory.
- The State cannot rely on its own administrative failures—such as the absence of sanctioned posts or delayed recruitment—to justify perpetual contractual employment.

Accordingly, *Uma Devi* does not authorise the State to avoid its labour obligations or perpetuate unfair labour practices under the guise of temporary employment.

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Practical Implications for NHSRCL and Similar Entities

For entities like NHSRCL, contractual engagements remain legally permissible, provided they are executed and managed with appropriate procedural safeguards. The following measures are advisable:

1. **Clear Project-Based Contracts:** Each contract should specify the project, the scope of work, and the expected duration. It must expressly state that the engagement does not confer any right to regularisation.
2. **Reasoned Extensions:** Every extension should be supported by a written note detailing performance evaluation, continued project necessity, and clarification that the extension does not create future entitlement.
3. **Cooling-Off Periods:** For administrative or support roles, a short gap (two to three months) between contracts can help legally break continuity and prevent claims of uninterrupted service.
4. **Structured Non-Renewal Process:** Before discontinuation, a 90-day review should be undertaken, followed by a reasoned order explaining non-renewal.
5. **Role Differentiation:** Maintain a detailed chart distinguishing the functions of contractual employees from those of regular staff to avoid claims of parity in pay or status.
6. **Transparent Outsourcing:** Any transition from contractual staff to outsourced manpower should follow a transparent, competitive tender process supported by proper documentation.

Functions such as HR, finance, drafting, IT support, and administrative coordination are inherently permanent in nature and should not remain contractual for extended periods. NHSRCL should gradually move such roles to sanctioned posts or initiate regular recruitment.

The Legal Position in Summary

Contractual employment is lawful, but indefinite continuation without proper justification is not.

If NHSRCL demonstrates that each engagement is genuinely project-based, maintains documentation for all extensions, differentiates between contractual and regular roles, and avoids abrupt or arbitrary terminations, the likelihood of judicial intervention remains low.

However, for functions that are perennial and essential to the organisation, transitioning towards sanctioned posts and regular recruitment is the only sustainable approach.

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