

**JAGJEET SINGH LYALLPURI (THROUGH LEGAL REPRESENTATIVES)  
AND OTHERS V. UNITOP APARTMENTS & BUILDERS LTD. 2019 SCC  
ONLINE SC 1541**

Supreme Court of India; 3-judge bench, R. Banumathi, **A. S. Bopanna**,  
Hrishikesh Roy JJ; decided on 03 December 2019

---

Arbitrator has flexibility in determining procedure; a decision with parties' consent to do away with cross-examination is okay; remand/remission of an arbitral award

---

This 3-judge bench of the Supreme Court affirmed that the rules of procedure to be followed by an arbitral tribunal are flexible and can be agreed upon by the parties as provided under Section 19 of the ACA.

The arbitrator had decided, with the consent of parties, that witnesses whose affidavits had been filed would not be cross-examined. He declared the evidence closed on 28 November 2009 and noted that the parties will rely on affidavits and documentary evidence.

The award was passed on 13 January 2010. Unitop filed a set-aside application that was rejected. It appealed under Section 37 of the ACA. The High Court set the award aside and remanded the matter to the arbitrator concluding that the parties were not granted appropriate opportunity by the arbitrator to present evidence and cross-examination.

The Supreme Court assessed the matter to determine if the High Court was right in examining the merits and remanding the matter to the tribunal. The court concluded in the negative and set aside the High Court's judgment. It held: –

- (i) When a challenge is raised on that ground (not allowing the opportunity to cross-examine), it would at best fall under Section 34(2) (a) (iii) (inability to present one's case).
- (ii) The rules of procedure to be followed by an arbitral tribunal is flexible and can be agreed upon by the parties as provided under Section 19 of the ACA. The arbitrator is not bound by the CPC or the Indian Evidence Act, 1872.

- (iii) Having consented to the procedure, it would not be open for the respondent to approbate and reprobate to raise a different contention at this point. Estoppel applies. “It is intriguing ... such a contention has not only been permitted to be raised but also accepted ... to remand the matter, which is wholly unjustified”.