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THE ARBITRATION AND CONCILIATION ACT, 1996

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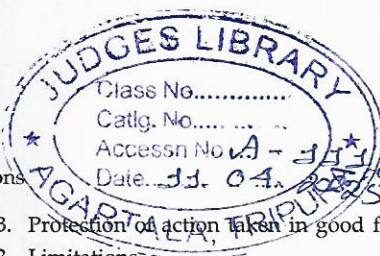
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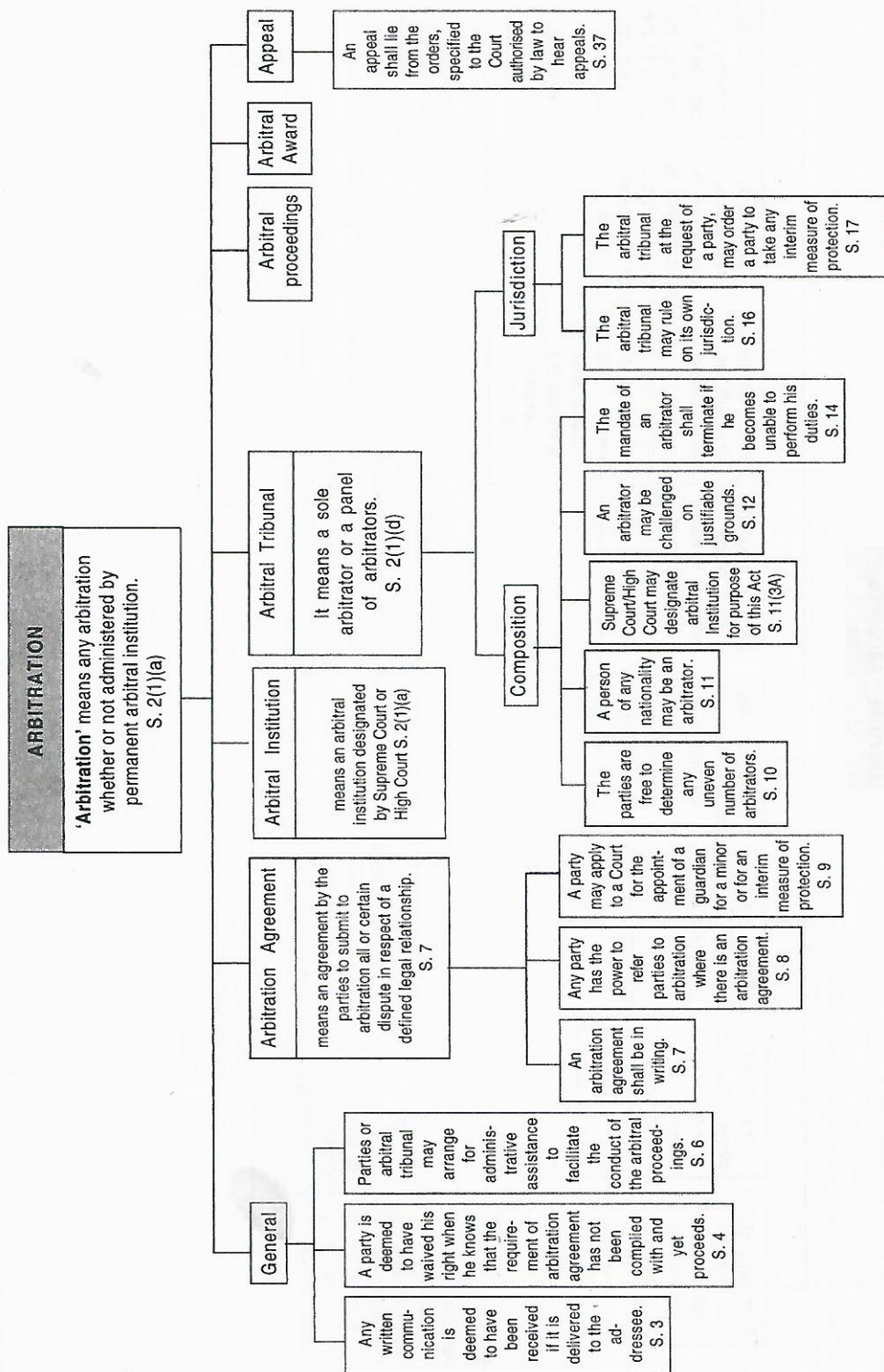
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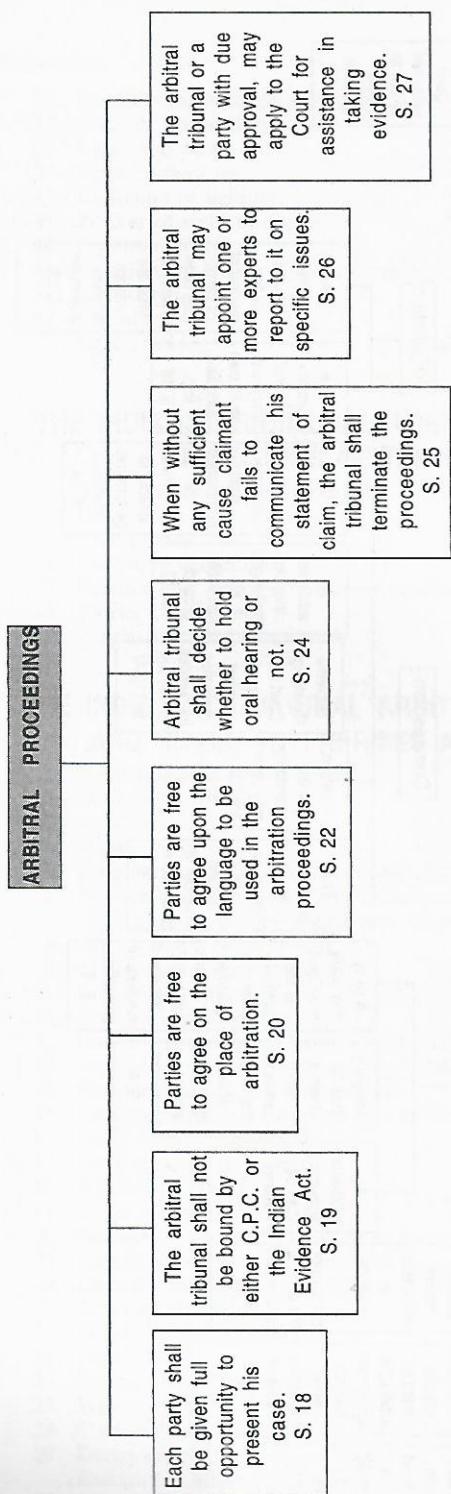
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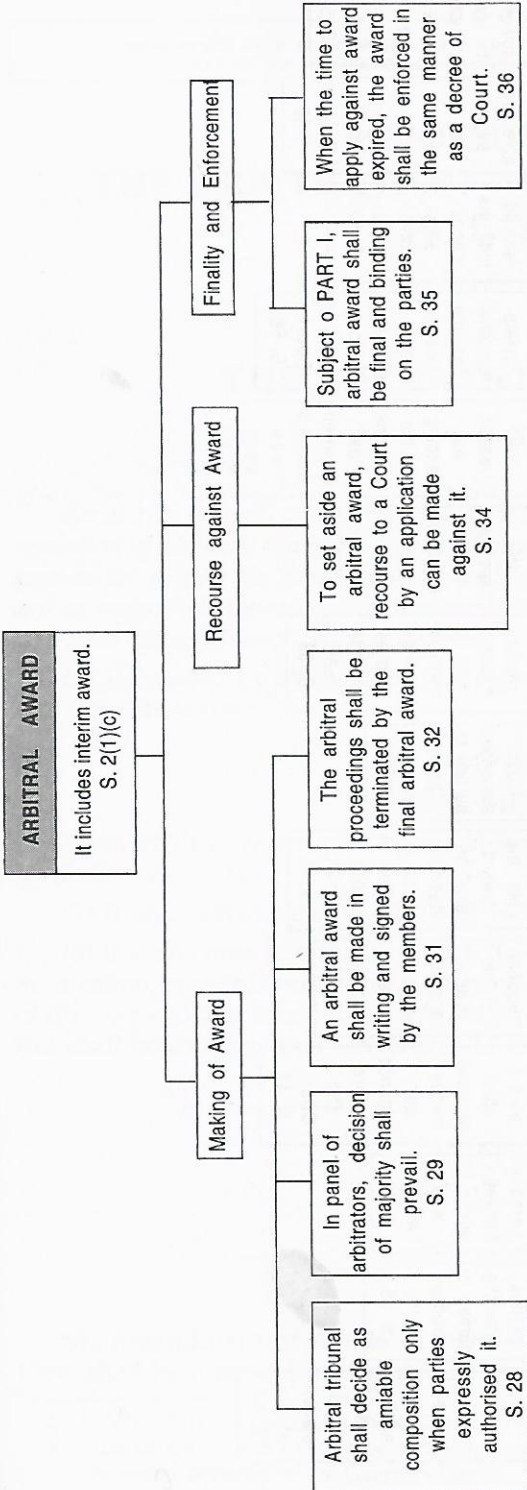
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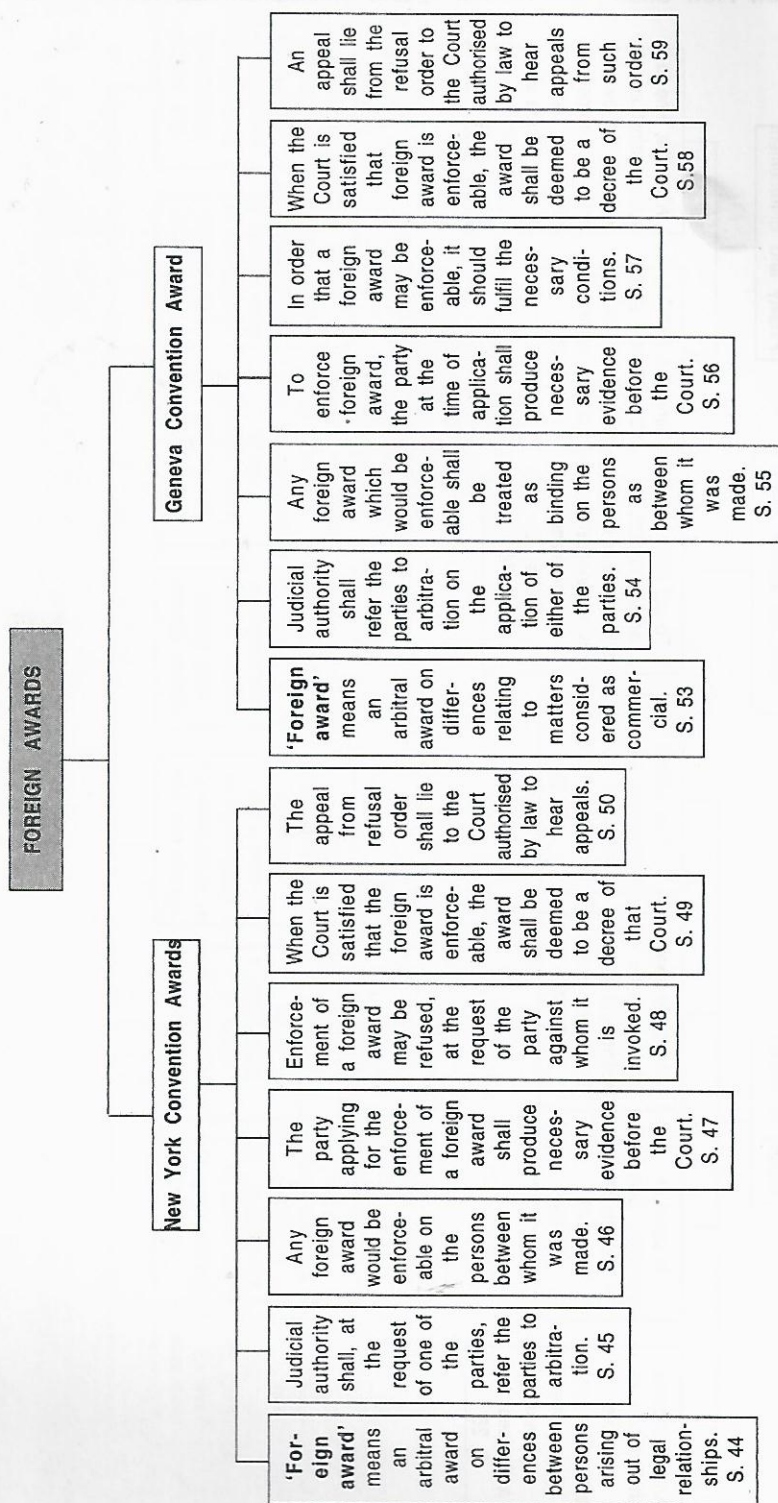
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IMPORTANT

