

The Indian Arbitration Law

Arbitration is one of the popular methods of Alternate Dispute Resolution. The process of Arbitration is a consensual and confidential procedure with the agreement of the parties to a dispute with the decision of the arbitration tribunal being binding on them all.

Previously, the Arbitration Act 1940 governed Arbitration in India. Later, in order to conform more fully to UNCITRAL (United Nations Commission on International Trade Law) norms; India enacted the Arbitration and Conciliation Act, 1996. Thereafter, , upon several recommendations being received from stakeholders and the Law Commission's advice the Government of India amended the Act by the passage of the Arbitration and Conciliation (Amendment) Act, 2015.

The Amendment Act of 2015 catered to two important aspects:

1. Strengthening arbitration as a more decisive dispute resolution mechanism by defining the exact grounds upon which an award may be appealed against in the High Court and making it difficult to do so on frivolous grounds.
2. Making India a more conducive location as a seat of international arbitration by making the arbitration law and procedure in India simpler, clear cut and thereby more attractive.

In an attempt to achieve the same there were some fundamental amendments made in the definitions. The amendment has extended the definition of "Court" to mean specifically High Court for the purpose of International Commercial Arbitration. It has also extended the application of section 9(interim measures) similar to the provisions of Order XXXIX and Section 151 CPC. Similarly, sections

of the Evidence Act namely Section 37(1)(a) and 37(3) and Section 27(taking of evidence) shall also apply to International Commercial Arbitration, even if the venue of arbitration is outside India but the seat thereof is India.. Section 8, now envisages that unless no prima facie valid arbitration agreement is found, notwithstanding any judgment, decree or the order of the Supreme Court or any court, the judicial authority shall refer the parties to the process of Arbitration. According to the amendment of section 9, if the court orders any interim measure before the commencement of the Arbitral proceedings the proceedings must begin within 90 days from the date of such order. Also, the court shall not entertain any such application under Section 9 unless the court finds that there is no remedy available under Section 17. According to the amendment (of 2015) to section 11, the Supreme Court or the High Court or the person designated by the parties involved in the dispute, must appoint the arbitrator(s) within a stipulated time period of 60 days.

The fifth schedule has been inserted, which enumerates all the circumstances that would give justifiable doubts on the impartiality of the arbitrator in case either party wishes to appeal against a tribunal's award under Section 34 of the Arbitration Act.. The list exhaustive and thus if the arbitrator(s) isn't covered under any of the grounds so mentioned, he is likely to be independent and unbiased. There is also the insertion of schedule seven which enumerates the various subject matters which would act as grounds for ineligibility for the arbitrator(s).

The amendment to section 25 entitles the failure to communicate his statement of defense by the defendant/ respondent, as forfeiture of his right to file such statement. The section 24 now requires day to day hearings for presentation of evidence and oral arguments. It also disapproves any adjournments, unless sufficient cause is shown. The changes made in section 37, now permits an appeal against an order under section 8 refusing to refer the parties to arbitration.

According to the changes made in Section 36, there should be an order made specifically staying the execution of the said award. The changes made in section 34 restrict the setting aside of an International Arbitration award on the grounds of it being against the Public Policy of India. An international award may be appealed against only on the basis of the award being vitiated by fraud and corruption, or contravention of any fundamental policy or if it conflicts the basic notions of morality. An additional ground of “patently illegal” is only available in cases of Domestic Arbitration. Also an application to set aside an award can only be filed now after prior notice to the other party involved. The domestic award maybe challenged on the grounds of being patently illegal, but such an award would not be set aside merely on the ground of erroneous application of law. A time limit of one year from the date of such notice is provided to dispose of such applications made under section 34, this time limit is not extendable by any provisions under the Act.

The insertion of section 29A and 29B importance in this Arbitration and Conciliation (Amendment) Act, 2015 is significant. These are the two sections which have been inserted to make the Indian Arbitration process a more time efficient one, thereby promoting India as a preferred destination for International Commercial Arbitration. It is now required that the Arbitration proceeding is completed within 12 months from the date of it being referred to the Arbitral Tribunal. This period can be extended for another maximum period of 6 months only with the consent of the parties, unless the court extends it on account of sufficient cause or any other such circumstances as the court may deem fit. However, the court, if it attributes such delays to the arbitrator, may order the reduction of up to 5% off his monthly fee for each such delay. It is also required by the court to dispose of such application of extensions within a period of 60 days from the date of notice to the opposite party. The parties are now empowered to opt for a “fast-track arbitration process”, where the award shall be passed by the

Tribunal within a period of 6 months. In this fast track procedure the Tribunal shall adjudicate the dispute on the basis of written pleadings and documents and submissions filed without hearings being held, unless the parties request for or it is required by the tribunal for any clarifications. This provision is based on the precepts contained in Order XII Rule 6 of the CPC>Additional fees of the arbitrator can be made by the consent of the parties in this process.

Arbitration or any methods of Alternate Dispute Resolution are supposed to be efficacious and cost effective. This new amendment attempts to obviate practices which have contributed to make the process of Arbitration a time consuming and expensive one. These changes are, therefore, encouraging steps towards achieving a fair and cost effective system of dispute resolution.

Disclaimer: The content of this article is for the purpose of information only.

April 2017 | Bonum Lex | Bonumlex.com