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THE NEED FOR MULTI-TIER ARBITRATION IN INDIA

By Sanjay Reddy

INTRODUCTION:

The fundamental components in an arbitration process include party autonomy, confidentiality, independence or impartiality and the finality of arbitral rulings. While the parties may argue that the arbitrators' award is final and binding on them, most of the time, the decisions are up for challenge by the courts and may even be overturned. The arbitration jurisprudence has developed an alternative known as "*Appellate Arbitration*," or "*Two-Tier Arbitration*," to stop unjustified and dishonest challenges to the arbitration awards because arbitration proceedings are time-consuming and expensive.

Appellate arbitration, also known Two-Tier arbitration, is a form of appeal in which the party who is aggrieved by an arbitral award has the option to start a new arbitration process in order to challenge the arbitral tribunal's ruling before another arbitral tribunal, as opposed to going through the civil courts. The parties prefer appellate arbitrations because they reduce court intervention and, in situations where it is necessary, narrow the grounds for reviewing the arbitral award, ultimately saving time and money. This is because going to civil court requires a substantial investment of time and resources in order to bring the dispute to a definitive resolution.

POSITION IN INDIA:

The question as to whether appellate arbitrations are permissible under The Arbitration and Conciliation Act, 1996 (‘*1996 Act*’) in India and whether it was

contrary to the public policy of India was discussed by the Hon'ble Supreme Court of India in *Centrotrade Minerals & Metals v. Hindustan Copper Ltd [(2017)2 SCC 228].*

On adjudication of the above case, the three-judge bench of the Hon'ble Supreme Court, consisting of Madan B. Lokur, J. R.K. Agrawal, J. and D.Y. Chandrachud, J, ruled that parties are free to enter into an agreement providing for non-statutory appeals so that their disputes and differences are settled without resorting to court processes. It also observed that the Act does not prohibit a two-tier system, nor does it exclude the autonomy of the parties to mutually agree to a procedure whereby an award might be reconsidered by another arbitrator(s) by way of an appeal acceptable to the parties, subject to a challenge under the Act. This being precisely what the parties had agreed upon, the Apex Court ruled that there was no difficulty in honouring their mutual decision and accepting the validity of their agreement.

The Court held that "*No such prohibition or mandate can be read into the A&C Act except by an unreasonable and awkward misconstruction and by straining its language to a vanishing point. We are not concerned with the reason why the parties (including HCL) agreed to a second instance arbitration-the fact is that they did and are bound by the agreement entered into by them. HCL cannot wriggle out of a solemn commitment made by it voluntarily, deliberately and with eyes wide open"*.

The Court, however, did not consider the actual enforceability of the ICC Award as a foreign award, dealing instead only with the question of validity of a two-tier arbitration clause. The Court noted that the matter would be set down for hearing on the remaining issue at a later date on account of its roster of business allowing it to hear appeals only sporadically.

Subsequently, since the above three judge bench decision was silent on the issue of enforcement of the London award, the matter

was once again listed before another three judge bench of the Supreme Court comprising of Rohinton Fali Nariman, J. Navin Sinha, J. B.R. Gavai, J. in *Centrotrade Minerals & Metals v Hindustan Copper Ltd [2020 SCC OnLine SC 479]* for considering the second issue of enforcement of the London award.

The Hon'ble Court after considering the facts, merits and the earlier decisions rendered in this case held that the appellate award passed by Jeremy Cook QC in London, UK in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce is the award which can be enforced as a foreign award.

PURPOSE OF MULTI-TIER ARBITRATION

The core objectives of arbitration are factors such as party autonomy, confidentiality, expeditious disposal of dispute, party-centric, amongst others. Parties resort to arbitration, taking into consideration these vital factors, which provide them a hand-hold over the proceedings and permit them to dictate the terms of the dispute resolution, as against litigation. These privileges of arbitration are enjoyed by the parties only till the termination of the proceedings i.e., till passing of the award.

