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A Study on the Law of Arbitration in India

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ABSTRACT

As we know that globalization is increasing, and the commercial market is also growing, so it gives rise to disputes and conflicts among the people regarding the contracts. Apart from Litigation, there are many other ways to resolve disputes, and one such method is Arbitration. In Arbitration, the case is settled by the mutual entity known as the arbitrator. Arbitrators are the individuals that are tasked to resolve the disputes among parties as autonomous persons. The process to settle the cases through Arbitration in India is increasing a lot as we know that the Supreme Courts, High Courts, and District Courts are overflooded with the cases that are not settled yet, and Arbitration is a very quick and effective way to settle the disputes. So this paper will allow you to analyze What is Arbitration? What are its advantages disadvantages? How the cases can be settled through Arbitration and Which type of cases can be solved with the help of Arbitration and finally author has analyzed the present law of Arbitration prevailing in India.

***Keywords**: Arbitration, Arbitrator.*

I. INTRODUCTION

(A) Definition

Arbitration is a dispute resolution process through which the parties to the dispute sort the dispute through the third person or party that is known as the arbitrator. **According to Rene David, a French Professor of Law,** "**Arbitration can be defined as the settlement of a question of a dispute between two or more parties by a third party or parties. These private parties gain their power from the agreement between the parties and not from the state**." Arbitration is the most systematic and cooperative means to settle conflicts that result from domestic and foreign contractual relationships and in which the parties agree mutually to settle the conflict by signing a settlement. Since Arbitration follows a procedure that permits more flexibility, Arbitration as a dispute resolution method is preferred by the parties. These arbitral disputes are better placed to resolve disputes involving transnational laws than National Courts since many of these disputes pertain to transnational laws.

In contrast to other judicial mechanisms, Arbitration is the most reliable and efficient remedy

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to resolve the conflicts between parties as it does not contain lengthy proceedings to follow and requires less time to settle the dispute at a fair cost. Commercial disputes need more time to be resolved in Indian courts, but Arbitration saves a lot of time.

Cases of disputes that can be solved through Arbitration

Now the question arises that what type of dispute can be referred for the adjudication to the Arbitration or what kind of disputes can be resolved through the process of Arbitration. The Supreme Court, in its various judgments, has dealt with the matters that can be settled through Arbitration. In judgment Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., 2011 (5) SCC 532, the Supreme Court held that Arbitration could adjudicate only 3 matters. These matters are:

1. Disputes that are covered by the arbitration agreement.

2. Disputes that are referred by the parties to the Arbitration.

3. Where the dispute falls within the scope of the Arbitration Agreement.

Disputes where the arbitration act is not applicable/non-arbitral disputes

4. Disputes that arise out of criminal offences.

5. Matrimonial Disputes (Divorce, Judicial Separation, Restitution of Conjugal Rights, Child Custody.

6. Guardianship Matters

7. Insolvency and Winding up matters

8. Testamentary matters(Grant of Probate, Letters of Administration, and Succession Certificate)

9. Eviction or Tenancy matters governed by Special statutes

(Part 22 of Judgement SUPRA)

In the above-mentioned disputes, special Courts have been set up, and special Acts have been enacted to provide the procedure of concluding a dispute. However, mediation is a good tool to sort out the dispute about Matrimonial disputes.

II. CONCEPT OF ARBITRATION IN ANCIENT TIMES AND HOW IT EVOLVED

We can trace the concept of Arbitration since ancient times, and it is not a new concept. It is a very old concept that is prevailing in India since the Vedic times, and we can also find proof of it in Pradvivaca Upanishad. In the Vedic period, the Brhadaranayaka Upanishad was the

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first text that discussed this commonly used mechanism of Arbitration. According to that, three separate arbitration bodies are The Puga, The Sreni, The Kula. We have also seen that in villages, the group of the people is chosen by the residents of that village who are known as the Panch, and the disputes that arise in the village are solved in the Panchayats to reduce the need to go to the Courts, and these panchayats conduct proceedings that are informal and did not have technicalities. The orders and decisions given by them were binding on the parties.