AMENDMENTS HAVE BEEN INCORPORATED IN THE MAIN ACT AT APPROPRIATE PLACES.
TEXT OF THE AMENDING ACT IS REPRODUCED BELOW FOR REFERENCE.

AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT, 1996

(26 of 1996)

BY THE MEDIATION ACT, 2023¹

(32 of 2023)

[14th September, 2023.]

An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Mediation Act, 2023.

(2) It shall extend to the whole of India.

(3) It shall come into force on such date² as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

* *

CHAPTER XI MISCELLANEOUS

* *

61. Amendment of Act 26 of 1996.—The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.

1. Published in the Gazette of India, Extra., Pt. II, sec. 1, No. 35, dated 15th September, 2023.
2. Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India.

*Amendments to the Arbitration and Conciliation Act, 1996
(26 of 1996) by the Mediation Act, 2023 (32 of 2023)*

THE SIXTH SCHEDULE

(See section 61)

In the Arbitration and Conciliation Act, 1996 (26 of 1996),—

(a) in section 43D,—

- (i) in sub-section (1), the words “mediation, conciliation” shall be omitted;
- (ii) in sub-section (2), in clauses (e), (f) and (i), the words “and conciliation” wherever they occur shall be omitted;

(b) for sections 61 to 81, the following sections shall be substituted, namely:—

“61. Reference of conciliation in enactments.—(1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2023.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in clause (h) of section 3 of the Mediation Act, 2023.

*62. Saving.—*Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2023, shall be continued as such, as if the Mediation Act, 2023, had not been enacted.”.

* *

THE ARBITRATION AND CONCILIATION ACT, 1996

INTRODUCTION

The law on arbitration was substantially contained in three enactments, *viz.* the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Arbitration Act, 1940 was widely felt to have become outdated. The Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration had proposed amendments to this Act to make it more responsive to contemporary requirements. It was also felt that economic reforms taking place in the country may not become fully effective if the laws dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. Conciliation, like arbitration is also getting worldwide recognition as an instrument for settlement of disputes. The United Nations Commission on International Trade Law adopted the Model Law on International Commercial Arbitration. It also adopted a set of Conciliation Rules. The General Assembly of the United Nations had recommended that all countries give due consideration to the said Model Law and use the Conciliation Rules in cases where the disputes arise in the context of international commercial relation. In order to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the Model Law and Conciliation Rules adopted by the United Nations Commission on International Trade Law the President, on 16th January, 1996, promulgated the Arbitration and Conciliation Ordinance, 1996 as the Parliament was not in session and the circumstances existed which rendered it necessary to take immediate action. The Ordinance could not be replaced by an Act as the Parliament session was prorogued without passing the Bill.

In order to give further continued effect to the provisions of the said Ordinance the President promulgated the Arbitration and Conciliation (Second) Ordinance, 1996 on 26th March, 1996 which could also not be passed by the Parliament. On 21st June, 1996 the President promulgated the Arbitration and Conciliation (Third) Ordinance, 1996. To replace the Ordinance of 21st June, 1996 the Arbitration and Conciliation Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The law on arbitration in India is at present substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. It is widely felt that the 1940 Act, which contains the general law of arbitration, has become outdated. The Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have proposed amendments to this Act to make it more responsive to contemporary requirements. It is also recognised that our economic reforms may

not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. There is, however, no general law on the subject in India.

2. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL Model Law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

3. Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.

4. The main objectives of the Bill are as under:—

- (i) to comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation;
- (ii) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;
- (iii) to provide that the arbitral tribunal gives reasons for its arbitral award;
- (iv) to ensure that the arbitral tribunal remains within the limits of its jurisdiction;
- (v) to minimise the supervisory role of courts in the arbitral process;
- (vi) to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;
- (vii) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;
- (viii) to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and

- (ix) to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two international Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.

5. The Bill seeks to achieve the above objects.

ACT 26 OF 1996

The Arbitration and Conciliation Bill having been passed by both the Houses of Parliament received the assent of the President on 16th August, 1996. It came on the Statute Book as THE ARBITRATION AND CONCILIATION ACT, 1996 (26 of 1996) (*Came into force on 22-8-1996*).

LIST OF AMENDING ACTS

1. The Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) (w.r.e.f. 23-10-2015).
2. The Arbitration and Conciliation (Amendment) Act, 2019 (33 of 2019) [w.e.f. 30-8-2019, for section 1, section 4 to section 9 (both inclusive), section 11 to section 13 (both inclusive), section 15; w.e.f. 12-10-2023, for section 10].
3. The Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019) (w.e.f. 31-10-2019).
4. The Arbitration and Conciliation (Amendment) Act, 2021 (3 of 2021) [w.r.e.f. 23-10-2015 for section 2; w.r.e.f. 4-11-2020 for sections 3 and 4].
5. The Mediation Act, 2023 (32 of 2023).

THE ARBITRATION AND CONCILIATION ACT, 1996

(26 of 1996)

[16th August, 1996]

An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

PREAMBLE

WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;

AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;

AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

BE it enacted by Parliament in the Forty-seventh Year of the Republic as follows:—

COMMENTS

Applicability of Act

The applicability of the Act does not depend upon the dispute being a commercial dispute. Reference to arbitration and arbitrability depends upon the existence of an arbitration agreement, and not upon the question whether it is a civil dispute or commercial dispute. There can be arbitration agreements in non-commercial civil disputes also; *H. Srinivas Pai v. H.V. Pai*, 2010 (7) SCALE 171: 2010 (5) RAJ 64: 2010 (5) SLT 516.

Legislative intent and essence

The Legislative intent and essence of the Act is to bring domestic as well as international commercial arbitration in consonance with the UNCITRAL Model Rules, the New York Convention and Geneva Convention; *Chloro Controls (I) P. Ltd. v. Severn Trent Water Purification Inc.*, JT 2012 (10) SC 187: (2012) 9 SCALE 595: 2012 (6) RAJ 1.

Object of the Act

Main objective of the Act is to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration and to minimise the supervisory role of courts in the arbitral process and to permit an arbitral Tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in settlement of disputes, etc.; *Bharat Sewa Sansthan v. Uttar Pradesh Electronics Corporation Limited*, AIR 2007 SC 2961.

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Arbitration and Conciliation Act, 1996.

(2) It extends to the whole of India:

¹[* * *]

Explanation.—In this sub-section, the expression “international commercial conciliation” shall have the same meaning as the expression “international commercial arbitration” in clause (f) of sub-section (1) of section 2, subject to the modification that for the word “arbitration” occurring therein, the word “conciliation” shall be substituted.

(3) It shall come into force on such date² as the Central Government may, by notification in the official Gazette, appoint.

STATE & UT AMENDMENT

***Union Territory of Jammu and Kashmir.**—In sub-section (1), omit the proviso and Explanation

[*Vide* the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 (w.e.f. 18-3-2020), S.O. 1123(E), dated 18th March, 2020, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 1016, dated 18th March, 2020.]

PART I

ARBITRATION

CHAPTER I

GENERAL PROVISIONS

2. Definitions.—(1) In this Part, unless the context otherwise requires,—

- (a) “arbitration” means any arbitration whether or not administered by permanent arbitral institution;
- (b) “arbitration agreement” means an agreement referred to in section 7;
- (c) “arbitral award” includes an interim award;
- ³[(ca) “arbitral institution” means an arbitral institution designated by the Supreme Court or a High Court under this Act;]
- (d) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- ⁴[(e) “Court” means—

1. Proviso omitted by Act 34 of 2019, secs. 95 and 96 and Fifth Sch. - Table 1 (w.e.f. 31-10-2019). Proviso, before omission, stood as under:

“Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.”

2. Came into force on 22-8-1996 *vide* G.S.R. 375(E), dated 22nd August, 1996.

*. Refer, Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020 *vide* S.O. 3774(E), dated 23rd October, 2020 regarding Union territory of Ladakh.

3. Ins. by Act 33 of 2019, sec. 2(i)(A) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

4. Subs. by Act 3 of 2016, sec. 2(I)(A), for clause (e) (w.r.e.f. 23-10-2015). Clause (e), before substitution, stood as under:

“(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court or any Court of Small Causes.”



- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]
- (f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—
 - (i) an individual who is a national of, or habitually resident in, any country other than India; or
 - (ii) a body corporate which is incorporated in any country other than India; or
 - (iii) ¹[***] an association or a body of individuals whose central management and control is exercised in any country other than India; or
 - (iv) the Government of a foreign country;
- (g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;
- (h) "party" means a party to an arbitration agreement;
- ²[(i) "prescribed" means prescribed by rules made under this Act;]
- ²[(j) "regulations" means the regulations made by the Council under this Act.]

Scope

- (2) This Part shall apply where the place of arbitration is in India:

³[Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and ⁴[clause (b)] of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to

1. The words "a company or" omitted by Act 3 of 2016, sec. 2(I)(B) (w.r.e.f. 23-10-2015).

2. Ins. by Act 33 of 2019, sec. 2(i)(B) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

3. Ins. by Act 3 of 2016, sec. 2(II) (w.r.e.f. 23-10-2015).

4. Subs. by Act 33 of 2019, sec. 2(ii), for "clause (a)" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

be made in such place is enforceable and recognised under the provisions of Part II of this Act.]

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

Construction of references

(6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue.

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part—

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,

that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counter-claim, and where it refers to a defence, it shall also apply to a defence to that counter-claim.

COMMENTS

Arbitration agreement, meaning thereof

Arbitration agreement would mean an agreement which is enforceable in law; *India Household and Healthcare Ltd. v. L.G. Household and Healthcare Ltd.*, AIR 2007 SC 1376.

International Commercial Arbitration, Scope thereof

In a case where at least one of the parties is an individual having nationality of another country other than India or a body corporate which is incorporated in any country other than India or an association or a body of individuals whose central management and control is exercised in any country other than India or the government of a foreign country, such case would be a case of international commercial arbitration; *Dominant Offset Pvt. Ltd. v. Adamovske Strojirny A.S.*, 1997 (2) Arb LR 335.

Legal representative, meaning thereof

A person who has the right to represent the estate of a deceased person occupies the status of a legal person. Persons claiming under the rights of a deceased person are the personal representative of the deceased party; *Ravi Prakash Goel v. Chandra Prakash Goel*, AIR 2007 SC 1517.

3. Receipt of written communications.—(1) Unless otherwise agreed by the parties,—

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and
- (b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

4. Waiver of right to object.—A party who knows that—

- (a) any provision of this Part from which the parties may derogate, or
- (b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

COMMENTS

A party who knows that a requirement under the arbitration agreement has not been complied with and still proceeds with the arbitration without raising an objection, as soon as possible, waives his right to object; *Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd.*, 2008 (12) SCALE 720: 2008 (7) Supreme 431.

5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

6. Administrative assistance.—In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

CHAPTER II

ARBITRATION AGREEMENT

7. Arbitration agreement.—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

- (a) a document signed by the parties;
- (b) an exchange of letters, telex, telegrams or other means of telecommunication ¹[including communication through electronic means] which provide a record of the agreement; or
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

COMMENTS

There is nothing in the Arbitration and Conciliation Act that prohibits the contracting parties from agreeing upon a second instance or appellate arbitration either explicitly or implicitly. No such prohibition or mandate can be read into the Act; *M/s Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.*, AIR 2017 SC 185.

Requirement to constitute Arbitration agreement

To constitute an arbitration agreement under section 7(4)(c) of the Act, what is required is a statement of claim containing a specific allegation about the existence of an arbitration agreement by the applicant and 'non-denial' thereof by the other party. An 'allegation' is an assertion or declaration about a fact and also refers to the narration of a transaction; *S.N. Prasad v. Monnet Finance Ltd.*, 2010 (II) JT 479; 2010 (II) SCALE 225; 2010 (7) Supreme 851.

Competence of Arbitrator

The arbitrator is competent to decide the objection on its own jurisdiction whether appointed as per the terms of the agreement within the provisions of section or appointed under the provisions of section 11; *State of Jharkhand v. R.K. Construction (Pvt.) Ltd.*, AIR 2006 Jhar 98.

What constitute an arbitration agreement, well settled principles in respect thereof

In regard to what constitutes an arbitration agreement, the well settled principles are—

- (i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and an willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.
- (ii) Even if the words 'arbitration' and 'arbitral tribunal (or arbitrator)' are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are: (a) The agreement should be in writing, (b) The parties should have agreed

1. Ins. by Act 3 of 2016, sec. 3 (w.r.e.f. 23-10-2015).

to refer any disputes (present or future) between them to the decision of a private tribunal, (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the Private Tribunal in respect of the disputes will be binding on them.

- (iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to Arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically excludes any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the Authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the Authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.
- (iv) But mere use of the word 'arbitration' or 'arbitrator' in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" or "if any disputes arise between the parties, they should consider settlement by arbitration" in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that "if the parties so decide, the disputes shall be referred to arbitration" or "any disputes between parties, if they so agree, shall be referred to arbitration" is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future; *Jagdish Chander v. Ramesh Chander*, (2007) 5 SCC 719.

8. Power to refer parties to arbitration where there is an arbitration agreement.—¹[(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme

1. Subs. by Act 3 of 2016, sec. 4(i), for sub-section (1) (w.r.e.f. 23-10-2015). Sub-section (1), before substitution, stood as under:

"(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration."

Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

¹[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

COMMENTS

Merely because agreement has come to an end by its termination by mutual consent, the arbitration clause does not get perished nor is rendered inoperative; *Mrs. Hema Khattar v. Shiv Khera*, AIR 2017 SC 1793.

Where there are allegation of fraud simpliciter and such allegation are merely alleged, it would not nullify effect of arbitration agreement between parties. Such issues can be determined by Arbitral Tribunal; *A. Ayyasamy v. A. Paramasivam*, AIR 2016 SC 4675.

Applicability

For the application of section 8, it is absolutely essential that there should be an agreement between the parties; *Atul Singh v. Sunil Kumar Singh*, AIR 2008 SC 1016: 2008 (2) SCC 602.

Appointment of Arbitrator

It is not the duty of court to adjourn a matter to enable parties to report to court about appointment of Arbitrator and then make reference; *Pawan Sharma v. Tarkeshwar Shah*, AIR 2007 (NOC) 156 (HP).

Arbitral clause

Where dispute is referable to arbitration, parties cannot be compelled to take recourse to in civil court; *Ravi Prakash Goel v. Chandra Prakash Goel*, AIR 2007 SC 1517.

Expression—First statement on the substance of the dispute, Scope thereof

The expression 'first statement on the substance of the dispute' contained in sub-section (1) of section 8 must be contra-distinguished with the expression 'written statement'. It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of judicial authority that the party has waived his right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court; *Rashtriya Ispat Nigam Ltd. v. Verma Transport Company*, AIR 2006 SC 2800.

Jurisdiction of Civil Court

(i) The language of section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties

1. Ins. by Act 3 of 2016, sec. 4(ii), (w.r.e.f. 23-10-2015).

to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator; *P. Anand Gajapathi Raju v. P.V.G. Raju (Dead)*, 2000 (4) SCC 539.

(ii) Mere existence of arbitration clause in agreement does not bar jurisdiction of Civil Court automatically; *Mahesh Kumar v. Rajasthan State Road Transport Corporation*, AIR 2006 Raj 56.

Power of Court to appoint Arbitrator

Power of Court to refer parties for arbitration would and must necessarily include, imply and inhere in it the power and jurisdiction to appoint Arbitrator also; *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., Kochi*, AIR 2007 (NOC) 233 (Ker).

Scope and object

Scope and object of section 8 of the Arbitration and Conciliation Act, 1996 and section 34 of the Arbitration Act, 1940 is different. Therefore, these two respective provisions of different Acts have no application to deprive the party of the legitimate right to invoke section 8 of the Arbitration and Conciliation Act to have the matter relating to the disputes referred to arbitration, in terms of the arbitration agreement; *Kalpana Kothari v. Sudha Yadav*, AIR 2001 SC 404.

The expression "submission of a statement on the substance of dispute"—Scope thereof

Not only filing of the written statement in a suit, but filing of any statement, application, affidavit filed by a defendant prior to the filing of the written statement will be construed as "submission of a statement on the substance of the dispute", if by filing such statement/application/affidavit, the defendant shows his intention to submit himself to the jurisdiction of the court and waive his right to seek reference to arbitration; *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, AIR 2011 SC 2507: (2011) 5 SCC 532: JT 2011 (5) SC 198: (2011) 5 SCALE 147.

STATE & UT AMENDMENT

***Union Territory of Jammu and Kashmir:**—After section 8, insert the following sections, namely:—

"8A. Power of the court, seized of petitions under sections 9 or 11 of the Act, to refer the dispute to Mediation or Conciliation.—

- (1) If during the pendency of petitions under sections 9 or 11 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to,—
 - (a) mediation; or
 - (b) conciliation.
- (2) The procedure for reference of a dispute to mediation is as under—
 - (a) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under that Act shall apply;
 - (b) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;
 - (c) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated

*. Refer, Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020 vide S.O. 3774(E), dated 23rd October, 2020 regarding Union territory of Ladakh.

settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

- (d) the court shall record a statement on oath of the parties, or their authorised representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement;
 - (e) if satisfied, the court shall pass an order in terms of the settlement;
 - (f) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;
 - (g) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (iii), (iv) and (v);
 - (h) such a mediated settlement, shall have the same status and effect as an arbitral award and may be enforced in the manner specified under section 36 of the Act.
- (3) With respect to reference of a dispute to conciliation, the provisions of Part II of this Act shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.”.

“8B. Power of the court, seized of matters under sections 34 or 37 of the Act, to refer the dispute to Mediation or Conciliation.—

- (1) If during the pendency of a petition under section 34 or an appeal under section 37 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to:—
 - (a) mediation; or
 - (b) conciliation.
- (2) The procedure for reference of a dispute to mediation is as under:—
 - (a) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under the Act shall apply;
 - (b) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;
 - (c) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;
 - (d) the court shall record a statement on oath of the parties, or their authorized representatives, affirming the mediated settlement, a clear undertaking of the parties to abide by the terms of the settlement as well as statement to the above effect;

- (e) if satisfied, the court shall pass an order in terms of the settlement;
 - (f) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;
 - (g) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (iii), (iv) and (v);
 - (h) such a mediated settlement, shall have the status of a modified arbitral award and may be enforced in the manner specified under section 36 of the Act.
- (3) With respect to reference of a dispute to conciliation, the provisions of Part III of the Act, shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.”.