However, when an aggrieved party decides to challenge the award under the Arbitration and Conciliation Act, 1996, the parties have to invariably approach a civil court under Section 34 of the Arbitration and Conciliation Act, 1996. Even though the civil court has limited powers to adjudicate/set-aside an award under Section 34, merely by approaching the civil court, the entire purpose for the adhering to arbitration is defeated, since recourse to civil courts entails significant time and cost in achieving finality of the dispute. In such instances, the parties may prefer appellate arbitrations to limit the interference of the courts, and in cases where court's interventions are necessary, limit the

grounds for reviewing the arbitral award, thereby saving time and cost in the long run.

While this position allows parties another chance at hearing the same matter on merits, it also poses enforcement issues that deter parties from including such clauses in contracts. A few challenges identified are listed below:

***a. Enforcement of first arbitral award**:* In the Centrotrade Minerals Case, the Supreme Court addressed the legality of appellate arbitration clauses; however, it said nothing about the first arbitral award's status in the event that the appeal provision is used. It is unclear whether the first arbitral award could be upheld while the second arbitral panel considers and rules on the appeal. Since enforcement is a matter covered by the statute, it will be addressed by the legislature or the courts through clarification or revision of the Arbitration Act.

Certain international arbitration organizations, such as Judicial Arbitration and Mediation Services (JAMS) Optional Arbitration Appeal Procedure, 2003 ('***JAMS Appeal Procedure'***), Arbitration Appeal Procedure of International Institute of Conflict Prevention and Resolution, 2015 ('***CPR Appeal Procedure'***), and Optional Appellate Rules of American Arbitral Association, 2013 ('***AAA Appeal Procedure'***), provide for the same, even though the Indian system is still ambiguous on the matter. According to these institutional regulations, the initial arbitral ruling cannot be enforced while the appeal is pending. However, this could be a strategy employed by parties to stall proceedings and prevent arbitral rulings from being enforced, negating the goal of prompt redress. The existing enforcement process outlined by the Arbitration Act can be used as inspiration to close the gap; however, if one party wishes to appeal to a different arbitral tribunal, it might also be necessary to request a stay of enforcement of the first arbitral award by approaching the court. This approach will ensure a just opportunity is granted to both

the parties on whether hold on the enforcement is necessary in the case or can be authorized concurrently.

b. *Ad-hoc arbitrations*: Institutional arbitrations, such as the one mentioned above, specify the process to be followed in the event of an appeal. Unless all parties agree to be bound by the same, these procedures are optional. However, a question arises in circumstances when parties resort to ad-hoc arbitrations and do not agree on a mechanism of nomination and conduct of appellate arbitrations in the agreement. It's possible that Indian courts, which support party independence, will mandate that parties use the same procedure that was decided upon for the first arbitral tribunal in light of the Centrotrade Minerals Case ruling. Furthermore, as stipulated under the current system, parties may approach the courts to request the establishment of an arbitral tribunal for appellate arbitration in the event of a disagreement.

c. *Limitation*: The statue of limitation specifies a time frame in which parties can begin enforcing the arbitral ruling in a court appeal process. However, in the instance of two arbitration awards—one from the arbitral tribunal established in the first instance and another from the appellate arbitral tribunal—are present in an appellate system. The first arbitral tribunal's decision would need to be enforced in this case, should the appellate arbitral tribunal uphold the arbitral award made in the first instance. Nonetheless, the duration of the appeal process can surpass the standard timeframe for pursuing enforcement. Therefore, a question facing the parties is whether the statute of limitations to enforce would start from the date of the first or second arbitral award.

The JAMS Appeal Procedure's Rule (c) and the CPR Appeal Procedure's Rule 2.3 stipulate that the date of the appellate award will serve as the start of the statute of limitations for bringing enforcement actions. The stance taken by JAMS Appeal Procedure and CPR Appeal Procedure stems from the

fact that these two establishments only permit enforcement when the appeal process is over. Consequently, the statute of limitations shall start on the day the award of the appeal arbitral tribunal is made. The current enforcement procedure, which involves seeking a stay and simultaneously appealing the decision, may be understood to mean that, in the absence of clarity in India to this extent, the enforcement period will depend on the outcome of the appellate arbitration procedure. Furthermore, in order to determine the maximum period of limitation, the Limitation Act, 1963 stipulates that time spent in legitimate litigation must be excluded. Consequently, the courts will not include the time spent in appeal as bona fide for computing the limitation period in cases where the appellate review of the award is denied and the arbitral award of first instance is sought to be enforced.