As we know that in 1834 legislative council was established in India, and it enacted the Code of Civil Procedure Act 1859. This Act aimed to codify the procedures followed by the Civil Courts. Section 312 to 325 of the code deals with the Arbitration in suits, and Section 326 and 327 discusses Arbitration without the intervention of Courts. But it was not in force in the Presidency Towns till the Code of 1862 came in force.

III. ARBITRATION AND CONCILIATION,1996

This Act was introduced to amend and consolidate the law that relates Arbitration in India that relates to Domestic Arbitration, international commercial Arbitration, and foreign award enforcement. The Act was brought to bring India up to standards of UNCITRAL Model Law of Arbitration and Rules of Conciliation, and it came into force on August 22 1996, but it was effective only where arbitral proceedings started from January 25 1996. This was introduced as it was felt that the previous Act, i.e. Arbitration and Conciliation Act 1940, was inadequate to deal with the evolving role of Arbitration.

The objective of the Arbitration and Conciliation Act, 1996:

- To enhance the speedy, fair, and cost-effective trial.
- To lighten the burden on courts.
- To cut the cost of Litigation.
- To make the Arbitration more effective.

Important sections and procedures of domestic Arbitration in India:-

This Act is mainly divided into four parts:-

PART 1: Arbitration

PART 2: Enforcement of certain foreign awards

PART 3: Conciliation

PART 4: Supplementary Provisions

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Section 2(1)(a) defines the meaning of Arbitration:

Arbitration means any arbitration, whether or not administered by a permanent arbitral institution.

Section 2(1)(e) defines the meaning of the Court.

As per this Section the principal Civil Court of original jurisdiction in a District, and includes the High Court in the exercise of its ordinary Civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of Arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principle Civil Court or any Court of small causes.

Section 2(1)(h) defines the meaning of party.

As per this section, "Party means a party to an arbitration agreement."

Section 3:- This section deals with the mode of written communication in respect of Arbitration proceedings.

Section 7:- This section deals with the Arbitration Agreement.

Section 5 and Section 8

Section 5 of the Arbitration and conciliation act 1996 is reproduced hereunder:

"Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this part."

The Arbitration and Conciliation Act 1996 barred the jurisdiction of the civil courts. Section 8 (1) of the Arbitration and Conciliation act 1996 is reproduced herein below:

Section 8 (1) – A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."

Section 8 (2) – The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof: Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to Arbitration

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Under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

Section 8 (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

Section 8 stipulates that whenever a suit is filed in a civil court, and the cause of action of said suit emanates from a contract in which the parties had voluntarily and willingly agreed to settle the dispute via Arbitration, then, if the essentials of section 8 are met, it is the bounden duty of the Court to refer the parties to the Arbitration.

Section 8 of the Act bars the jurisdiction of the court as well as judicial intervention in the matters which are the subject matter of an Arbitration Agreement. This section mandates that as and when such matter is filed in the court in that case, the court must refer the matter to Arbitration.

In this regard, the reference can be taken from the following case laws:-

It has been held by the Hon'ble Apex Courts as well as by the Hon'ble High Courts of different states in a catena of judgments that **where an arbitration clause exists in the agreement executed between the parties to a contract, the Court has a mandatory duty to refer the dispute arising between the contracting parties to the arbitrator and in such circumstances, the Civil court has no jurisdiction to continue with the suit once an application u/s 8 of the Arbitration and conciliation Act, 1996 has been filed**. As held in **(2003) 6 Supreme Court Cases Page 503 "Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums."**

The other references can be taken from various case laws **As held in 2004(2) RCR (Civil) Page 643: 2004(7) SCC page 288 (Milkfood Ltd. Vs. M/s GMC Ice Cream.) 2005(1) Recent Civil Reports Page 458** (M/s Escorts Finance Ltd. Vs. Dharambir).

