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FUTURE OF ARBITRATION IN INDIA

ABSTRACT

This research paper “Future of arbitration in India” aims at understanding the increasing importance and growth of it in India, being a global powerhouse, its interest lies with the global business community. This paper discusses the changes brought in the arbitration and conciliation act of 1986 and how certain judicial pronouncements affected it. Further it deals with how the ongoing pandemic has impacted the arbitration proceedings and how the clause of emergency arbitration should be used during the same.

INTRODUCTION

Arbitration is a private dispute resolution where a dispute with the agreement of the parties is settled by an individual arbitrator or more and their decision is binding upon both the parties. The parties at dispute allow the arbitrators or the tribunal to decide for them.

The Arbitration and Conciliation Act, 1986 governs the arbitration procedure in India. It is based upon the lines of United Nations Commission of international trade and law with an aim to

modernize Indian arbitration laws and assimilate it with worldwide practices and making India a global hub for Arbitration.

Arbitration has acquired a great significance in India these days and individuals are more drawn towards this because of its practical and less tedious interaction. In starting stages, the rate of development for intrusion was extremely delayed as the vast majority of individuals were ignorant about the benefits it has to bring to the table over conventional prosecution measure. There has been huge improvement in the field of arbitration from the Arbitration and Conciliation act, 1996 to the amendments made in 2015. Domestic development in arbitration has been conceivable because of the worldwide development like UNCITRAL Model Law which enables the countries to be updated with the changes occurring in the area of arbitration. There are a few arrangements which were added and revised just to keep the national law in standard with international standards. The most recent change in arbitration occurred in 2019 as The Arbitration and Conciliation Amendment Act, 2019. Via revision in 2019 ACI (Arbitration Council of India) has decided to build up the arbitral tribunals and settle on issue like minimum qualifications needed for appointment of an arbitrator and characterizing a few different guidelines identified with the arbitrator. Additionally, the high courts and The Supreme Court of India has been awarded with the power to assign the arbitral tribunals which will be reviewed by the ACI

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ARBITRATION AND CONCILIATION ACT

The Arbitration and Conciliation (Amendment) Act 2021 is a new expansion to the pro-arbitration point of view. This is the third time the Act of 1996 has been revised over the most recent six years, showing the administrative longing to change the Act of 1996 and make India a more arbitration-friendly jurisdiction. The main change in the Act of 2021 is an alteration to Section 34 with respect to the automatic stay of grants made under the Principal Act. Under the current framework, a party can apply to the Court for the setting aside of an arbitral judgment under Section 34. However, following the 2015 change to the Act, an automatic stay on the award's execution would not be acquired only by filing an application to set it aside.

In *Prakash Industries Limited v. Bengal Energy Limited and Ors*¹ case the court was approached to analyze the extent of modification made to an arbitration application submitted under Section 34² of the Arbitration Act. The court stated that what should be resolved is whether the grounds sought to be added through an amendment are new and autonomous grounds that didn't have a foundation in the first Section 34 application; this implies that each case should be settled on the nature of the revisions made. As directed by the Calcutta High Court, the rules for accepting or dismissing an adjustment to existing reasons in an arbitration case is whether the proposed grounds would involve filing a new motion for setting aside the dispute. Subsequently, the court dismissed the revision application, thinking that the new grounds didn't have a foundational basis in the current appeal, the petitioner couldn't enter through the 'enhancement' course, as guaranteed, and that if the enhancement plan fails, the petitioner has no other statutory provision under the existing law.

The 2021 Amendment made noteworthy improvements by adding a provision under section 36(3)³ to guarantee that if the courts are prima facie satisfied by the case based on either the arbitration agreement that is the basis of the award; or the award was influenced by fraud or corruption, the award will be upheld. In the case of *Mohini Electricals ltd v. Delhi Jal Board*⁴, the Delhi high court stated that an arbitrator has no legal rights to direct that the stamp duty is to be paid in a particular timeframe. Consequently, there is no obligation to pay the stamp duty at the time of articulating the award.

In circumstances where an application under Section 36(2)⁵ of the Act is awaiting adjudication before the court, the candidates will be needed to file new applications as per the new grounds. Unless the courts pay heed to this new alteration all alone and dispose it with filing of new entries, this is probably going to result in delays and extra costs. In spite of the use of words, it was also asserted that extortion and corruption under Section 34 were fundamental since the latter didn't offer an "automatic stay" of the award.

¹Prakash Industries Limited v. Bengal Energy Limited and Ors. 2020 SCC OnLine Cal 971: AIR 2020 Cal 279.

² The Arbitration and Conciliation (Amendment) Act, 2021, §34, no. 3, Acts of Parliament, 2021(India)

³ The Arbitration and Conciliation (Amendment) Act, 2021, §36(3), no.3, Acts of Parliament, 2021(India)

⁴ Mohini Electricals ltd v. Delhi Jal Board, 2021 SCC OnLine Del 3506.