CONCLUDING REMARKS

Parties are free to agree on a modified or revised procedure, even though the aforementioned limits discourage them from selecting appellate arbitration clauses. It is important to remember that party liberty is the driving concept in arbitration. In light of this, experts believe that in order for parties to gain from the process, they should think about creating an arbitration clause that specifies suitable steps for the appellate arbitration procedure. This will guarantee a process that is specifically designed to address the deficiencies of the current system and be appropriate for the type of conflicts that are referred to arbitration. Since the appellate arbitration procedure permits a merits challenge, the likelihood of judicial intervention is greatly reduced. Therefore, it is highly advised that parties choose to use custom appellate arbitration clauses in contracts in cases where a wise conclusion is more important than the time and money spent on dispute resolution.

ENFORCEMENT OF FOREIGN ARBITRATION AWARDS:

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JURISDICTION AND KEY RULINGS BY THE DELHI HIGH COURT

By Tanishq Kashyap

The Delhi High Court, in a significant ruling by Justice Jasmeet Singh, reaffirmed the principle that the authority to set aside a foreign arbitration award rests exclusively with the courts at the seat of arbitration, which hold primary or supervisory jurisdiction. Enforcement courts, having only secondary jurisdiction, are limited to refusing enforcement under Section 48 of the Arbitration and Conciliation Act, 1996, and cannot annul the award.

Case Overview

The case concerned a petition for the enforcement of a foreign arbitral award dated April 21, 2022, issued in an arbitration between the International Air Transport Association (IATA) and Spring Travels Pvt. Ltd. (STPL). The arbitration, conducted under the ICC International Court of Arbitration, was seated in Singapore. IATA, a global trade association of airlines, sought to recover approximately ₹124 crores from STPL, which had failed to remit ticket sales proceeds under a Passenger Sales Agency (PSA) Agreement.

STPL had initially challenged the arbitral tribunal's jurisdiction before the Singapore International Commercial Court, but its objections were dismissed. Subsequently, STPL raised several defenses during the enforcement proceedings in India, invoking Section 48 of the Arbitration Act to argue against the enforceability of the award.

Key Objections and Findings

Pre-Arbitration Requirements:

STPL argued that IATA's failure to seek a review by the Travel Agency Commissioner (TAC) rendered the arbitration invalid. The

court, however, upheld the arbitral tribunal's interpretation that TAC review was not a mandatory prerequisite under the PSA Agreement or the Handbook. It also observed that STPL had waived this objection by its conduct.

Natural Justice:

STPL contended that excessive arbitration costs prevented it from participating effectively, thus violating principles of natural justice. The court rejected this, noting that STPL had access to all proceedings and willfully abstained from participation. Citing the Supreme Court's decision in Vijay Karia v. Prysmian Cavi E Sistemi SRL (2020), the court held that denial of justice must result from genuine inability, which was not demonstrated here.

Limitation and Jurisdiction:

STPL claimed that the arbitral tribunal's finding on limitation was perverse. The court clarified that enforcement courts cannot reassess findings of primary jurisdiction courts, as per the Supreme Court ruling in Union of India v. Vedanta Ltd. (2020). The ground of "perversity" is not recognized under Section 48.

Documentary Compliance:

The objection regarding non-compliance with Section 47(1)(b) of the Arbitration Act was dismissed, with the court citing PEC Ltd. v. Austbulk Shipping Sdn. Bhd. (2019), which held that minor procedural lapses in document filing do not invalidate enforcement.

Representative Capacity:

STPL's argument that IATA could not represent member airlines was deemed baseless, as the PSA Agreement explicitly authorized IATA to act on behalf of its members.