Section 8: Section 8 is peremptory - By section, in a case where there exists an arbitration agreement, the Court is under obligation to refer the parties to Arbitration in terms of the arbitration agreement. As held in **2007(1) Recent Arbitration Judgments Page 686 (SC)/2007(1) Apex Court Judgments Page 407** (Agri Gold Exams Ltd. vs. Sri Lakshmi Knits & Wovens)

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Section 7 & 8 of Arbitration Act 1996: Arbitration agreement-Dismissal of application for referring the matter to the Arbitrator- Not Justified- Once the execution of the agreement between the parties containing the arbitration clause was proved, the Court needed to refer the matter to the Arbitrator-**Court is not required to go into the legality or otherwise of the agreement.-Such a question of legality or illegality can be raised before the concerned Arbitral tribunal**. As held in a case titled **M/s Magma Leasing Ltd. Vs. Inder Pal** decided from the Court of Hon'ble Punjab and Haryana High Court in Civil Revision No. 4773 of 2008 on 7-8-2009. **2010(5) Recent Civil Reports Page 322.**

Section 8 & 16: **Applicability of Arbitration Clause-** ***Question of to be decided by the arbitrator and not by Court-Tenancy agreement between parties containing arbitration clause-***Dismissal of application holding that arbitration clause not applicable to vacating the premises by the lessee- **Held, such a controversy not to fall within the realm of court- View of legislative intent to minimize the supervisory role of courts to ensure that intervention of the court is minimal.-**Impugned order set aside. As held in 2007(3) R.A.J. Page 637 (M/s Vimoni India (P) Ltd. Vs. Smt. Ritu Gupta & Ors.

Termination of contract due to a breach - Arbitration agreement - Arbitration – **The arbitration clause does not get perished nor rendered inoperative rather, it survives for resolution of dispute arising 'in respect of' or 'about' or 'under' the contract**- Nothing on record that the pre-requisite conditions of Section 8 are not fully satisfied in the present case - The trial Court in the circumstances ought to have referred the parties to Arbitration as per arbitration clause. As held in **(2009) 10 SCC Page 103** (Branch Manager, M/s Magma Leasing & Finance Ltd. & Anr. Vs. Potluri Madhavilata & anr.)

Interim Measures/Reliefs:

Section 9 & 17:

Sections 9 and 17: During or before the arbitration process, any contracting party is free to apply interim measures. A party has the right to file an application with the court for interim measures under Section 9 and before the arbitral tribunal for interim measures under Section 17. In light of this, it's vital to understand the types of interim relief that courts and arbitral tribunals can grant, as well as their limitations.

A court can grant temporary measures under Section 9 of the Act. It provides for interim measures of security not only before the start of arbitral proceedings and during them but also after the arbitral award has been issued (but before its enforcement). The courts have also held that standards prescribed in the CPC would not apply to proceedings under Section 9 of the

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Act and have held that if a party can merely show that it has a good case on merits, it would be likely to succeed in obtaining an interim relief. In these cases, courts have been motivated by the presumption that denying such interim reliefs would result in injustice to the claimant or make the resulting award unenforceable if such reliefs were not issued.

Scope of Section 9 where these provisions can be invoked:

1. Before the establishment of the Arbitral Tribunal, i.e. before the formation of the Arbitral Tribunal
2. After the Arbitral Award is issued but before it is enforced;
3. When the remedy provided by Section 17 will be ineffective.

A person who can invoke this provision:

Any party to the arbitration agreement can seek interim measures at any time during the arbitral proceedings.

However, only a successful party who is entitled to claim the enforcement of the arbitral award may apply to the court under Section 9 for protection under Section 9 (ii) of the Act after the arbitral award is made.

The party whose plea has been rejected by the Arbitrator/Tribunal in the award has no right to file an application u/s 9 of the Act.

Jurisdiction for applying:

Following the Supreme Court's judgment in Bharat Aluminum Company v. Kaiser Aluminum, the court of the seat of Arbitration will have jurisdiction under the Act.

Section 2(1)(e) of the Act may be either a district court or a High Court with 'original jurisdiction,' which would have the authority to determine the arbitration subject matter as though it were a civil suit.