⁵ The Arbitration and Conciliation (Amendment) Act, 2021, §36(2), no.3, Acts of Parliament, 2021(India)

The two amendments were interconnected so they were addressed together. Section 43J⁶ Of the main act which defines the criteria, eligibility and standards for the arbitrator accreditation were included in the 2019 Amendment. The Eighth schedule of the act offers a list of qualities That an arbitrator must possess. Section 43J was substituted in the 2021 amendment and the eight schedule of the main act was eliminated. Therefore, now the parties can appoint arbitrators with or without credentials

This modification in the act would provide the Indian arbitration council more freedom and would encourage institutional arbitration. The modified section 43J states that the arbitrator qualifications would be based on regulations that are defined under Section 2(1)(j)⁷. The amendment of section 43J has given the commission the authority to examine the appointment of foreign arbitrators. It restores the concept of party autonomy which in turns allows the parties to choose arbitrators irrespective of their credentials.

The modification in section 43J has the ability to attract foreign arbitrators which would be a huge achievement in the field of Indian arbitration. It allows arbitral tribunal to employ numerous ADR techniques throughout the arbitral processes to simplify conflict settlement and make it more successful.

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COVID 19 LOCKDOWN AND ITS IMPACT ON ARBITRATION

Regardless of the expanding limitations and complete lockdown in India, critical arbitral procedures might in any case be directed essentially through video conferencing. Such innovation for virtual activities implies COVID-19 won't hinder intervention from continuing.

Section 19⁸ of the Arbitration and Conciliation Act,1996 states that, "*the arbitral tribunal shall not be bound by the Code of Civil Procedure of 1908 or the Indian Evidence Act of 1872. The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.*"

⁶ The Arbitration and Conciliation (Amendment) Act, 2021, §43J, no.3, Acts of Parliament, 2021(India)

⁷ The Arbitration and Conciliation (Amendment) Act, 2021, §2(1)(j), no.3, Acts of Parliament, 2021(India)

⁸ The Arbitration and Conciliation (Amendment) Act, 2021, §19, no.3, Acts of Parliament, 2021(India)

Although the Arbitration and Conciliation Act of 1996 is quiet on the conduct of assertion procedures through video conferencing, Section 19 unquestionably permits the arbitral tribunal a similar technology. The arbitral tribunal can approve all the parties to the arbitration procedures to record pleadings through electronic mail and conduct meetings by means of video conferencing to maintain social distancing.

Indeed, even the Indian Council of Arbitration (ICA) suggests that the arbitral tribunal might direct arbitration procedures by videoconference, by phone or any other means of communication. During International Commercial Arbitration, virtual procedures, for example, video conferencing are already an established practice; subsequently, domestic arbitration procedures should also adopt this method to carry out arbitration conveniently in the covid situation.

Dispute Resolution goals are progressing all through the world and video conferencing can be utilize to record testimonies of witnesses. However, to execute the same to conduct the arbitration proceedings explicit orders would be required to be given under Section 19 when arbitration procedures start.

We can't deny that different nations are in the process or have resorted to digital arbitrations. If not switched to digital arbitration, then the litigants might face a lot of difficulty in doing their jobs and the authorities might also face severe challenges.

That is the reason technology transformation id the need of the hour. It offers us the chance to continue going effectively by utilizing the technology that permits us to work distantly during the Covid-19 pandemic. Since the spreading of COVID-19 has yet not been controlled, the lockdown might fluctuate in the future. we need to adhere to the fact that employing this new technology would help us to carry out the arbitration proceedings very effectively.

PROVISION OF EMERGENCY ARBITRATION

The emergency arbitrator provision can be utilized in matter of urgency during Covid 19, the recourse to this provision was taken by the parties. But in India there is ambiguity in the law with regard to the enforceability of emergency awards and orders in arbitrations in India. The LCI in its 246th Report had suggested perceiving the idea of emergency arbitrator by enlarging the definition

of arbitral tribunal under section 2(d)⁹ of the ACA to incorporate emergency arbitrators. This proposal was not incorporated in the 2015 Amendment Act. The equivalent was additionally suggested by the Sai Krishna Committee Report.

The issue resurfaced in the recent dispute between Amazon, Future Group and Reliance, where Amazon obtained an interim order from an emergency arbitrator under the SIAC rules. It restrained the future group entities from proceeding with Rs. 24,700 crore deal to monetize in retail business. Issues were raised regarding the interim order passed by the emergency arbitrator and Reliance states its motive to go ahead with the sale.

CONCLUSION

In spite of the fact that Government has attempted its level best to build the Arbitration law in India yet there are still a few inconveniences which could discourage individuals from picking arbitration for settlement of their question. These drawbacks incorporate matters like absence of mindfulness about the arbitration strategy among individuals, the principles in regards to restricting of an arbitral award are not severe in India. In addition, there isn't time limit set for finishing of arbitral procedures. The main concern is the situation of arbitral tribunals and arrangement of arbitration which is an extremely tiring cycle. Additionally, the way that arbitral procedures are practical isn't totally evident as the charges of the judges are exceptionally high which keep individuals from inclining toward mediation over some other case measure. This can't be disregarded that conciliation tremendously affect global relations and business thus, it is exceptionally important to address and ignore the defects and make the assertion smooth and ideal interaction.

Regardless of having a few imperfections, there is no question that arbitration has end up being truly enduring cycle in the field of law and it will keep on developing with time.

⁹ The Arbitration and Conciliation (Amendment) Act, 2021, §2(d), no.3, Acts of Parliament, 2021(India)