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Call for Blog Posts: RMLNLU Arbitration Law Blog

THEMES:

1. **Repeal of Section 11(6A): Changing trends in pre-arbitral judicial intervention**
2. **Mandatory Arbitration through Statutes**
3. **Applicability of Limitation Act at various stages of an arbitral proceeding**
4. **Feasibility of introducing arbitration mechanism within the folds of the 2013 Companies Act**
5. **Relevance of host state's level of development in interpretation of investment treaty standards**
6. **Time bound Arbitration (with a special emphasis on Section 29- A)**

SOCIETY FOR EXCELLENCE IN ARBITRATION LAW

The RMLNLU Society for Excellence in Arbitration Law (SEAL) was established in the year 2015. It is a student-run academic body set up with a view to having insightful discussions on various contemporary developments taking place in the field of Arbitration Law within and outside the country.

ABOUT THE BLOG

The Blog shall accept submissions from students, legal professionals and practitioners dealing with any area of Arbitration law. The author must (a) explain the legal background clearly and succinctly, and (b) offer insight into or analysis of the issues being covered. We request you to read our Submission Guidelines carefully before sending your submissions.

We are also delighted to share that our RMLNLU Arbitration Law Blog has been recognized among the **top 60 Indian Law Blogs and Websites to follow in 2019** by Feedspot. In November 2019, we were ranked 13 out of the top 60 legal blogs.

The blog has been conceived to encourage law students to explore forward-looking issues in the area of Arbitration law. To this effect, we have formulated a few themes to foster research on some of the contemporary developments in the field. If you wish to publish your views on our blog on the themes detailed below, please send them at ***seal.rmlnlu[at]gmail.com***

THEMES

1. Repeal of Section 11 (6A): Changing trends in pre-arbitral judicial intervention

After an exhaustive judicial journey and following the 246th Law Commission's Report, in order to clear the murky waters on pre-arbitral judicial intervention, a provision was introduced in the form

of Section 11 (6A). Albeit intended to reduce judicial scrutiny at the stage of appointment of an arbitrator, it led to claims challenging scope, validity and existence of arbitration agreements (see for example, *Garware Wall Ropes v. Coastal Marine Constructions & Engineering Ltd*. and *United India Insurance Co. Ltd.* and *Ors. v. Hyundai Engineering and Construction Co. Ltd.*). Consequently, the BN Srikrishna Committee formed to promote institutionalization of arbitration suggested deletion of Section 11(6A), put to effect in the 2019 Amendment Act. Now, the courts have been deprived of the power to rule on the "existence" of an arbitration agreement.

In furtherance of this, authors are expected to deliberate upon both or either of the following issues:

1. A party challenging the arbitration agreement under Section 11(6A) against its 'validity', 'scope' and 'existence', will now have to resort to other provisions (such as section 8 or 9) having scope to empower the courts to delve into such analysis.

2. While the amendment aimed at minimizing intervention of the courts to achieve expeditious results through arbitration and empowering the institutions, in the absence of a coherent system or any related guidelines in place, some amount of judicial interference is imperative to render a degree of certainty and reduce the number of appeals arising out of pre-arbitration decisions.

2. Mandatory Arbitration through Statutes

In India, certain enactments such as the Railways Act, 1989, the Electricity Act, 2003 and the Micro, Small and Medium Enterprises Development Act, 2006 mandate arbitration as the mechanism for resolution of certain disputes arising out of these statutes. Arbitration initiated on the basis of such statutes, rather than freely negotiated arbitration agreements, is termed 'statutory arbitration.' Section 2(4) of the Arbitration and Conciliation Act, 1996 gives recognition to statutory arbitrations in India by putting them on the same pedestal as arbitrations pursuant to traditional arbitration agreements.

A similar kind of mandatory arbitration exists in the U.S.A. as well as India, where standard B2C contracts mandate arbitration in their boilerplate terms, as the means for resolving disputes arising out of the contract. While arbitration is often viewed as an expeditious and economical alternative to litigation, consumer advocates and others contend that these mandatory arbitration agreements

create one-sided arrangements that deny consumers and employees advantages afforded by a judicial proceeding .

While this type of mandatory arbitration has been the subject of vigorous debate and criticism, the literature on the issues surrounding statutory arbitration have been woefully inadequate, particularly so in the Indian context. Thus, we implore practitioners, academicians and scholars of arbitration law to write on the pitfalls and advantages and other issues surrounding statutory arbitration in India**.**

3. <u>Applicability of Limitation Act at various stages of an arbitral proceeding</u>

The grundnorm behind the Limitation Act, 1963 (Limitation Act) is that the law assists the vigilant and not the one who sleeps over his rights (*Vigilantibus non dormeintibus jura subveniunt*). Due to this principle, Section 43 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) provides for the application of Limitation Act.

Since the Arbitration Act is a special legislation, Limitation Act is applied only to the extent it is not expressly excluded. Recent cases have uncovered new issues arising through confluence of these two laws. One such issue is the applicability of Limitation Act for setting aside of domestic arbitral award under Section 34 and the limitation period for the same provided under Section 34(3). Different cases have provided for application of certain provisions of the Limitation Act while excluding the applicability of others. Authors are encouraged to delve into the analysis of express exclusion of Limitation Act in the Arbitration Act and underline scenarios where the Limitation Act would or would not be applicable to the arbitration. Authors may also discuss the precise period allowed for challenging the arbitral award and the point when this period commences. Another area of discussion in the sub theme can be the application of Limitation Act to enforcement of foreign arbitral awards and the limitation period applicable to enforce such awards after the award is received. It is to be noted that Section 43 is a part of Part I of the Arbitration Act and Sections 48 and 49 which provide for enforcement of foreign arbitral awards and the grounds thereof, do not provide any limitation period as provided by Section 34(3).