The relief which can be claimed u/s 9:

A party may apply to the court for interim measures of protection before or during the arbitral proceedings:

1. Appointment of a guardian for a minor or a mentally ill person;
2. If the items are perishable, preservation, temporary custody, or selling is required;
3. Securing the sum of claims is required;
4. Permitting inspection, granting an interim injunction, or appointing a receiver;

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5. Any other relief that the court, in its discretion, deems appropriate given the facts of the case.

Relevant case Laws:

Om Sakthi Renergies Limited v. Megatech Control Limited, MANU/TN/8146/2006.

Delta Construction Systems Ltd., Hyderabad v. M/S Narmada Cement Company Ltd, Mumbai, MANU/MH/0557/2001

National Shipping Company of Saudi Arabia v. Sentrans Industries Ltd., MANU/MH/0004/2004.

Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited, MANU/MH/0268/2013

Effectiveness/Enforceability of Order passed u/s 9 by a Court:

Order can be applied/enforced like any other order issued by the court under any other law. Parties may choose to initiate civil contempt proceedings for willful non-compliance/disobedience of the judgment/order under Section 2 (b) of the Contempt of Courts Act, 1971, and in the said eventuality, the defaulting party may be punished with the maximum punishment as provided in terms of Section 12 of the said Act.

Interim relief under section 17:

This clause is only invoked at the request of a party to the arbitral proceedings and only after the tribunal has been established. A party can request interim relief up until the tribunal issues an award.

Relief under this provision can be sought during the pendency of the arbitration proceedings before passing of Arbitration Award.

Before the 2015 Amendment Act came into force, Section 17 gave a broad range of powers to the arbitral tribunal as the tribunals had powers to issue any sort of interim measures of protection, and there was no exception carved out in the 1940 Act. The Amendment Act 2015, on the other hand, has made much-needed amendments to the grant of interim reliefs by an arbitral tribunal, adding clarification to the types of reliefs that can be granted and bringing them in line with the interim reliefs that can be granted by courts under Section 9 of the Act.

The relief which can be sought in an application u/s 17 of the Act:

1. Securing the sum of dispute in Arbitration;

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2. Retaining, preserving, or inspecting any property or thing that is the subject of the arbitration dispute;

3. Interim injunctions and the appointment of a receiver;

4. Every other just and convenient interim action.

Effectiveness/Enforceability of order passed by Arbitral Tribunal u/s 17 of the Act:

Even though the Act grants the power to the arbitral tribunal to issue interim measures, there is a lack of a mechanism in the Act for implementing any interim relief given.

However, an amendment to Section 17 of the Act has clarified that an order of the tribunal would be enforceable like an order passed by a Court. Case Law:

However, after the amendment in Arbitration Act, India's legislature, courts, and parties are working to reduce the use of Section 9 once the tribunal is established, it may be some time before the remedy under Section 17 becomes fully effective. The wide power granted by Section 9 has been exercised with caution so far, and as India moves closer to being an arbitration-friendly jurisdiction, our courts' careful approach to granting injunctive relief will help immensely.

SECTION 20:-

This section deals with the place of Arbitration. As per this section, the parties are free to agree on the place of Arbitration.

Section 20: Place of Arbitration:

Section 20 of the Act defines 'Place of Arbitration', which is used interchangeably for both seat and venue. Also, the Law Commission recommended the independent definitions for seat and venue under the 2015 Amendment Act; such suggestions did not translate into actual amendments.

In this regard, the law has been settled through various judicial pronouncements.

Supreme Court observed in the matter of Bharat Aluminum Co. vs. Kaiser Aluminum Technical (BALCO)[Civ App 3678 of 2007] that the legal position that turns up for all the decisions appears to be that choosing the seat of Arbitration for another country necessarily imports an acceptance of the law of that country for the supervision and conduct of arbitrations proceedings.

It means that when parties decide on another country as a seat of arbitration, the parties intentionally accept the law of that country relating to the conduct.

