

SALIENT FEATURES OF THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2019

INTRODUCTION

The Arbitration and Conciliation Act, 1996 ("**the Act**") contains provisions to deal with domestic and international arbitration, and defines the law for conducting conciliation proceedings. There has been a manifold increase in the number of commercial disputes due to globalisation, industrialisation and liberalisation. Arbitration has increasingly become a preferred option to settle commercial disputes globally as well as in India. Therefore, it was the need of the hour to reform the Act to achieve an effective and efficient arbitration system for commercial dispute resolution.

Thus, with a view to make India a hub of institutional arbitration for both domestic as well as international arbitration and to keep pace with international arbitration practices, certain amendments are proposed in the Arbitration (Amendment) Bill, 2018. For this purpose, The Arbitration and Conciliation (Amendment) Bill, 2018 was introduced in the Lok Sabha on 18th July, 2018 and was passed by the Lok Sabha on 10th August, 2018 and was pending in Rajya Sabha. However, the Sixteenth Lok Sabha was dissolved and the Bill lapsed. Hence, the 2018 bill with minor changes was introduced as the Arbitration and Conciliation (Amendment) Bill, 2019 ("**new bill**") on 15th July, 2019 and was passed by Rajya Sabha on 18th July, 2019.

The main object of the amendments under the new bill is to strengthen institutional arbitration in the country, by establishing an independent body for grading of arbitral institutions and accreditation of arbitrators, etc. Though arbitral institutions have been working in India, they are not preferred by the parties, as the parties prefer ad-hoc arbitration or arbitral institutions located abroad. A large number of these arbitration cases are conducted in countries such as Singapore, the UK and France. The amendments under the new bill seek to minimise the need to approach the Courts for appointment of arbitrators and make India a robust centre for institutional arbitration both domestic and international.

SALIENT FEATURES OF THE NEW BILL

- **AMENDMENT TO SECTION 11 (APPOINTMENT OF ARBITRATORS)**

The amendment seeks to change the present system of appointment of arbitrators by the Supreme Court or High Court, to a system where the arbitrators shall be appointed by the "arbitral institutions" designated by the Supreme Court or High Court;

Under the new bill, the appointment of an arbitrator shall be made on an application by the party, to the arbitral institution designated by the Supreme Court

in case of international commercial arbitration, or by the High Court in case of arbitrations other than international commercial arbitrations, as the case may be. The Supreme Court and High Court shall have the power to designate arbitral institutions, which have been graded by the Arbitration Council of India. However, in the case of those High Courts within whose jurisdiction graded arbitral institutions are not available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of an arbitral institution.

An application made by a party for appointment of an arbitrator shall be disposed of by the arbitral institution within a period of thirty days from the date of service of the notice to the other party, thereby disposing of the applications in an expeditious manner.

The amendment eliminates the need to file a formal application for appointment of an arbitrator before the court, thus speeding up the process by reducing the burden from the court and bringing down the inordinate delays occurring in dispute resolution.

• **AMENDMENT TO SECTION 23 (STATEMENTS OF CLAIM AND DEFENCE)**

Under the amendment the statement of claim and statement of defence shall be completed within a period of six months from the date the appointment of an arbitrator, thus creating a strict timeline for completion of pleadings for the purpose of section 29A, for ensuring a speedy disposal of arbitral proceedings.

• **AMENDMENT TO SECTION 29A (TIME-LIMIT FOR ARBITRAL AWARD)**

The award in matters other than international commercial arbitrations shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.

However, the awards in the matter of international commercial arbitrations shall be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings.

The amendment seeks to change the commencement of the timeline from the date of the '*constitution of the tribunal*' to the date of '*completion of pleadings*'. The completion of pleadings under the amendment shall mean filing of statement of claim and statement of defence.

Further the amendment seeks to relax the time limit for completion of the international commercial arbitration, because of the perceived difficulty of working within the time frame of twelve months in many international commercial arbitrations.

• **INTRODUCTION OF SECTION 42A (CONFIDENTIALITY OF INFORMATION)**

Under the amendment the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except where its disclosure is necessary for the purpose of implementation and enforcement of the award. The amendment mandates that the arbitrator, arbitral institution and the parties shall keep confidentiality of all arbitration proceedings. It binds the parties to an arbitration agreement to very broad confidentiality obligations with a single exception.