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 (w.e.f. 18-3-2020), S.O. 1123(E), dated 18th March, 2020, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 1016, dated 18th March, 2020.]

9. Interim measures, etc. by Court.—¹[1] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

- (i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:—
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - (d) interim injunction or the appointment of a receiver;
 - (e) such other interim measure of protection as may appear to the court to be just and convenient,

1. Section 9 re-numbered as sub-section (1) thereof by Act 3 of 2016, sec. 5 (w.r.e.f. 23-10-2015).

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

¹[(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.]

¹[(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

COMMENTS

Interim protection

A party or a person is entitled to interim protection if action of the other party is either in breach of the terms of the agreement or militates against equity, fair play or natural justice, otherwise not; *Baby Arya v. Delhi Vidyut Board*, AIR 2002 Del 50.

Pendency of any arbitral proceedings is not a pre-condition for an exercise of power by the court

Pendency of any arbitral proceedings is not a pre-condition for exercise of power by court. The court may grant interim relief before or during arbitral proceedings or at anytime after making of the arbitral award but before it is enforced; *Globe Cogeneration Power Ltd. v. Sri Hiranyakeshi Sahkari Sakkere Karkhane Niyamit*, AIR 2005 Kant 94.

Scope

Section 9 of the Arbitration and Conciliation Act, 1996, only deals with the interim measure by the court. Obviously it is not within the scope of this section to inquire into the claim and the counter-claim made by both the parties in regard to the custody of the articles beyond what has been admitted by the respondent; *Narain Sahai Aggarwal v. Santosh Rani*, 1997 (2) Arb LR 322.

CHAPTER III

COMPOSITION OF ARBITRAL TRIBUNAL

10. Number of arbitrators.—(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

COMMENTS

Number of arbitrators

The parties are at liberty to determine the number of arbitrators, but such number shall not be an even number. If the parties fail to provide for an odd number of arbitrators, the arbitral tribunal shall be constituted by a sole arbitrator; *Sri Venkateshwara Construction Co. v. Union of India*, AIR 2001 AP 284.

1. Ins. by Act 3 of 2016, sec. 5 (w.r.e.f. 23-10-2015).

In the present case, a contract between the two parties M and S provided that each party shall nominate one arbitrator and the two arbitrators shall then appoint an umpire before proceeding with the reference. S invoked arbitration clause and appointed an arbitrator under the agreement after the 1996 Act came into force. It was contended by the M that the arbitration agreement provided for the appointment of two arbitrators while section 10(1) of the 1996 Act does not envisage the appointment of an even number of arbitrators and that the only remedy in such a case was by way of suit and not by arbitration. The Supreme Court held that there is nothing in section 7 to indicate the requirement of the number of arbitrators as a part of the arbitration agreement. Thus the validity of an arbitration agreement does not depend on the number of arbitrators specified therein. The number of arbitrators is dealt with separately in section 10 which is a part of machinery provision for the working of the arbitration agreement. It is, therefore, clear that an agreement specifying an even number of arbitrators cannot be a ground to render the arbitration agreement invalid under the 1996 Act. In view of the term in the arbitration agreement that the two arbitrators would appoint an umpire, the requirement of section 10(1) was satisfied. In other words, the arbitration agreement was not for an even number of arbitrators and section 10(2) was not attracted. The arbitration agreement was deemed to be one providing for three arbitrators; *M.M.T.C. Ltd. v. Sterlite Industries (India) Ltd.*, AIR 1997 SC 605.

11. Appointment of arbitrators.—(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

¹[(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.]

(4) If the appointment procedure in sub-section (3) applies and—

- (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
- (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

1. Ins. by Act 33 of 2019, sec. 3(i) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

¹[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be].

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree ²[the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4)].

(6) Where, under an appointment procedure agreed upon by the parties,—

- (a) a party fails to act as required under that procedure; or
- (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

³[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

⁴[(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.]

⁵[(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]

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1. Subs. by Act 33 of 2019, sec. 3(ii), for "the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier these words were amended by Act 3 of 2016, sec. 6(i) (w.r.e.f. 23-10-2015).
 2. Subs. by Act 33 of 2019, sec. 3(iii), for "the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier these words were amended by Act 3 of 2016, sec. 6(i) (w.r.e.f. 23-10-2015).
 3. Subs. by Act 33 of 2019, sec. 3(iv), for "a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier these words were amended by Act 3 of 2016, sec. 6(i) (w.r.e.f. 23-10-2015).
 4. Sub-section (6A) omitted by Act 33 of 2019, sec. 3(v) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier Sub-section (6A) was inserted by the Act 3 of 2016, sec. 6(ii) (w.r.e.f. 23-10-2015).
 5. Ins. by Act 3 of 2016, sec. 6(ii) (w.r.e.f. 23-10-2015).

¹[(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision.]

²[(8) ³[The arbitral institution referred to in sub-sections (4), (5) and (6)], before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

- (a) any qualifications required for the arbitrator by the agreement of the parties; and
- (b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, ⁴[the arbitral institution designated by the Supreme Court] may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

⁵[(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.]

⁶[(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.]

1. Sub-section (7) omitted by Act 33 of 2019, sec. 3(v) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier Sub-section (7) was amended by the Act 3 of 2016, sec. 6(iii) (w.r.e.f. 23-10-2015).

2. Subs. by Act 3 of 2016, sec. 6(iv), for sub-section (8) (w.r.e.f. 23-10-2015). Sub-section (8), before substitution, stood as under:

“(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to—

- (a) any qualifications required of the arbitrator by the agreement of the parties; and
- (b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.”

3. Subs. by Act 33 of 2019, sec. 3(vi), for “The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court” [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

4. Subs. by Act 33 of 2019, sec. 3(vii), for “the Supreme Court or the person or institution designated by that Court” [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier these words were substituted by the Act 3 of 2016, sec. 6(v) (w.r.e.f. 23-10-2015).

5. Sub-section (10) omitted by Act 33 of 2019, sec. 3(viii) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier Sub-section (10) was substituted by the Act 3 of 2016, sec. 6(vi) (w.r.e.f. 23-10-2015).

6. Subs. by Act 33 of 2019, sec. 3(ix), for sub-section (11) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier sub-section (11) was amended by Act 3 of 2016, sec. 6(vii) (w.r.e.f. 23-10-2015). Sub-section (11), before substitution, stood as under:

“(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different High Courts or their designates, the High Court or its designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.”

¹[(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).]

²[(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.]

³[(14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.]

COMMENTS

Appointment of an Independent Arbitrator

Even if an arbitrator is specified in arbitration agreement, if circumstances so warrant, Chief Justice or designated Court can appoint an independent arbitrator; *Union of India v. BESCO Ltd.*, AIR 2017 SC 1628.

1. Subs. by Act 33 of 2019, sec. 3(ix), for sub-section (12) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier sub-section (12) was substituted by Act 3 of 2016, sec 6(viii) (w.r.e.f. 23-10-2015). Sub-section (12), before substitution by Act 33 of 2019, stood as under:

“(12)(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”; and

(b) where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “High Court” within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.”

2. Subs. by Act 33 of 2019, sec. 3(ix), for sub-section (13) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Earlier sub-section (13) was inserted by Act 3 of 2016, sec 6(ix) (w.r.e.f. 23-10-2015). Sub-section (13), before substitution, stood as under:

“(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

3. Subs. by Act 33 of 2019, sec. 3(ix) for sub-section (14) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Sub-section (14), before substitution, stood as under:

“(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.”

Conditions precedent for appointment of arbitrator

The existence of an arbitration agreement between the parties to the petition under section 11 of the Act and existence of dispute(s) to be referred to arbitrator are conditions precedent for appointing an arbitration under section 11 of the Act; *Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar*, AIR 2011 SC 1899: (2011) 11 SCC 375: JT 2011 (4) SC 45: (2011) 4 SCALE 33.

Discretion for appointment of arbitrator

Exercise of discretion for appointment of same arbitrator even after forfeiture of right is improper; *Suri Constructions v. State of Rajasthan*, AIR 2006 Raj 53.

Existence of arbitration clause and validity of reference

The existence of the arbitration clause and the validity of reference shall only be decided by the Arbitrator. It is also within the domain of the Arbitrator to decide whether the claim of the petitioner has already been settled on full satisfaction; *Navratandas & Co. (P) Ltd. v. Tata Iron & Steel Co.*, AIR 2006 Jhar 7.

Extinguishment of right of appointing authority to appoint arbitrator

Once a minimum 30 days period has expired and a petition under section 11 is filed, the appointing authority loses the right to make the appointment of arbitrator; *Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd.*; 2008 (12) SCALE 720: 2008 (7) Supreme 431: 2008 (3) Arb LR 531.

Issues to be decided by Chief Justice or his nominee – Scope

The Chief Justice or his designate has to decide the issues, it raised, regarding (i) territorial jurisdiction; (ii) existence of an arbitration agreement between the parties and (iii) whether the claim made by the applicant was a dead one in the sense that the parties have already concluded the transaction by recording satisfaction of their mutual rights and obligations or have recorded satisfaction regarding their financial claims; *Anil Kumar v. B.S. Neelkanta*, AIR 2010 SC 2715: 2010 (5) SCC 407: 2010 (6) JT 255.

Function of Chief Justice or his designate

Function of the Chief Justice or Designate Judge in consideration of the application under section 11 is judicial and such application has to be dealt with in its entirety by either Chief Justice himself or the Designate Judge; *Hindustan Copper Ltd. v. Monarch Gold Mining Co. Ltd.*, 2012 (6) RAJ 202: (2012) 10 SCC 167: JT 2012 (10) SC 345: (2012) 10 SCALE 168.

Power of Chief Justice to refer disputes

Section 11 of the Act contemplates minimal judicial intervention, the Chief Justice or his designate has been authorized to appoint the arbitrator but it does not contain any provision for the court to refer the disputes to the arbitrator; *State of Goa v. Praveen Enterprises*, AIR 2011 SC 3814: JT 2011 (8) SC 359: 2011 (7) SCALE 131.

Scope

(i) Any challenge regarding the appointment of an arbitrator as per the terms of the agreement between the parties must be viewed in the context of the agreement between the parties; *S.P. Singla Constructions (P) Ltd. v. State of H.P.* [Civil Appeal Nos. 11824-11825 of 2018, decided on 04-12-2018 (Supreme Court)], LNIND 2018 SC 622.