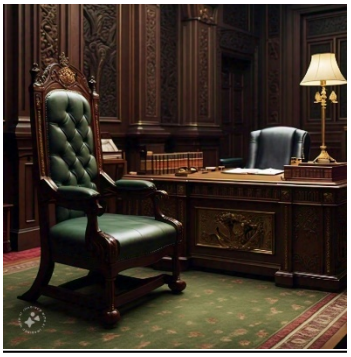
Conclusion

The court concluded that STPL's objections lacked merit and were primarily aimed at defeating the arbitral process. It emphasized that enforcement courts cannot overturn awards or revisit findings of supervisory courts. Accordingly, the petition for enforcement was allowed, reaffirming India's commitment to honoring foreign arbitral awards under established legal principles.

ANALYSIS: VEDANTA LIMITED V. SHREEJI SHIPPING

ARB.P. 342 OF 2023

2024 SCC ONLINE DEL 4871



INTRODUCTION –

The advent of alternative methods of dispute resolution has widely ameliorated the rigmaroles of litigation before courts. Particularly, with commercial entities widely preferring arbitration for resolution of disputes, there have been and will be newer ambiguities in the terms of contracts. One such question posited before the Hon'ble Delhi High Court in the aforementioned case is whether designation of multiple seats of arbitration amounts to uncertainty under Section 29 of the Indian Contract Act, 1872. The Hon'ble High Court has delved into the said issue in the aforementioned case, which will be analyzed by the Researcher as hereunder.

FACTS:

The Arbitration Petition named above was filed by the Petitioner under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of arbitrator in accordance with Clause 10 of the Purchase Order.

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In the present case, the parties executed a Letter of Intent dated 17/06/2021, and a Purchase Order dated 21/06/2021, bearing No. 4800019319. Subsequently, the parties also entered into Standard Terms and Conditions for Transport Agreement to the Purchase Order. Under Clause 10 of the Purchase Order, the parties have agreed to resolve disputes by way of mediation, failing which, the parties may refer the dispute to arbitration, with the seat of arbitration being Goa, Karnataka and Delhi as seats of arbitration.

Due to dispute with respect to the amount contracted for transportation and the amount actually transported, the Petitioner invoked the arbitration clause and approached the Hon'ble High Court of Delhi under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of arbitrator/s.

ISSUES:

The issues for adjudication before the Hon'ble High Court of Delhi are as below –

1. Whether there is an Arbitration Agreement between the Parties?

2. Whether the Arbitration Clause in the Purchase Order is hit by Section 29 of the Indian Contracts Act, 1872?

LAW:

Apart from the question whether there is an arbitration agreement, the Hon'ble High Court of Delhi is seized of a significant question of law involving interplay between the Arbitration and Conciliation Act, 1996 and the Indian Contract Act, 1872.

It may be pertinent at this juncture to underscore that Section 29 of the Indian Contract Act, 1872 makes an agreement void for uncertainty. In the present case, Clause 10 of the Purchase Order designates Local Jurisdiction of Goa, Karnataka and/or Delhi as the seats of arbitration.

ANALYSIS:

The Ld. Counsel for Petitioner contends that the Purchase Order executed by the Petitioner involves an arbitration clause and therefore the dispute shall be referred to arbitration.

The Ld. Counsel for Respondent contends that the Purchase Order which came to be delivered to the Respondent through post was delivered subsequent to commencement of unloading / handling of coal. Further, the Ld. Counsel also contended that the said Purchase Order was not signed by the Respondent, by reason of which the said Purchase Order was not binding on the Respondent.

The second contention of the Ld. Counsel for Respondent is that Clause 10 of the Purchase Order designates three different cities as seats of arbitration and therefore is hit by Section 29 of the Indian Contract Act, 1872.

As regards the 1st issue of whether there is an arbitration agreement, the Hon'ble Court was of the opinion that at the stage of Section 11 Petition, the Court's jurisdiction is limited to prima facie existence of arbitration agreement. Referring to the wide scope of Section 7 of the Arbitration and Conciliation Act, 1996, the Court opined that the Purchase Order containing arbitration clause was brought to the notice of the Respondent via post and email, hence, the same is suggestive of prima facie existence of arbitration agreement.