• **INTRODUCTION OF SECTION 42B (PROTECTION OF ACTION TAKEN IN GOOD FAITH)**

The amendment seeks to protect the arbitrator/s from any suit or other legal proceedings for any action or omission done in good faith in the course of arbitration proceedings. The immunity to the arbitrators will ensure independence of the arbitrators while conducting the arbitral proceedings without any fear of proceedings ensuing therefrom.

• **INTRODUCTION OF PART IA (ESTABLISHMENT OF ARBITRATION COUNCIL OF INDIA "ACI")**

The amendment seeks for the establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of promoting and encouraging arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

The functions of Arbitration Council of India include: (i) framing policies, governing the grading and reviewing the grading of arbitral institutions and arbitrators; (ii) providing accreditation of arbitrators; (iii) holding training, workshops and courses in the area of arbitration in collaboration with law firms, law universities and arbitral institutes; (iv) make recommendations to the Central Government on various measures to be adopted to for easy resolution of commercial disputes; (v) establishing and maintaining depository of arbitral awards made in India; (vi) making recommendations regarding personnel, training and infrastructure of arbitral institutions; and (vii) such other functions as may be decided by the Central Government.

The Arbitration Council of India shall work towards promoting and encouraging arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

• **INTRODUCTION OF SECTION 87 (EFFECT OF ARBITRAL AND RELATED COURT PROCEEDINGS COMMENCED PRIOR TO 23RD OCTOBER, 2015)**

Unless the parties otherwise agree, the amendments made to the Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall (a) not apply to the (i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015; (ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;

Uncertainty persisted about whether the Amendment Act applied to existing arbitrations and arbitration related court proceedings that commenced before the Amendment Act came into effect. The amendment clarifies that unless parties agree

otherwise, the amendments made to the Act by the Arbitration and Conciliation (Amendment) Act, 2015 are applicable only to the arbitral proceedings which commenced on or after 23rd October, 2015 and to such court proceedings which emanate from such arbitral proceedings.

• **INTRODUCTION OF EIGHTH SCHEDULE (QUALIFICATIONS NAD EXPERIENCE OF ARBITRATOR)**

The schedule under the new bill prescribes the qualifications and experience required for appointment of a person as an arbitrator which include (i) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate, or (ii) is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of practice experience as a chartered accountant; or (iii) is a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of practice experience as a cost accountant; or (iv) is a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary; etc.

A person shall not be qualified to be an arbitrator unless he has the qualification and experience as laid down under the schedule. The nature of minimum qualifications prescribed effectively implies that professionals other than that which are laid down under the schedule will not be able to act as arbitrators in an India seated arbitration. Therefore, the qualifications, experience and the general norms for appointment of an arbitrator will impose a certain degree of limitation on the parties to choose an arbitrator.

CONCLUSION

The amendments under the new bill seek to aim to promote and encourage arbitration, mediation, conciliation and other alternative dispute resolution mechanism by establishment of the Arbitration

Council of India which will maintain uniform professional standards in respect of all matters relating to arbitration by laying down the arbitral norms and accreditation of the arbitrators. Further, the amendment seeks to provide a speedy disposal of the arbitral proceedings, by laying down a strict time line for completion of the domestic arbitral proceedings and making arbitration process more approachable and cost effective, with minimum court intervention. Although the amendment seeks for a speedy disposal of the arbitral proceedings, unfortunately nothing has been done qua enforcement of arbitral awards under the new bill thus to an extent frustrating the object of the amendment, in as much as though the arbitral proceedings may be concluded with great speed, the enforcement of an arbitral award can take years.

The new bill also has some lacunas such as, in case when the existence of the arbitration agreement is in

dispute or when the arbitration agreement is unduly stamped, would the arbitral institution have powers to decide upon the same; the time limit for completion of arbitral proceedings which shall be twelve months from the completion of pleadings i.e. from filing of statement of claim and statement of defence, however, in case there are any amendments to the statement of claim and statement of defence, from which date will the time limit commence; and how would the confidentiality of all arbitral proceedings extend to the proceedings filed under section 34 of the Act, as once the proceedings are filed with the Court, the same become part of public record. It is only a matter of time before the courts would have to decide such issues.

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.