(ii) It is well settled that where an arbitrator is named in the arbitration agreement, the provisions of section 11 of the Act are not attracted and the court will not have jurisdiction to try and decide the petition filed by party for appointment of another arbitrator; *Kamla Solvent v. Manipal Finance Corpn. Ltd.*, AIR 2001 Mad 440.

(iii) Under section 11, there is no provision fixing any time limit except under sub-section (5) which provides the time limit of 30 days from the receipt of the request from the party for appointment of an arbitrator. Under sub-section (6) no such time limit have been fixed. It is required under the procedure, a party may request the Chief Justice

or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment; *Ansal Properties & Industries Ltd. v. Himachal Pradesh State Electricity Board*, AIR 1997 Arb LR 11.

¹[11A. Power of Central Government to amend Fourth Schedule.—(1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.]

12. Grounds for challenge.—²[(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

- (a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and
- (b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- (b) he does not possess the qualifications agreed to by the parties.

1. Ins. by Act 3 of 2016, sec. 7 (w.r.e.f. 23-10-2015).

2. Subs. by Act 3 of 2016, sec. 8(i), for sub-section (1) (w.r.e.f. 23-10-2015). Sub-section (1), before substitution, stood as under:

“(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.”.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

¹[(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.]

13. Challenge procedure.—(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. Failure or impossibility to act.—(1) ²[The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—]

(a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate

1. Ins. by Act 3 of 2016, sec. 8(ii) (w.r.e.f. 23-10-2015).

2. Subs. by Act 3 of 2016, sec. 9, for "The mandate of an arbitrator shall terminate if—" (w.r.e.f. 23-10-2015).

of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. Termination of mandate and substitution of arbitrator.—(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—

- (a) where he withdraws from office for any reason; or
- (b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV

JURISDICTION OF ARBITRAL TRIBUNALS

16. Competence of arbitral tribunal to rule on its jurisdiction.—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.



COMMENTS

Jurisdiction of Civil Court

During pendency of arbitration, civil court has no jurisdiction to entertain petition and decide nature of objections raised therein. Questions can be raised before and decided by arbitrator; *State of Jharkhand v. Himachal Construction Co. Pvt. Ltd.*, AIR 2006 NOC 249 (Jhar).

Jurisdiction of tribunal to determine its jurisdiction

Principles of Kompetenz Kompetenz—The principle requires that the arbitral tribunal must exercise jurisdiction over the dispute under the arbitration agreement. Challenge to the existence or validity of the arbitration agreement will not prevent the arbitral tribunal from proceeding with hearing and ruling upon Jurisdiction. If it retains jurisdiction, making an award or the substance of the dispute would be permissible without waiting for the outcome of any court action aimed at deciding the issue of the jurisdiction. The negative effect of the Kompetenz Kompetenz principal is that arbitrators are entitled to be the first to determine their jurisdiction which is later reviewable by the Court, when there is action to enforce or set aside the arbitral award. Where the dispute is not before an arbitral tribunal, the court must also decline jurisdiction unless the arbitration agreement is patently void, inoperative or incapable of being performed; *Chloro Controls (I) P. Ltd. v. Severn Trent Water Purification Inc.*, JT 2012 (10) SC 187: (2012) 9 SCALE 595: 2012 (6) RAJ 1.

Power of the arbitrator to decide jurisdiction

The Arbitrator himself in exercise of power conferred on him by or under section 16 can decide the question whether or not the arbitration clause in question was scored out at the time of agreement between the parties and as such, whether or not he has jurisdiction to decide the matter or adjudicate the dispute; *State of Orissa v. Surendranath Kanungo*, AIR 2004 Ori 153.

¹[17. Interim measures ordered by arbitral tribunal.—(1) A party may, during the arbitral proceedings ²[* * *], apply to the arbitral tribunal—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:—
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising

1. Subs. by Act 3 of 2016, sec. 10, for section 17 (w.r.e.f. 23-10-2015). Section 17, before substitution, stood as under:

“17. Interim measures ordered by arbitral tribunal.—(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).”

2. The words “or at any time after the making of the arbitral award but before it is enforced in accordance with section 36” omitted by Act 33 of 2019, sec. 4 [w.e.f. 30-8-2019, vide S.O. 3154 (E), dated 30th August, 2019].

for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

- (d) interim injunction or the appointment of a receiver;
- (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.]

CHAPTER V

CONDUCT OF ARBITRAL PROCEEDINGS

18. Equal treatment of parties.—The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. Determination of rules of procedure.—(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. Place of arbitration.—(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

COMMENTS

Ascertaining venue of arbitration

A conjoint reading of section 2(6) and section 20 leads to the conclusion that in the event, parties do not agree with regard to the place of arbitration, then they had the right to authorise any person including an institution for deciding the venue of the arbitration; *Sanshin Chemicals Industry v. Oriental Carbons and Chemicals Ltd.*, AIR 2001 SC 1219.

***21. Commencement of arbitral proceedings.**—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

COMMENTS

Object

Section 21 of the Act lays down that unless and otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by respondent; *Y. Parthsarthy v. G.M., Railway Electrification, Allahabad*, 1997 (2) Arb LR 347.

22. Language.—(1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

23. Statement of claim and defence.—(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

¹[(2A) The respondent, in support of his case, may also submit a counter-claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter-claim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

* See also section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and section 15 of the Arbitration and Conciliation (Amendment) Act, 2019 (33 of 2019).

Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) stood as under:

"26. Act not to apply in pending arbitral proceedings.—Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before commencement of this Act, unless the parties, otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of the commencement of this Act."

Section 15 of the Arbitration and Conciliation (Amendment) Act, 2019 (33 of 2019) stood as under:

"15. Amendment to Act 3 of 2016.—Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 shall be omitted and shall be deemed to have been omitted with effect from the 23rd October, 2015."

1. Ins. by Act 3 of 2016, sec. 11 (w.r.e.f. 23-10-2015).

¹[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.]

24. Hearings and written proceedings.—(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

²[Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—

- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant ³[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited];
- (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. Expert appointment by arbitral tribunal.—(1) Unless otherwise agreed by the parties, the arbitral tribunal may—

- (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and
- (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his

1. Ins. by Act 33 of 2019, sec. 5 [w.e.f. 30-8-2019, vide S.O. 3154 (E), dated 30th August, 2019].

2. Ins. by Act 3 of 2016, sec. 12 (w.r.e.f. 23-10-2015).

3. Ins. by Act 3 of 2016, sec. 13 (w.r.e.f. 23-10-2015).

written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

27. Court assistance in taking evidence.—(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

- (a) the names and addresses of the parties and the arbitrators;
- (b) the general nature of the claim and the relief sought;
- (c) the evidence to be obtained, in particular,—
 - (i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;
 - (ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

CHAPTER VI

MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

28. Rules applicable to substance of dispute.—(1) Where the place of arbitration is situate in India,—

- (a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;
- (b) in international commercial arbitration,—

- (i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;
- (ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;
- (iii) failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

¹[(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.]

29. Decision making by panel of arbitrators.—(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

COMMENTS

Power to award interest

Where the arbitrator has awarded interest from the date of the award till the date of payment, disallow interest from the date of the decree or determine a different rate at which the interest is to be paid or confirm the grant of interest as awarded in the award. In the instant case, the arbitrator is entitled to grant pre-reference, *pendente lite* and future interest, however, the claimant did not claim any pre-reference interest in proceedings before the arbitrator in the present facts and circumstances could not have granted interest from the date the arbitrator entered upon the reference by sending notice to the claimant and respondent on 26-4-1991 to the date of award at the rate of 15% p.a. on the amounts awarded; *State of Orissa v. B.N. Agarwal*, AIR 1997 SC 925.

²[**29A. Time limit for arbitral award.**—³(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

1. Subs. by Act 3 of 2016, sec. 14, for sub-section (3) (w.r.e.f. 23-10-2015). Sub-section (3), before substitution, stood as under:

“(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”.

2. Ins. by Act 3 of 2016, sec. 15 (w.r.e.f. 23-10-2015).

3. Subs. by Act 33 of 2019, sec. 6(a), for sub-section (1) [w.e.f. 30-8-2019, *vide* S.O. 3154 (E), dated 30th August, 2019]. Sub-section (1), before substitution, stood as under:

“(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.”

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose off the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay:

¹[Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

STATE & UT AMENDMENT

***Union Territory of Jammu and Kashmir:**—(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purposes of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.”;

(b) in sub-section (4), omit second and third provisos.”.

[*Vide* the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 (w.e.f. 18-3-2020), S.O. 1123(E), dated 18th March, 2020, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 1016, dated 18th March, 2020.]

1. Ins. by Act 33 of 2019, sec. 6(b) [w.e.f. 30-8-2019, *vide* S.O. 3154 (E), dated 30th August, 2019].

* *Refer*, Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020 *vide* S.O. 3774(E), dated 23rd October, 2020 regarding Union territory of Ladakh.

1[29B. Fast track procedure.—(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):

- (a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
- (b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
- (c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
- (d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.]

30. Settlement.—(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

COMMENTS

Settlement

When the arbitrator, having been invested with the jurisdiction to decide the arbitrability of certain claims has committed error of jurisdiction in not considering the arbitrability of the claims and passed a non-speaking award granting certain lump sum amount, it is difficult to give acceptance to the award made by the umpire; *Tamil Nadu Electricity Board v. Bridge Tunnel Constructions*, AIR 1997 SC 1376.

31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

1. Ins. by Act 3 of 2016, sec. 15 (w.r.e.f. 23-10-2015).

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

¹[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.]

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]

²[(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.]

1. Subs. by Act 3 of 2016, sec. 16(i), for clause (b) (w.r.e.f. 23-10-2015). Clause (b), before substitution, stood as under:

“(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.”.

2. Subs. by Act 3 of 2016, sec. 16(ii), for sub-section (8) (w.r.e.f. 23-10-2015). Sub-section (8), before substitution, stood as under:

“(8) Unless otherwise agreed by the parties,—

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify—

(i) the party entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation.—For the purpose of clause (a), “costs” means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.”.

COMMENTS

Pendente lite interest

(i) General conditions of contract imposed complete bar in awarding *pendente lite* interest. Tribunal had no jurisdiction to award interest; *Jaiprakash Associates Ltd. (JAL) through its Director v. Tehri Hydro Development Corporation India Ltd. (THDC) through its Director*, LNIND 2019 SC 107.

(ii) If contract expressly bars award of interest *pendente lite*, the same cannot be awarded by the Arbitrator. Further, the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest *pendente lite* by the Arbitral Tribunal; *Union of India v. M/s Ambica Construction*, AIR 2016 SC 1441.