As regards the 2nd issue, the Court, turning down the contention of the Respondent, opined that designation of three different ports of cities as seats of arbitration merely vests with the parties, the autonomy to

choose one of the three as the seat of arbitration.

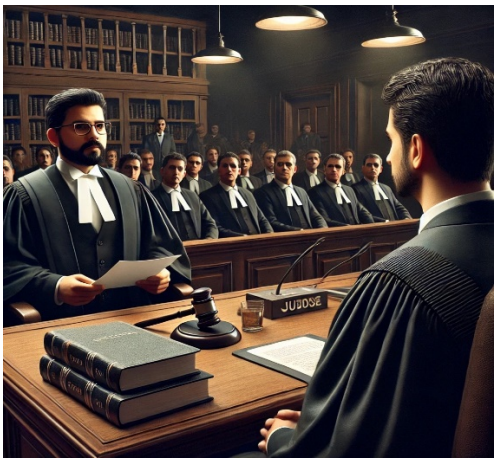
In conclusion, the Court has allowed the Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996.

CONCLUSION:

Arbitration being the most preferred alternative dispute resolution mechanism, is fraught with newer ambiguities. One such conundrum before the Hon'ble High Court was whether designation of more than one location as the seat of arbitration is hit by Section 29 of the Indian Contract Act, 1872. The Hon'ble Court, observed that the Arbitration Clause which designates more than one city as the seat of arbitration, vests autonomy with the parties to choose a seat of arbitration. However, in the opinion of the author , the said precedence may lead to practical difficulties, where parties tend to choose different cities as seats of arbitration. One of the implied observations may be that in such a case, the High Court in which Section 11 Petition is filed shall become the seat of arbitration.

CENTRAL ORGANISATION FOR RAILWAY ELECTRIFICATION V. M/s ECI SPIC SMO MCM (JV) A JOINT VENTURE COMPANY:

By Suhas M S



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INTRODUCTION:

Appointment of arbitrators has been one of the most haunting stages of arbitration. Several ambiguities surrounding the appointment of arbitrators are restriction of panel of arbitrators, unilateral appointment clause, nomination of persons with disqualification under Schedule V or VII of the Arbitration and Conciliation Act, 1996 ("The Act"). One such ambiguity at the doors of the Hon'ble Supreme Court is regarding unilateral appointment of arbitrator/s by a public sector undertaking. The Researcher attempts to delve into the observations of the Constitution Bench of the Hon'ble Supreme Court.

BACKGROUND:

In light of the 246th Law Commission Report, Voestalpine , TRF Ltd. , and Perkins Eastman judgements, the Three Judge Bench of the Hon'ble Supreme Court in Central Organization for Railway Electrification v. M/S ECI SPIC SMO MCM (JV), referred the matter to the Hon'ble Constitution Bench.

The issue in the present matter before the Three Judge Bench of the Hon'ble Supreme Court was whether the appointment of retired railway officers as arbitrators was valid?

The Three Judge Bench of the Hon'ble Supreme Court, referring to Voestalpine judgement, observed that appointment of former employees as arbitrators. Further, differentiating from TRF and Perkins Eastman judgements, the Hon'ble Court observed that the right of the General Manager of Central Organization for Railway Electrification (COER) to nominate arbitrators was counter-balanced by the right of the Respondents to choose two arbitrators out of four.

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Following the judgement of the Hon'ble Three Judge Bench, a coordinate Bench of the Supreme Court in Union of India v. Tantia Constructions Limited , dissenting from the observation of the Hon'ble Three Judge Bench in the present case, referred the present matter to the Hon'ble Constitution Bench.

ISSUES:

Surrounding the issues of unilateral appointment, the Hon'ble Supreme Court enlisted the following issues for consideration –

Whether an appointment process which allows a party who has an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel is valid in law;

Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators; and

Whether an appointment process in a public-private contract which allows a government entity to unilaterally appoint a sole arbitrator or majority of the arbitrators of the arbitral tribunal is violative of Article 14 of the Constitution.