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IV. KEY POINTS FOR THE CONCEPT OF SEAT

- The seat of Arbitration is vitally important because the court holds the supervisory jurisdiction over the arbitral process.
- Selecting the seat of Arbitration implies choosing the applicable laws.
- It is not mandatory that the seat and the venue of the Arbitration will remain the same; they may be different.
- Selection of Seat of Arbitration will be unaffected for the geographical place where the hearing takes place.

As mentioned above, "seat" and "venue" are two different parameters.

- The Supreme Court of India adopted the famous English pronounced by J. Cooke in Roger Shashoua vs. Mukesh Sharma (Civil Appeal No. 2841-2843 of 2017): The Shashoua principle states that when an agreement expressly designates the venue without express reference to the seat, combined with a supranational body of laws and no significant contrary indicia, the inexorable conclusion is that the venue is the seat of Arbitration.
- Hardy Exploration- the divergence from the Shashoua principle

In *Union of India vs. Hardy Exploration [Civil Appeal No. 4628 of 2018] and Production (India) Inc.*,

A reference was made before a bench of three judges to examine whether the judgment mentioned in Sumitomo Heavy Industries Ltd vs. ONGC Ltd. & Ors. will be impacting the juridical seat doctrine. The Court replied in a negative sense. The court analyzes and defines the venue of Arbitration as Kuala Lumpur (capital of Malaysia). The SC court analyzed that Kuala Lumpur is not the seat of Arbitration. The court held that the word 'place' cannot be replaced with the word 'seat'. A venue does not automatically become a seat. For converting it into the seat, it needed an affirmative action and something accompanying attached with it. In the same way, a place will be termed to be a seat when any of the conditions is satisfied. It does not ipso facto assume the status of a seat.

BGS-SGS-Soma-JV – Shashoua principle reiterated[**Civil Appeal no. 9307 of 2019**]. In this case, the Supreme Court analyzed that when the clauses designate a venue of Arbitration and declare that the Arbitration will take place at such place, it reflects that the venue is actually the seat. The judgment points out that it is not important that the 'Venue' is merely a venue and not a seat, further mentioning that such a place is the seat. Hence the Court reiterated the

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Shashoua principle. *BGS-SGS-Soma-JV – Shashoua principle reiterated*[**Civil Appeal no. 9307 of 2019**]

Additionally, the SC declared that the judgment of Hardy Exploration was contradictory to the principles laid down under BALCO and hence as "not being good law".

- **Mankatsu Impex – Another divergence*[In Arbitration petition no. 32 of 2018]***

Again, the bench of three judges revisited the issue of seat and venue in the matter of Mankatsu Impex. In the present case, the court was adjudicating a dispute stand up out of MOU, governed by laws of India, and the New Delhi Court will have the jurisdiction. The disputes will be introduced and finally settled in Hong Kong. The issue framed before the Court was to determine whether the seat of Arbitration in New Delhi or Hong Kong.

The Court declared that mere expression of the place of Arbitration would not presuppose that the parties intended it to be the seat. The intention of the parties to the seat has to be determined from other clauses of the agreement and the conduct of the parties.

This highlights to be the third view taken by another co-ordinate bench which seems to incline more towards the ratio of *Hardy Exploration*

V. CONCLUSION

The issue related to jurisdiction of courts at the seat has been finally and hopefully put to rest by BGS-SGS Soma. This is termed to be the positive step taken by the Supreme Court to resolve the confusion by BALCO.

To add further to this confusion, the Supreme Court in Mankatsu Impex (another 3 judge bench) took a view similar to Hardy Exploration without expressly overruling BGS-SGS Soma. It seems that this issue will soon be referred to a larger bench for deciding the parameters finally.

(A) Case

A bench of Justice R Banumathi and AS Bopanna set aside an order passed by the Madras High Court.

In the instant case, the appellant and the respondent in the case had agreed to the sale of iron ore pellets, which were to be loaded from the Dhamra Port, Bhadrak in Odisha and off-loaded in Chennai, Tamil Nadu. On account of a dispute relating to pricing, the appellant did not deliver the goods to the respondent, who in turn claimed damages.