Delivery of copy of award to parties

When a copy of the signed award is not delivered to the party itself, it would not amount to compliance with the provisions of sub-section (5) of section 31 of the Act. Proper compliance with sub-section (5) of section 31 would mean delivery of a signed copy of the arbitral award on the party itself. Which gives the party concerned the right to proceed under sub-section (3) of section 34; *Banarsi Krishan Committee v. Karmyogi Shelters Pvt. Ltd.*, (2012) 9 SCC 496: JT 2012 (9) SC 111: (2012) 9 SCALE 251: 2012 (5) RAJ 401.

Power to award interest

Arbitrator has power to award interest at all four stages. It was held that the direction to pay interest from date of award cannot be faulted under section 31(7); *T.P. George v. State of Kerala*, AIR 2001 SC 816.

¹31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and
- (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses;
- (ii) legal fees and expenses;
- (iii) any administration fees of the institution supervising the arbitration; and
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

- (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
- (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

- (a) the conduct of all the parties;

- (b) whether a party has succeeded partly in the case;
- (c) whether the party had made a frivolous counter-claim leading to delay in the disposal of the arbitral proceedings; and
- (d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.]

32. Termination of proceedings.—(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,
- (b) the parties agree on the termination of the proceedings, or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

33. Correction and interpretation of award; additional award.—(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

COMMENTS

Scope—Enlargement of

It is seen that by express agreement between the parties, arbitrability of the claim for refund of the hire charges was referred to arbitration and T came to be appointed as arbitrator and entered upon that reference. But when claim was made, he enlarged the dispute unilaterally without there being any agreement by the appellant. Infact they objected to the enlargement of the scope of the arbitration. Since arbitrator went on adjudicating the disputes, they were left with no option but to participate in the proceedings as the claims were pressed for and parties submitted to the jurisdiction of the arbitrator. Therefore, it did not amount to acquiescence. The arbitrator went out of their way to declare that whatever amount in addition was due from respondent No. 1 upon the *bahikhatta* account was remitted having regard to his labour and poverty and the whole unspecified amount found due against respondent No. 2 was remitted in full in view of his labour and poverty. It was contended that the award was decided outside the authority of the arbitrators. It was held that the arbitrators had clearly misdirected themselves and had exceeded the scope of their authority and the award was, therefore, set aside; *Union of India v. G.S. Atwal & Co.*, AIR 1996 SC 2965.

CHAPTER VII

RECOURSE AGAINST ARBITRAL AWARD

34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

- (a) the party making the application ¹[establishes on the basis of the record of the arbitral tribunal that]—
 - (i) a party was under some incapacity, or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

1. Subs. by Act 33 of 2019, sec 7, for “furnishes proof that” [w.e.f. 30-8-2019, vide S.O. 3154(E), dated 30th August, 2019].

- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
- (b) the Court finds that—
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
 - (ii) the arbitral award is in conflict with the public policy of India.

¹[*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.]

¹[*Explanation 2.*—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

²[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

1. Subs. by Act 3 of 2016, sec. 18(I), for the *Explanation* (w.r.e.f. 23-10-2015). The *Explanation*, before substitution, stood as under:

“*Explanation.*—Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.”

2. Ins. by Act 3 of 2016, sec. 18(II) (w.r.e.f. 23-10-2015).

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

¹[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.]

¹[(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

STATE & UT AMENDMENT

***Union Territory of Jammu and Kashmir:**—(i) after sub-section (2), insert the following sub-section, namely:—

“(2A) An arbitral award may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.”;

(ii) in sub-section (3),—

(i) for “three months” substitute, “six months”;

(ii) in proviso thereto, for, “three months and “thirty days” substitute respectively “six months” and “sixty days”.”

[Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 (w.e.f. 18-3-2020), S.O. 1123(E), dated 18th March, 2020, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 1016, dated 18th March, 2020.]

COMMENTS

Furnishing proof of one of grounds in section 34(2)(a) by applicant-party should only be by way of affidavit of facts not contained in record of arbitration. Cross-examination of person swearing to affidavit cannot be allowed unless absolutely necessary; *Emkay Global Financial Services Ltd. v. Girdhar Sondhi*, AIR 2018 SC 3894.

Place of arbitration determines law that will apply to arbitration and related matters like challenges to award etc.; *Imax Corporation v. M/s E-City Entertainment (I) Pvt. Limited*, AIR 2017 SC 1372.

Applications to Condone Delay

Principles of section 34(3) of the Act does not govern applications for condonation of delay in representing Arbitration Original Petitions and can be pressed into service only when petitions to condone delay in filing Arbitration Original Petitions are taken up for consideration. Court did not give any reason why delay be not condoned. Applications to condone delay liable to be allowed; *Kombi S/o Raman Ponnamm v. National Highway Authority of India, New Delhi, represented by the Project Director NHAI, Palkkad*, AIR 2013 NOC 222 (Ker).

Arbitration Court cannot interfere on the ground of award being erroneous

The arbitration court cannot interfere with the award on the ground that the award is erroneous if the award is otherwise proper. It is not open to the arbitration court to re-appreciate reasonableness of reasons in the arbitral award; *Union of India v. Pam Developments P. Ltd.*, AIR 2004 NOC 353 (Cal).

Award based on account of overlooking contents

The award made by the arbitrator was partially vitiated on account of overlooking the contents of the document brought to his notice and therefore, to that extent the award

1. Ins. by Act 3 of 2016, sec. 18(III) (w.r.e.f. 23-10-2015).

*. Refer, Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020 vide S.O. 3774(E), dated 23rd October, 2020 regarding Union territory of Ladakh.

should have been modified by the High Court. Virtually allotment of land was not in recognition of any statutory entitlement but was only by way of compassion; *State of Karnataka v. Siddaiah*, AIR 2001 SC 397.

Court must not look to the reasonableness of reasons

Where an arbitrator passed a non-speaking award granting certain lumpsum amount and award did not contain any decision or arbitrability of the claims, such award is liable to be set aside; *Tamil Nadu Electricity Board v. Bridge Tunnel Constructions*, AIR 1997 SC 1376.

Enforcement of Award

If an application is filed in executive Court, pursuant to rejection of some grounds, in section 34 of the Act proceeding, executing Court would have to discern as to whether that part of order of Court pertains to those claims which can be sustained on stand-alone basis. If executing Court comes to such conclusion, undoubtedly, execution proceedings can proceed against that part of order subject, however, to intercession by an appellate court; *National Highway Authority of India v. Oriental Structure Engineers Ltd., – Gammon India Ltd. (JV)*, AIR 2013 Del 67.

Right to get an award set aside is statutory

The right to file an application under section 34 to set aside an award is statutory and the same is unconditional and unqualified; *The Supdtg. Engineer (Highway & Rural Works), Chennai v. D.G. Deivasigamani*, AIR 2005 Mad 59.

Scope of the words "but not thereafter"

Use of words "but not thereafter" in the proviso to sub-section (3) makes it clear that even if a sufficient cause is made out for a longer extension, extension cannot be beyond thirty days; *Consolidated Engineering Enterprises v. Principal Secretary (Irrigation Department)*, 2008 (5) SCR 1108: 2008 (7) SCC 169.

CHAPTER VIII

FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS

35. Finality of arbitral awards.—Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

¹[36. Enforcement.]—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

²[Provided further that where the Court is satisfied that a *prima facie* case is made out that,—

- (a) the arbitration agreement or contract which is the basis of the award; or
- (b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).]

1. Subs. by Act 3 of 2016, sec. 19, for section 36 (w.r.e.f. 23-10-2015). Section 36, before substitution, stood as under:

"36. **Enforcement.**—Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."

2. Ins. by Act 3 of 2021, sec. 2 (w.r.e.f. 23-10-2015).

CHAPTER IX

APPEALS

37. Appealable orders.—(1) ¹[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

- ²(a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal.—

- (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

COMMENTS

Determination of forum of appellate court

Forum of appellate court must be determined with reference to definition of court in section 2(1)(e) of the Act. If a High Court does not exercise the original Civil Jurisdiction, it would not be a 'Court' within the meaning of the said provision; *Pandey & Co. Builders Pvt. Ltd. v. State of Bihar*, AIR 2007 SC 465.

Maintainability

A second appeal against the order of arbitral tribunal is not maintainable under this section; *Cref Finance Ltd. v. Puri Construction Ltd.*, AIR 2001 Del 414.

CHAPTER X

MISCELLANEOUS

38. Deposits.—(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

1. Subs. by Act 33 of 2019, sec 8, for "An appeal" [w.e.f. 30-8-2019, vide S.O. 3154(E), dated 30th August, 2019].

2. Subs. by Act 3 of 2016, sec. 20, for clauses (a) and (b) (w.r.e.f. 23-10-2015). Clauses (a) and (b), before substitution stood as under:

"(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34."

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

39. Lien on arbitral award and deposits as to costs.—(1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

40. Arbitration agreement not to be discharged by death of party thereto.—

(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

41. Provisions in case of insolvency.—(1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency

proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

COMMENTS

Execution proceedings

Application for execution proceedings made at place D, residing place of judgment debtor, while award was passed at place I. Held that decree cannot be executed unless and until court at place I transfer decree to court at place D; *Computer Sciences Corporation India Pvt. Ltd. v. Harishchandra Lodwal*, AIR 2006 MP 34.

Jurisdiction of Court

Section 42 provides that notwithstanding anything contained elsewhere in this part or in any other law for the time being in force, where with respect to an arbitrator agreement any application under this part has been made in a court, that court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court and in no other court. As already stated in the present case that the petitioner-company is a consortium partner with S Co. and L&T Ltd. and the three companies are equally liable and the contracts were executed by S as the leader of the consortium. The Bank guarantees which are subject matter before the High Court of Delhi. The leader of consortium S had already approached the High Court of Delhi as such according to section 42, all subsequent applications arising out of the arbitration agreement and arbitral proceedings shall have to be made in the High Court of Delhi and no other Court had jurisdiction to entertain such applications. Thus, the Court of the District Judge; Jaipur City had no jurisdictions to entertain the application submitted under section 11(6) read with section 8; *Sirojexport Co. Ltd. v. Indian Oil Corpn. Ltd.*, AIR 1997 Raj 120.

¹[42A. Confidentiality of information.—Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.]

¹[42B. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.]

