

## **All about Arbitration and Conciliation Act, 1996**

**By: Abhipsha Mohanty**

As said by Abraham Lincoln,

*“Discourage Litigation persuade your neighbours to compromise, whenever you can point out to them how the nominal winner is often a real loser, in fees, expenses, waste of time....”*

His intention to resolve the disputes through ADR mechanisms where Arbitration & Conciliation is one of the best alternative dispute resolution recognised in the every corners of the world. The concept of ADR lies in resolving the disputes outside the standard court procedures and encourages the communicative capacity of the disputants.

### **Introduction:**

The Arbitration and Conciliation Act, 1996 is an act regulating the domestic arbitration in India. The act was amended in 2015 decided by the Government of India where by introducing the Arbitration & Conciliation (Amendment) Bill, 2015. The Parliament had given its approval for the amendments taking into consideration the Law Commission’s Report and recommendations. To make Arbitration more effective and a preferred mode for settlement of commercial disputes and making India a centre for International Commercial Arbitration.

### **Q1: When did Arbitration & Conciliation Act, 1996 came into force?**

Ans: The Arbitration & Conciliation Act, 1996 which came into force on 25<sup>th</sup> day of January, 1996.

### **Q2: What is the nature of the Arbitration & Conciliation Act?**

Ans: The act is of consolidating and amending in nature and not exhaustive. It is much beyond the scope of the 1940 Act. It provides for domestic Arbitration and enforcement of foreign arbitral awards. It continues on the source of the UN Model Law to make our law agreement with the law adopted by the United Nations Commission on International Trade Law (UNCITRAL).

### **Q3: What are the main objectives of the Arbitration & Conciliation Act?**

Ans: The main objectives of the act is Liberalization, Privatization and Globalization (LPG). It makes provision for an arbitral procedure fair, efficient and capable of meeting the needs of

the specific arbitration. It lays down procedures for the arbitral tribunal and to remain within the limits of the jurisdiction. The arbitral tribunal should use mediation, conciliation or other mechanism during the arbitral proceedings to encourage the settlement of disputes.

**Q4: What disputes can be referred to Arbitration according to Arbitration and Conciliation Act?**

Ans: Generally, all disputes of a civil nature or quasi- civil nature which can be decided by a civil court can be referred to arbitration. Thus, disputes relating to property, right to hold an office, compensation for non-fulfilment of a clause in a contract, disputes in a partnership, etc. can be referred to arbitration.

Even the disputes between an insolvent and his creditors can be referred to arbitration by the official receiver/liquidator with the leave of the court. Thus, disputes arising in respect of defined legal relationship, whether contractual or not, can be referred to arbitration.

**Q5: What sort of disputes is ADR suitable?**

Ans: Both procedural laws & substantial laws is suitable for ADR mechanisms such as Civil Procedure Code, Family Disputes, Industrial Disputes, Hindu Marriage Act, Motor Vehicle Claims, Negotiable Instruments Act, etc.

**Q6: What is Arbitration Agreement means?**

Ans: Arbitration agreement is defined in Section 2(b) of the Arbitration & Conciliation Act, 1996. An agreement by the parties to submit to arbitration of certain disputes which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not. It should be in writing and must be signed by the parties. The oral agreement cannot be legally enforceable.

**Q7: What are the key provisions of Arbitration & Conciliation (Amendment) Act, 2015?**

Ans: The key provision are as follows:

- The arbitration agreement can be in the form of communication by electronic means and treated as the valid arbitration agreement in writing.
- Appointment of Arbitrators might be made by the Supreme Court or High Courts, as the case might be rather than the Chief Justice of India or Chief Justice of High Court.
- If there should be an occurrence of international arbitration, the significant court would just be the High Court having original jurisdiction.

- To guarantee lack of bias of arbitrators, the person should have possible connection with the appointment of the arbitrator and must disclose in writing that there is existence of any kind of relationship or interest.
- Presently the tribunal should have capacity to grant a wide range of interim measures which the court is engaged to give.
- The amendment introduces a provision that the arbitral tribunal to make its award within 12 months and may be extended by a 6 months but with certain reasonable restriction (Section 29A).
- The amendment also allows to complete the arbitration proceedings within 6 months with the desire of the parties in a fast track manner (Section 29B).

The amendment of the Arbitration & Conciliation Act, 1996 has encouraged in clearing the major lacunae caused by the landmark Supreme Court judgment in the case of *Bharat Aluminium Co. v. Kaiser Technical Services Inc.*<sup>1</sup> also known as BALCO case wherein there was a limitation on Indian courts from giving interim relief and helping in collecting evidence in the case of International Commercial Arbitration. This glitch has now been settled with the applicability of section 9 and section 27 to International commercial arbitration also. With the revision of the meaning of "courts" to refer just to a High Court on account of International Commercial Arbitration, parties will not have to approach by the lower courts to look forward for relief. By the enactment of the Arbitration and Conciliation (Amendment) Act, 2015 the administration looks to speed up the arbitral procedure and help the legislature to accomplish its objective of making India a seat for International Commercial Arbitration like the other significant business and financial districts of the world. The Act of 2015 will likewise help in recovering the lost certainty of the outside foreign investors in the Indian legal and arbitral framework.