LAW:

Whilst analyzing the provisions of the Arbitration and Conciliation Act, 1996, such as Section 11, 12, and 18, to name a few, and the Indian Contract Act, 1872, the Hon'ble Court has dealt with a plethora of principles underlying the very Arbitration and Conciliation Act, 1996.

Some of the principles discussed in the Judgement are –

Principle of Equality;

Party Autonomy;

Principles of Natural Justice;

Doctrine of Bias; and

Principle of Unconscionability.

ANALYSIS:

Battery of lawyers appeared in the matter and advanced submissions. In brief, the submissions against the practice of unilateral appointment of arbitrators, was that unilateral appointment of arbitrators is anti-thetical to the independence, impartiality of arbitrators, and is suggestive of reasonable apprehension of bias. Further, as regards counter-balance test, the Ld. Counsel submitted that the counter-balance test is applicable when both the parties have unfettered and equal choice in appointment of arbitrators and not in situations, where a party is constrained to select from a pre-selected list curated by one party.

On the other hand, submissions were made that appointment of arbitrators from a list curated by one party is contemplated under Section 11(2) of the Act. Further submissions were made differentiating the nature and ambit of Section 12 of the Act from the issue of biasness and partiality in appointment of arbitrators.

Furthermore, rebutting the principle of equality referred to by the opposing counsel, Ld. SG and other appearing for state entities submitted that principle of equality is not applicable at the stage of appointment of arbitrators, and is limited to treatment of parties equally during the proceedings. One of the most significant submissions from the Counsel appearing for the state entities, was that the observation in Voestalpine was correct and the panel of arbitrators curated by the PSUs is broad-based.

In view of the submissions, the Hon'ble Court, in reference to a plethora of judgements observed that unilateral

appointment of arbitrators is invalid. The Court also observed that maintenance of a panel of arbitrators is not barred under the guise of public policy considerations. However, such panel shall not lead to lack of balance between the parties in appointment of arbitrators. The Hon'ble Supreme Court further observed that party autonomy shall mean to start form the stage of appointment of arbitrators, principle of unconscionability, public policy considerations under the Indian Contract Act, 1872 and Article 14 of the Indian Constitution.

CONCLUSION:

There has been wide conundrum surrounding unilateral appointment of arbitrators. The Hon'ble Supreme Court has crystalized the issue at hand by articulating a balanced view. The precedent set forth in the present case helps Indian arbitration in the long run owing to several practical difficulties a PSU may face. One of the methods of ensuring a balanced approach in cases where panel of arbitrators is curated by one of the parties is when the panel is broad and the party has sufficient autonomy to choose one among them. Therefore, in the opinion of the author, the judgement delivered by the Hon'ble Supreme Court is landmark and appreciable.

IMPLICATIONS OF INSTITUTIONAL FRAMEWORK, PROCEDURAL CHANGES, AND CONFIDENTIALITY ENHANCEMENTS IN ARBITRATION

By Daeinn AP

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The Arbitration Council of India (ACI) has been introduced as a key element in the revised framework for arbitration. It is established by a government notification and comprises a diverse group of members, including a retired judge from the Supreme Court or High Court, an arbitration practitioner nominated by the Central Government, an academic with expertise in arbitration, and representatives from the legal and economic sectors. The ACI's primary role is to evaluate and grade arbitral institutions based on criteria such as infrastructure, arbitrator quality, and adherence to timelines. However, this setup limits party autonomy, particularly in international arbitration, by involving government oversight in the selection of arbitral institutions. The courts are now restricted to choosing from ACI-endorsed institutions, preventing the designation of globally recognized institutions without undergoing ACI's grading process.

Significant changes have been made to the process of filing for interim applications. Under the revised law, applications for interim measures can now only be filed while the arbitration proceedings are still ongoing. Previously, these applications could be made even after the arbitral award was passed. This adjustment aims to streamline the process and reduce unnecessary delays after the conclusion of arbitration.