1. Ins. by Act 33 of 2019, sec. 9 [w.e.f. 30-8-2019, vide S.O. 3154(E), dated 30th August, 2019].

43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

¹[PART IA

ARBITRATION COUNCIL OF INDIA

43A. Definitions.—In this Part, unless the context otherwise requires,—

- (a) “Chairperson” means the Chairperson of the Arbitration Council of India appointed under clause (a) of sub-section (1) of section 43C;
- (b) “Council” means the Arbitration Council of India established under section 43B;
- (c) “Member” means a Member of the Council and includes the Chairperson.

43B. Establishment and incorporation of Arbitration Council of India.—(1) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(3) The head office of the Council shall be at Delhi.

(4) The Council may, with the prior approval of the Central Government, establish offices at other places in India.

43C. Composition of Council.—(1) The Council shall consist of the following Members, namely:—

- (a) a person, who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent

1. Part IA (containing sections 43A to 43M) ins. by Act 33 of 2019, sec. 10 [12-10-2023, *vide* S.O. 4486(E), dated 12th October, 2023].

person, having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India—Chairperson;

- (b) an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government—Member;
- (c) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government in consultation with the Chairperson—Member;
- (d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, *ex officio*;
- (e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—Member, *ex officio*;
- (f) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government—Part-time Member; and
- (g) Chief Executive Officer—Member-Secretary, *ex officio*.

(2) The Chairperson and Members of the Council, other than *ex officio* Members, shall hold office as such, for a term of three years from the date on which they enter upon their office:

Provided that no Chairperson or Member, other than *ex officio* Member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

(3) The salaries, allowances and other terms and conditions of the Chairperson and Members referred to in clauses (b) and (c) of sub-section (1) shall be such as may be prescribed by the Central Government.

(4) The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed by the Central Government.

43D. Duties and functions of Council.—(1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, ¹[***] or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

(2) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

- (a) frame policies governing the grading of arbitral institutions;
- (b) recognise professional institutes providing accreditation of arbitrators;

1. The words "mediation, conciliation" omitted by the Mediation Act, 2023 (32 of 2023), sec. 61, Sixth Sch., para (a)(i) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].



- (c) review the grading of arbitral institutions and arbitrators;
- (d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) frame, review and update norms to ensure satisfactory level of arbitration ¹***];
- (f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration ¹***];
- (g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) promote institutional arbitration by strengthening arbitral institutions;
- (i) conduct examination and training on various subjects relating to arbitration ¹***] and award certificates thereof;
- (j) establish and maintain depository of arbitral awards made in India;
- (k) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and
- (l) such other functions as may be decided by the Central Government.

43E. Vacancies, etc., not to invalidate proceedings of Council.—No act or proceeding of the Council shall be invalid merely by reason of—

- (a) any vacancy or any defect, in the constitution of the Council;
- (b) any defect in the appointment of a person acting as a Member of the Council; or
- (c) any irregularity in the procedure of the Council not affecting the merits of the case.

43F. Resignation of Members.—The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or the Full-time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

43G. Removal of Member.—(1) The Central Government may, remove a Member from his office if he—

- (a) is an undischarged insolvent; or
- (b) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

1. The words "and conciliation" omitted by the Mediation Act, 2023 (32 of 2023), sec. 61, Sixth Sch., para (a)(ii) [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Member.

(2) Notwithstanding anything contained in sub-section (1), no Member shall be removed from his office on the grounds specified in clauses (d) and (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

43H. Appointment of experts and constitution of Committees thereof.—The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.

43-I. General norms for grading of arbitral institutions.—The Council shall make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations.

¹[**43J. Norms for accreditation of arbitrators.**—The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.]

43K. Depository of awards.—The Council shall maintain an electronic depository of arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations.

43L. Power to make regulations by Council.—The Council may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under this Act.

43M. Chief Executive Officer.—(1) There shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council.

(2) The qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be such as may be prescribed by the Central Government.

(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.

(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.

(5) The qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be prescribed by the Central Government.]

1. Subs. by Act 3 of 2021, sec. 3, for section 43J (w.r.e.f. 4-11-2020). Section 43J before substitution, stood as under:

"43J. Norms for accreditation.—The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:

Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly."

PART II ENFORCEMENT OF CERTAIN FOREIGN AWARDS

CHAPTER I

NEW YORK CONVENTION AWARDS

44. Definition.—In this Chapter, unless the context otherwise requires, “foreign award” means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

- (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and
- (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

COMMENTS

What is necessary for an award to be designated as a foreign award under Section 44 are four ingredients: (i) the dispute must be considered to be a commercial dispute under the law in force in India, (ii) it must be made in pursuance of an agreement in writing for arbitration, (iii) it must be disputes that arise between “persons” (without regard to their nationality, residence, or domicile), and (iv) the arbitration must be conducted in a country which is a signatory to the New York Convention; *PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited* (2021) 4 MLJ 59 (SC): LNIND 2021 SC 144.

45. Power of judicial authority to refer parties to arbitration.—Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, ¹[unless it *prima facie* finds] that the said agreement is null and void, inoperative or incapable of being performed.

COMMENTS

Scope of enquiry under section 45 does not extend to examination of legality of substantive contract; *Sasan Power Ltd. v. North American Coal Corporation India Pvt. Ltd.*, AIR 2016 SC 3974.

Expression “any person”

Legislative intent – Locus standi of person external to arbitration agreement.—The expression “any person” used in section 45 of the Act clearly refers to the legislative intent of enlarging the scope of the words beyond “the parties” who are signatory to the arbitration agreement. Section 45 is a provisions falling under Chapter I of Part II of this Act which is a self-contained Code. The expression “person claiming through or under” would mean and take within its ambit multiple and multi-party agreements, though in exceptional case. Such application should claim through or under the signatory party and once this link is established, then the court shall refer them to arbitration. Arbitration, thus, could be possible between a signatory to an arbitration agreement and a third party. Heavy onus lies on that party to show that, in fact and in law, it is claiming ‘through’ or ‘under’ the signatory party as contemplated under section 45 of the Act; *Chloro Controls (I) P. Ltd. v. Severn Trent Water Purification Inc.*, JT 2012 (10) SC 187: (2012) 9 SCALE 595: 2012 (6) RAJ 1.

Null and void agreement

In the absence of any serious challenge to the commercial contract or to the arbitration agreement, it has to be found that the agreement was valid, operative and capable of being performed and that there are disputes between the parties with regard to the matters agreed to be referred to arbitration; *State of Orissa v. Klockner & Co.*, AIR 1996 SC 2140.

1. Subs. by Act 33 of 2019, sec. 11 for “unless it finds” [w.e.f. 30-8-2019, vide S.O. 3154 (E), dated 30th August, 2019].

Referral is mandatory

A judicial authority does not have discretion for refusing to refer the parties to arbitration. Section 45 of the 1996 Act uses the mandatory expression 'shall' and makes it obligatory upon the judicial authority to refer the parties to arbitration, if conditions specified therein are fulfilled. Stay of suit is mandatory if the conditions specified in section 3 of the Foreign Awards (Recognition and Enforcement) Act, 1961 are fulfilled; *State of Orissa v. Klockner & Co.*, AIR 1996 SC 2140.

Scope and requirement for reference of dispute to arbitrator

At the request of one of the parties or any person claiming through or under him, court is bound to refer the parties to arbitration unless it finds that said agreement is null and void, inoperative or incapable of being performed; *Sakti Bhog Foods Limited v. Kola Shipping Limited*, 2008 (10) JT 694: 2008 (12) SCALE 822.

46. When foreign award binding.—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

47. Evidence.—(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

- (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
- (b) the original agreement for arbitration or a duly certified copy thereof; and
- (c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

¹[*Explanation.*—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.]

1. Subs. by Act 3 of 2016, sec. 21, for *Explanation* (w.r.e.f. 23-10-2015). *Explanation*, before substitution, stood as under:

"*Explanation.*—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

COMMENTS

Production of documents at the time of application

An application for enforcement of award accompanied by Xerox copy of original award certified to be true copy by International Chamber of Commerce was filed and subsequently before delivery of judgment the said copy was duly authenticated as required under law, it was held that it would not be said that the application was made without the original award or the copy of the award; *Renusagar Power Co. Ltd. v. General Electric Co.*, AIR 1985 SC 1156.

48. Conditions for enforcement of foreign awards.—(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—

- (a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

- (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

- (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
- (b) the enforcement of the award would be contrary to the public policy of India.

¹[*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

1. Subs. by Act 3 of 2016, sec. 22, for *Explanation* (w.r.e.f. 23-10-2015). *Explanation*, before substitution stood as under:

“*Explanation.*—Without prejudice to the generality of clause (b) of this section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.”.

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.]

¹[*Explanation 2.*—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

COMMENTS

Awarded has been set aside

An interim award was made at London by an arbitral tribunal constituted by the international Chamber of Commerce. The agreement was made at New Delhi and agreement was governed by the law in force in India. Court held that the law expressly chosen by the parties in respect of all matters arising under their contract, which must necessarily include the agreement contained in the arbitration clause, being Indian law and the exclusive jurisdiction of the courts in Delhi having been expressly recognised by the parties to the contract in all matters arising under it, and the contract being most intimately associated with India, the proper law of arbitration and the competent courts are both exclusively Indian, while matters of procedure connected with the conduct of arbitration are left to be regulated by the contractually chosen rules of the ICC to the extent that such rules are not in conflict with the public policy and the mandatory requirements of the proper law and of the place of arbitration; *National Thermal Power Corpn. v. Singer Co.*, AIR 1993 SC 998.

Enforcement of foreign award

For enforcement of a foreign award, there is no need to take separate proceedings such as one for deciding enforceability of award to make rule of court or decree and other to take up execution thereafter; *Fuerst Day Lawson Ltd. v. Jindal Export Ltd.*, AIR 2001 SC 2293.

Invalidity of the arbitration agreement

A foreign award will not be enforced if it is proved by the party against whom it is sought to be enforced that the parties to the agreement were, under the law applicable to them, under some incapacity, or, the agreement was not valid under the law to which the parties have subjected it, or, in the absence of any indication thereon, under the law of the place of arbitrations; or there was no due compliance with the rules of fair hearing; or the award exceeded the scope of the submission to arbitration; or the composition of the arbitral authority or its procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the place of arbitration; or the award has not yet become binding on the parties, or has been set aside or suspended by a competent

1. Subs. by Act 3 of 2016, sec. 22, for *Explanation* (w.r.e.f. 23-10-2015). *Explanation*, before substitution stood as under:

"*Explanation.*—Without prejudice to the generality of clause (b) of this section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption."

authority or the country in which, or under the law of which, that award was made. The award will not be enforced by a court in India if it is satisfied that the subject matter of the award is not capable of settlement by arbitration under Indian law or the enforcement of the award is contrary to the public; *National Thermal Power Corpn. v. Singer Co.*, AIR 1993 SC 998.