**Q8: Whether the arbitral can be set aside if it is contrary to ‘public policy’?**

Ans: Section 34 of the Act gives that an arbitral award might be put aside on the off chance that it is contrary to 'public policy'. There must be an application given by the aggrieved party within 3 months from the date of award made by the tribunal and received by it. If sufficient cause is given for the delay of making application, then a further period of 30 days after the expiry of 3 months will be granted by the tribunal as given under the proviso of section 34(3).

---

<sup>1</sup> Bharat Aluminium Co. v. Kaiser Technical Services Inc., (2012) 9 SCC 552.

In the *Municipal Corporation of Greater Mumbai v. Prestress Product*,<sup>2</sup> the court held that the new act was brought to express the parliamentary objective of curtailing the judicial interference.

There are some conditions under which the award can be set aside, as follows:

- If the party is not competent enough to look after his interests and also not represented properly, then the award will not have any binding effect on the parties and may be set aside. For example, minor or an unsound person.
- If the clause mentioned in the contract is invalid in nature, then the arbitration clause will be invalid automatically.
- Notice should be given to the parties, if any ex-parte award given by the arbitrator will be considered as invalid and to be set aside.
- The arbitrator must pass the award within the jurisdiction, if he exceeds the limit the award stands invalid and the extra part need to be set aside.
- Section 34(2) (a) (v) also provides that the composition of the tribunal can be challenged and award can be set aside. If the composition is not accordance with the agreement, then the procedure followed in the proceedings cannot be valid.

The Supreme Court of India in *ONGC v. Saw Pipes Ltd.*<sup>3</sup>, the arbitral tribunal cannot act in breach of some provisions of substantive law or the provisions of the act. According to the Sec. 34(2) (a) (v), the composition of the tribunal should be in accordance with the agreement. It has wider interpretation of the term public policy to include patent illegality in addition to the attributes mentioned by the Supreme Court in *Renusagar*<sup>4</sup> case. In this case, the term Public policy was construed to mean, fundamental policy of Indian law, Interest of India and Justice and morality.

The main question in the *Renusagar case* was the application of arbitral award challenged but in the *ONGC case*, the validity of the award itself was the challenging factor.

The ground that arbitral award is in conflict with public policy of India has turned out to be one of the best defence available for losing party to challenge the award. Such an award would be considered as 'patently illegal' and in this manner infringing upon public policy.<sup>5</sup> This wider

---

<sup>2</sup> *Municipal Corporation of Greater Mumbai v. Prestress Product*, 2003 (2) ARBLR 624 Bom, 2003 (3) BomCR 117.

<sup>3</sup> *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

<sup>4</sup> *Renusagar Power Co. Ltd v. General Electrical Co.* 1994 Supp (1) SCC 644.

<sup>5</sup> *Supra note 3.*

interpretation managed the losing party a chance to re-disturb the benefits of the case. In spite of the fact that in the recent judgment, the Supreme Court noticed that while the benefits of an arbitral award can be examined when a test is made on grounds that an arbitral award has infringed 'public policy', there were confinements with regards to the degree to which, such a re-assessment can be conducted.

In the case of *Venture Global v. Satyam Computers*<sup>6</sup>, there was an open challenge to the section 34 of the act where the awards declared outside India. The foreign awards started to be the subject to the wider interpretation of public policy made in *ONGC*<sup>7</sup> case.

Then, the wider meaning of public policy given in the *Phulchand*<sup>8</sup> case where the scope and purpose of the section 34 is same as section 48. The parties can challenge the foreign award under section 34 of the act.

But the same reason was overruled in *Shri Lal Mahal Ltd v. Progetto Grano Spa*<sup>9</sup>, the award passed and upheld by the courts of UK was enforced in India. The enforcement of the award was the main objection and raised under Sec. 48 that it was contrary to the terms of the contract and thus patently illegal and violated 'public policy'. The Supreme court held that the term public policy under section 48 would not include the patents illegality grounds. It has a ground limit subject to section 34 of the act.

The Ordinance, in any case, clears up that an award will be in conflict with the general public of India, just in specific conditions, for example, if the award is abused or influenced by extortion or coercion, or is in contradiction with the fundamental rights of Indian law, or is in conflict with justice, morality and equity. Further, the Ordinance gives that an assurance of whether there is a contradiction with the essential approach of Indian law can't involve an audit of the merits of the case. This change looks to confine the re-valuation for the benefits of the question at the phase of test to the award before the court of law.

Henceforth, the Legislature has fundamentally lessened the scope of the analysis by the judiciary into the question of violation of 'public policy'.

---

<sup>6</sup> *Venture Global v. Satyam Computers*, (2010) 8 SCC 660.

<sup>7</sup> *Supra note 3*.

<sup>8</sup> *Phulchand Exports Limited v OOO Patriot* (2011) 10 SCC 300.

<sup>9</sup> *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, 2013 (4) CTC 636.

**Q9: What can be concluded by the Arbitration & Conciliation Act, 1996?**

Ans: Practically, the path for International Commercial Arbitration in India is not simple. It is still in the early stage with lot of lacuna that mainly hinder the progress of successful method of Arbitration in India. It needs multiple effective strategy to fulfil the interest of the public. Although the amendment to the act solved the major problem related to the time but the procedures needs more clarification for using efficaciously. There is need for more institutions with supervisory roles to coordinate the efforts of ADR in India. This can be achieved with active support and encouragement of the judicial luminary in the growth of well-recognized arbitration in India.

---