Another notable reform involves the time limits for filing pleadings. The Act now mandates that statements of claim and defense must be filed within six months of the arbitrators receiving their notice of appointment. This time frame is designed to ensure that arbitration proceeds efficiently without undue delays, fostering a quicker resolution to disputes.

The timeline for passing awards has also been adjusted. Previously, there was an 18-month window for completing the arbitration process, which in some cases proved to be too short. The amended rules extend the time limit for passing an award to 12 months from the date of the arbitrator's appointment,

rather than from the date of the award itself. This extension allows for a more flexible approach, reducing judicial interference due to missed deadlines.

In relation to the setting aside of arbitral awards, changes have been made to Section 34 of the Arbitration and Conciliation Act. The language has been refined to limit the scope of judicial intervention in arbitral awards. The amendment removes inconsistencies that arose in some High Courts, where civil suit procedures were applied to arbitration cases. The revised approach aligns with the Supreme Court's judgment in the case of *Fiza Developers & Inter-Trade P. Ltd. v. AMCI(I) Pvt. Ltd.*, reinforcing that arbitration should not be treated in the same manner as civil disputes.

The insertion of a non-obstante clause aims to restrict the scope of appeals under the Commercial Courts Act, thereby limiting opportunities to prolong disputes. This change is intended to prevent unnecessary delays in the resolution of commercial cases and to make arbitration a more effective mechanism for dispute resolution.

Finally, the confidentiality of arbitration proceedings has been strengthened with the introduction of Section 42A, ensuring that the process remains private. However, the amendment lacks an opt-out provision, which is commonly practiced globally, allowing parties the discretion to keep the award from being published if they so choose. This omission may limit the flexibility that parties have in managing the confidentiality of their arbitration proceedings.

IMPACT OF THE 2019 AMENDMENT TO THE ARBITRATION AND CONCILIATION ACT: STRENGTHENING INSTITUTIONAL ARBITRATION AND REDUCING JUDICIAL INTERVENTION

By Daeinn AP

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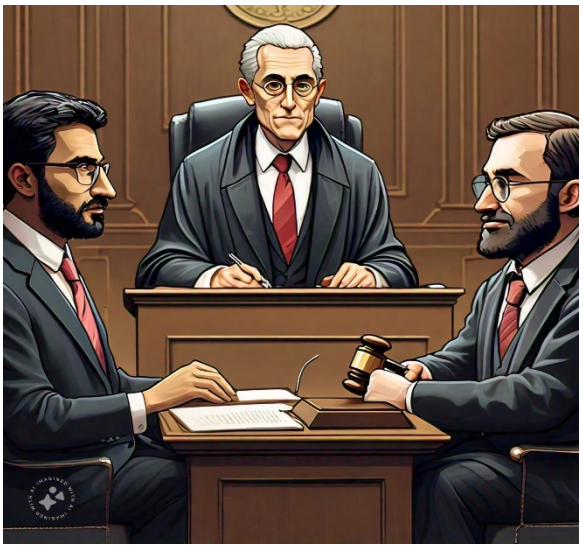

The 2019 Amendment to the Arbitration and Conciliation Act and every other Amendment made earlier to Arbitration and Conciliation Act, 1996 (hereinafter "ACA") was mainly with the objective of making the entire process of Arbitration with better party autonomy and minimal judicial intervention to ensure expeditious settlement of Arbitrable disputes, in the backdrop of 1991 economic reforms and the globalization trends of the contemporary world also necessities "ease of doing business" as an essential macro economy policy of any nation which is directly proportional to the Dispute settlement mechanism of the respective countries.

The primary focus of the 2019 Amendment was to push India towards becoming the hotspot of commercial arbitration (domestic and international). In perseverance of this objective and to address the lacunas in the earlier Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter 2015 Amendment), the Ministry of Law and Justice constituted a High-Level Committee which Justice B.N. Srikrishna headed.