49. Enforcement of foreign awards.—Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

COMMENTS

Court is required to record its satisfaction that a foreign award is enforceable

Before proceeding to execute a foreign award as a decree of a court, the court is required to record its satisfaction that such a foreign award is enforceable. This, however, does not mean that court cannot pass any interim order in order to protect interest of person applying for enforcement and execution of a foreign award; *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.*, AIR 2004 Cal 142.

50. Appealable orders.—(1) ¹[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the order refusing to—

(a) refer the parties to arbitration under section 45;

(b) enforce a foreign award under section 48,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

51. Saving.—Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

52. Chapter II not to apply.—Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

CHAPTER II

GENEVA CONVENTION AWARDS

53. Interpretation.—In this Chapter “foreign award” means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

1. Subs. by Act 33 of 2019, sec. 12 for “An appeal” [w.e.f. 30-8-2019, vide S.O. 3154 (E), dated 30th August, 2019].

- (c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

54. Power of judicial authority to refer parties to arbitration.—Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

55. Foreign awards when binding.—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

56. Evidence.—(1) The party applying for the enforcement of a foreign award shall, at the time of application, produce before the Court—

- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
- (b) evidence proving that the award has become final; and
- (c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (c) of sub-section (1) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

¹[*Explanation.*—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been

1. Subs. by Act 3 of 2016, sec. 23, for *Explanation* (w.r.e.f. 23-10-2015). *Explanation*, before substitution stood as under:

“*Explanation.*—In this section and all the following sections of this Chapter, “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.”.

the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.]

57. Conditions for enforcement of foreign awards.—(1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that—

- (a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) the subject-matter of the award is capable of settlement by arbitration under the law of India;
- (c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) the enforcement of the award is not contrary to the public policy or the law of India.

¹[*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.]

¹[*Explanation 2.*—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

- (a) the award has been annulled in the country in which it was made;
- (b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

1. Subs. by Act 3 of 2016, sec. 24, for *Explanation* (w.r.e.f. 23-10-2015). *Explanation*, before substitution, stood as under:

“*Explanation.*—Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.”.

Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub-section (1) and clauses (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

58. Enforcement of foreign awards.—Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

59. Appealable orders.—(1) An appeal shall lie from the order refusing—

(a) to refer the parties to arbitration under section 54; and

(b) to enforce a foreign award under section 57,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

60. Saving.—Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

PART III CONCILIATION

¹[**61. Reference of conciliation in enactments.**—(1) Any provision, in any other enactment for the time being in force, providing for resolution of

1. Subs. by the Mediation Act, 2023 (32 of 2023), sec. 61, Sixth Sch., para (b), for sections 61 to 81 [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India]. Sections 61 to 81 before substitution, stood as under:

"61. Application and scope.—(1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

62. Commencement of conciliation proceedings.—(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

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(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. *Number of conciliators.*—(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

64. *Appointment of conciliators.*—(1) Subject to sub-section (2),—

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

65. *Submission of statements to conciliator.*—(1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation.—In this section and all the following sections of this Part, the term “conciliator” applies to a sole conciliator, two or three conciliators as the case may be.

66. *Conciliator not bound by certain enactments.*—The conciliator is not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

67. *Role of conciliator.*—(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

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(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

68. *Administrative assistance.*—In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

69. *Communication between conciliator and parties.*—(1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. *Disclosure of information.*—When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

71. *Co-operation of parties with conciliator.*—The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

72. *Suggestions by parties for settlement of dispute.*—Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

73. *Settlement agreement.*—(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

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(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. *Status and effect of settlement agreement.*—The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

75. *Confidentiality.*—Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

76. *Termination of conciliation proceedings.*—The conciliation proceedings shall be terminated—

- (a) by the signing of the settlement agreement by the parties on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

77. *Resort to arbitral or judicial proceedings.*—The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

78. *Costs.*—(1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

- (a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;
- (b) any expert advice requested by the conciliator with the consent of the parties;
- (c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68;
- (d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

79. *Deposits.*—(1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

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disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2023.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in clause (h) of section 3 of the Mediation Act, 2023.

62. Saving.—Notwithstanding anything contained in section 61, any conciliation proceeding initiated in pursuance of sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2023, shall be continued as such, as if the Mediation Act, 2023, had not been enacted.]

PART IV SUPPLEMENTARY PROVISIONS

82. Power of High Court to make rules.—The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act.

83. Removal of difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in

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(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

80. Role of conciliator in other proceedings.—Unless otherwise agreed by the parties,—

- (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
- (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

81. Admissibility of evidence in other proceedings.—The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the conciliation proceedings;
- (c) proposals made by the conciliator;
- (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator."

the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

84. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

85. Repeal and savings.—(1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (45 of 1961) are hereby repealed.

(2) Notwithstanding such repeal,—

- (a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;
- (b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

COMMENTS

Agreement providing arbitration under the provisions of the Arbitration Act, 1940

By section 85 of the Act of 1996, the earlier Act of 1940 was repealed and the only exception is provided in sub-section (2) of said section where a proceeding which had commenced when the Act of 1940 was in force and continued even after coming into force of Act of 1996 and all the parties thereto agreed that the old Act of 1940 shall apply to the said proceeding. Where the agreement was made in the year 2000, and the suit filed in the year 2003 when the Act of 1940 had already been repealed by the Act of 1996, parties cannot take the help of the exception provided in sub-section (2) of the Act of 1996; *Rajan Kumar Verma v. Sachchidanand Singh*, AIR 2006 Pat 1.

Enforcement of Foreign award

The foreign award given after the commencement of the Arbitration and Conciliation Act, would be governed by that Act, although the proceedings of arbitration had commenced prior to enforcement of the Arbitration and Conciliation Act, 1996; *Fuerst Day Lawson Ltd. v. Jindal Export Ltd.*, AIR 2001 SC 2293.

86. Repeal of Ordinance 27 of 1996 and Saving.—(1) The Arbitration and Conciliation (Third) Ordinance, 1996 (27 of 1996) is hereby repealed.

(2) Notwithstanding such repeal, any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance, shall be deemed to have been made, done or taken under the corresponding provisions of this Act.

¹[**87. Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.**—Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) shall—

(a) not apply to—

- (i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016);
- (ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016);

(b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and to court proceedings arising out of or in relation to such arbitral proceedings.]

THE FIRST SCHEDULE

(See section 44)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

1. Ins. by Act 33 of 2019, sec. 13 [(w.r.e.f. 23-10-2015) and read with S.O. 3154 (E), dated 30th August, 2019].

ARTICLE II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative and incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply—

- (a) the duly authenticated original award or a duly certified copy thereof;
- (b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

- (a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

- (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

- (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

ARTICLE VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of

which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply:—

- (a) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- (b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;
- (c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:—

- (a) signatures and ratifications in accordance with article VIII;
- (b) accessions in accordance with article IX;
- (c) declarations and notifications under articles I, X and XI;
- (d) the date upon which this Convention enters into force in accordance with article XII;
- (e) denunciations and notifications in accordance with article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article XIII.

THE SECOND SCHEDULE

(See section 53)

PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article I applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.
6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.
7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.
8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the under-mentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE THIRD SCHEDULE

(See section 53)

CONVENTION OF THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

(2) To obtain such recognition or enforcement, it shall, further, be necessary—

- (a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the court is satisfied—

- (a) that the award has been annulled in the country in which it was made;
- (b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.—If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1(a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular—

- (1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1(d), in the country in which it was made;
- (3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph (1) and paragraph (2) (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and Non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or Non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

Article 10.—The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every Non-Member State which signs the same.

¹[THE FOURTH SCHEDULE²[See section 11(3A)]

Sl. No.	Sum in dispute	Model fee
(1)	(2)	(3)
1.	Upto Rs. 5,00,000	Rs. 45,000
2.	Above Rs. 5,00,000 and upto Rs. 20,00,000	Rs. 45,000 plus 3.5 per cent. of the claim amount over and above Rs. 5,00,000
3.	Above Rs. 20,00,000 and upto Rs. 1,00,00,000	Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000
4.	Above Rs. 1,00,00,000 and upto Rs. 10,00,00,000	Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000
5.	Above Rs. 10,00,00,000 and upto Rs. 20,00,00,000	Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000
6.	Above Rs. 20,00,00,000	Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000

Note:—In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent. on the fee payable as per the above.]

³[THE FIFTH SCHEDULE

[See section 12(1)(b)]

The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators:

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

1. Subs. by S.O. 5674(E), dated 12th November, 2018, for Fourth Schedule (w.r.e.f. 23-10-2015). Earlier the Fourth Schedule was inserted by Act 3 of 2016, sec. 25 (w.r.e.f. 23-10-2015).
2. Subs. by Act 33 of 2019, sec. 16, for "[See section 11(14)]" [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].
3. Ins. by Act 3 of 2016, sec. 25 (w.r.e.f. 23-10-2015).

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Previous services for one of the parties or other involvement in the case

20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.
21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.
22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.
23. The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.
24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

Relationship between an arbitrator and another arbitrator or counsel

25. The arbitrator and another arbitrator are lawyers in the same law firm.
26. The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.
27. A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.
28. A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.
29. The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.

Relationship between arbitrator and party and others involved in the arbitration

30. The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.
31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

Other circumstances

32. The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.
33. The arbitrator holds a position in an arbitration institution with appointing authority over the dispute.
34. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

Explanation 1.—The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.]

¹[THE SIXTH SCHEDULE

[See section 12(1)(b)]

NAME:

CONTACT DETAILS:

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS):

NUMBER OF ONGOING ARBITRATIONS:

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT):

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWELVE MONTHS (LIST OUT):]

²[THE SEVENTH SCHEDULE

[See section 12(5)]

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.

1. Ins. by Act 3 of 2016, sec. 25 (w.r.e.f. 23-10-2015).

2. Ins. by Act 3 of 2016, sec. 25 (w.r.e.f. 23-10-2015).

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.—The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.]

THE EIGHTH SCHEDULE

1[***]

1. The Eighth Schedule omitted by Act 3 of 2021, sec. 4 (w.r.e.f. 4-11-2020). Earlier it was inserted by Act 33 of 2019, sec. 14 [Date of enforcement yet to be notified. For present status, see Notification issued by the concerned Ministry or the Gazette of India].