4. <u>Feasibility of introducing arbitration mechanism within the folds of the 2013 Companies Act</u>

The 2018 Company Law Committee Report while addressing its mandate to lay down the broad contours of an in-house adjudicatory mechanism for the levy of penalties, classified the offences in the Companies Act, 2013 ("CA-13") into eight categories and went on to recommend 16 of these offences to be brought under the in- house adjudication system. This was done to promote Ease of Living in India by providing Ease of Doing Business to law abiding corporates. Under this, an officer of the Central Government is appointed as the adjudicating officer, as opposed to the previous approach of referring such disputes to the National Company Law Tribunal ("NCLT"), for adjudging penalty under the provisions of CA-13. In line with the same objective, recently, the government has yet again constituted a Company Law Committee (F. No. 2/1/2018-CL-V, dated Sep. 18, 2019) for examining and making recommendations on various provisions and issues pertaining to implementation of the CA-13. One of the mandates of 2019 Committee is to examine the feasibility of introducing settlement mechanism within the fold of the CA-13. Authors are encouraged to identify those provisions of the CA-13 which can be subjected to arbitration. They can make reference to Section 58 of CA-13 in this regard. Submissions dealing with the nature of the provision, the functions performed by the NCLT and the extent of arbitrability of the dispute identified under the said provision are recommended.

5. Relevance of host state's level of development in interpretation of investment treaty standards

Developing countries have unstable political conditions to varying degrees and they also stay vulnerable to severe economic crisis, with limited resources at their disposal. Generally, foreign investors seek protection from such scenarios through various investment treaty standards mentioned in a relevant Bilateral Investment Treaty ("BIT"), such as, through the Full Protection and Security standard ("FPS") and Fair and Equitable Treatment standard ("FET"). However, in recent times, tribunals like *Pantechniki v. Albania* have passed awards where the scope of such treaty standards has been interpreted to vary largely, depending upon the availability of resources to a host state and its level of development. By contrast, notable jurists like Professor Reisman subscribe to the view that ad hoc assessments based on an evaluation of a host state's capacity at a given moment of its development will not incentivize for that state to improve. Participants are encouraged to discuss the advantages and disadvantages of assessing a treaty standard in light of the level of development of a host state and whether such an assessment lowers the responsibility of such host

states under International law. They may also explore the implications of adopting such an ad-hoc approach in interpretation of treaty standard and how it may affect the desire to bring consistency and predictability in Investor-State Dispute Settlement framework.

6. Time bound Arbitrations (with special emphasis on Section 29- A)

The 2019 Arbitration Amendment Act has introduced noteworthy modifications to the Arbitration and Conciliation Act, 1996 while significantly tweaking some of the formulations introduced by dint of the Arbitration and Conciliation (Amendment) Act, 2015. Section 29A of the 2015 Amendment Act, which provided a 12-month timeline for completing an arbitration starting from the date the tribunal entered reference, was criticized because of its rigidity. The 2019 Amendment Act allows more flexibility by providing that the 12-month period must start from the date of completion of pleadings, exempting international commercial arbitration from this timeline. The ad hoc international commercial arbitration seated in India will not be covered by fixed timeline whereas the domestic arbitration has to be governed by the mandatory timeline. Authors are encouraged to assess the impact that this amendment might have on the future of the nation being an arbitration hub along with its interplay with institutional rules and other domestic arbitration legislations that provide with similar time bound mechanisms.

SUBMISSION GUIDELINES

- We are flexible with the length of the posts that we publish. Generally, the blog posts should be in the range of 700-1500 words. Longer posts will be published in parts.
- Articles that have contemporary relevance are preferred. However, you may cross-examine an old issue or take up something that it is not sufficiently articulated in other fora.
- We encourage our contributors to write well-organised pieces with decent articulation. Contributions should be coherent and easy to understand. Please avoid excessive use of jargons. Rest, the editorial team will work with you to improve the quality of your contribution.
- We expect our contributors to cite other writers, articles, or books if they are borrowing any content, as is the case in any academic writing. Being an online platform, we expect our contributors to use hyperlinks instead of footnotes. Though, sources that cannot be accessed online may be footnoted.
- Blog posts should be accompanied by a short excerpt detailing the core issue(s) dealt in its content: preferably 80-100 words.
- The submission should not mention any information about the author(s) or their affiliation. Alternatively, we would like you to send us a short biography of yours (either in a separate document or in the body of the email). Your biography shall be published along with your post.
- Submissions must be sent to us latest by **30th December 2019.**
- To discuss the topics, issues or themes you want to write on, contact us. Our response time varies from a couple of hours to a couple of days. Likewise, the decision of the editorial board regarding the publication of your submission is usually communicated in a week's time.
- By submitting a post to the blog, the Contributor guarantees that the post is a product of their work and is unpublished. Contributors also permit the RMLNLU Arbitration Law Blog to use their post, with full attribution but without further consent, on a non-commercial basis in online and offline publications.

CONTACT

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