The key highlights of the Committee recommendations and the incorporated changes to the ACA are as under:

1) Establishment of Arbitration Council of India.

2) Omission of Section 11 (6A), which was inserted vid. 2015 Amendment.

3) Amendment concerning the time of Arbitration and maintaining confidentiality.

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Establishment of Arbitral Institution and its Scope

The 2019 Amendment revoked Sub-Section (6-A) and (7), bolstering institutional arbitration in India. The Amended ACA Section 11(6) enables Arbitral Institutions to handle arbitrator Appointments As per the 246th Law Commission Report , Section 11 Amendment limits judicial review to a dual[1] test of looking into "existence" or "null and void" status, i.e., existence and validity of an Arbitration Agreement. If the 'judicial authority' confirms the agreement existence, the dispute heads to arbitration, leaving validity for the Arbitral Tribunal. In contrast, the judicial decision is conclusive if the agreement is deemed non-existent. However, the 2015 Amendment included the existence aspect and not the validity. This exclusion of the law commission recommendation was questioned in Duro Felguera S.A. vs. Gangavaram Port Ltd , and the court observed in light of the[2] rulings in SBP vs. Patel Engineering and National Insurance Co. Ltd. v. Boghara Polyfab Pvt Ltd.[3], the power granted by Section 11(6) of the 1996 Act had an extensive scope. This stance[4] persisted up to the revision that was implemented in 2015. Following the modification, the Courts will only be looking to see if an arbitration agreement actually exists. The legislative objective and purpose generally seek to limit the Court's involvement in selecting the arbitrator, and Section 11(6A) reflects this intention.

From the series of conflicting judgements by the supreme court and the high court on the need for judicial review of Section 11(6A) it is crucial to note the findings of the Delhi High Court even while relying on Mayavti trading private limited V. Praduyut Deb Berman went on to expand its[5] scope to include both existence and validity of the arbitral agreement (Example Devi Fatepuria

[1] Report No. 246, Law Commission of India (August 2014).p.20.

[2] 2017 (9) SCC 764
[3] 2005, 8 SCC 618
[4] 2009, 1 SCC 117
[5] 2019 (8) SCC 714

Case[6] and Unique reality private limited case[7]). The 2019 amendment omits this provision in order to reduce judicial interference and conflicting decisions in this regard. Thereby this amendment also emphasizes on institutional arbitration. Whereupon reference of the matter to the arbitral institution by the conserved court, it is the arbitral institution that appoints the arbitrator.

This categorically implies that the scope of Courts is limited towards identifying the existence of arboreal agreement, and every other primary questions, such as arbitrability, validity etc, is to be decided by the tribunal. The same has been reiterated in the SC in Uttarakhand Poorv Sinkey Kalyannigam V. Northern coal field limited.[8]

In conclusion, the 2019 Amendment to the Arbitration and Conciliation Act marks a significant shift towards enhancing institutional arbitration in India, reducing judicial intervention, and promoting party autonomy in the dispute resolution process. By establishing the Arbitration Council of India and removing the provisions that previously allowed extensive judicial review, the Amendment streamlines the arbitration process and strengthens India's position as a global hub for commercial arbitration. This move is expected to not only improve the efficiency and effectiveness of arbitration in India but also attract international businesses by ensuring a more predictable, transparent, and less court-involved arbitration environment.

[6] Arb Petition no. 339 of 2019
[7] Arb Petition no. 432 of 2019
[8] 2020 (2) SCC 455 10

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Mr. Raj Panchmatia
Mr. Naushad Engineer
Mr. Shikhil Suri
Mr. Satyan Israni
Mr. Vyom D. Shah
Ms. Sneha Phene
Mr. Rishi Kumar Dugar

(*Please send in your entries to legal@imcnet.org.*)

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Note from the editorial: Credits to all the members for encouraging and offering suggestions for this bulletin. Thank you for making this possible. Though the issue is being circulated in October 2024, we have covered recent developments from previous months.

Committee Members for Bulletin:

Mr. Prashant Popat

Ms.Sneha Phene

Mr.Rishi Kumar Dugar