The Respondent invoked Arbitration which, as per Clause 18 of their agreement and had fixed

the venue of Arbitration at Bhubaneshwar. The Appellant did not agree to the appointment of the arbitrator, which led to the Respondent moving the Madras High Court under Section 11(6) of the Arbitration and Conciliation Act for the appointment of the sole arbitrator.

The Appellant opposed the jurisdiction of Madras High Court. However, the Madras High Court proceeded to appoint an Arbitrator in the matter; while holding that the decision of the seat of Arbitration would not oust the jurisdiction of other Courts. The High Court also added that in the absence of a clause giving exclusive jurisdiction to a specific Court, both Orissa and Madras High Courts would have jurisdiction.

(B) Decision

The Supreme Court, however, decided with the contradictory view from the decision of the Madras High Court; by stating that the where the contract specifies the jurisdiction of the Court at a particular place; only such Court will have the jurisdiction to deal with the matter and parties intended to exclude all other Courts. Considering the agreement of the parties having Bhubaneswar as the venue of Arbitration, the parties intend to exclude all other Courts. It is not necessary to separately use the words like "exclusive jurisdiction", "only", "exclusive", "alone", etc.

Therefore, setting aside the Madras High Court's order, the Supreme Court granted liberty to the parties to approach the Orissa High Court with the plea.

VI. TIME LIMIT FOR THE PASSING OF ARBITRAL AWARDS

In domestic arbitrations, the time limit set to the Arbitral tribunal for issuing the arbitral award is twelve months from the date on which the Arbitrator/ all the arbitrators receive notice in writing of their appointment.

Procedure to apply for setting aside Arbitral Awards: Section 34 deals with the objection for setting aside the Arbitral Award.

In case of a domestic award, an application **under Section 34** of the Act shall file before the Court three months from the date on which the party making that application had received the arbitral award. **Section 34(3)** allows the party if it satisfies a further period of 30 days after the expiry of three months if sufficient cause prevented the party from making the application. Moreover, The court can entertain no application for setting aside the award after the expiry of these additional thirty days.

Section 34 of the Act provides grounds for setting aside an arbitral award. These grounds are:

i) Incompetency of party

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As per **Section 9** of the 1996 Act, a party may apply to the court for the appointment of a guardian for a minor or a person of unsound mind for arbitral proceedings. When the guardian represents the incompetent person, the ground of inability/incapacity will cease to apply.

ii) The question of the validity of the arbitration agreement

In-State ***of UP v. Allied Constructions,*** the court held that the validity of an agreement has to be tested based on the law to which the parties have subjected it. Where there is no such indication, the validity would be examined according to the law which is in force.

iii) Service of notice of arbitration proceedings:

In ***Dulal Podda v. Executive Engineer, Dona Canal Division***, the court observed that appointment of an arbitrator on behalf of the appellant without providing notice to the respondent, ex parte award given by the arbitrator, will be treated illegal and can be set aside.

iv) Matter which does not fall under the terms of the arbitration agreement:

In ***Rajinder Kishan Kumar v. UOI***, a matter was referred to Arbitration under a writ petition. The writ petition contained no claim of compensation for damage to the potentiality of the land because of the opposing party discharging effluents and slurry on the land. The award of such compensation was held to be outside the scope of reference hence liable to be set aside.

v) Impartiality and confidentiality

In-State *Trading Corp. v. Molasses Co.,* a permanent arbitral institution, did not allow a company to be represented by its Law Officer, who was a full-time employee of the company. The Court observed that it was the misconduct of the arbitrator as well as the arbitration proceedings.

Two more grounds are mentioned under Section 34(2)(b), which will be left to the court to decide whether the arbitral award is to be set aside or not. These are as follows:

1. When a dispute is not capable of settlement by the arbitral process.
2. When the disputed conflict is in the public policy of India.

If required and if it is separable, the court can set aside an arbitral award partially.

- We can trace the concept of Section 34 from Section 34 of the UNCITRAL Model Law. And, For setting aside the arbitral award, the parties must make an application under Section 34. The application must contain the ground of challenge. Section 34 does not prescribe any special form for making an application. But, the written statement must be filed within the limitation period.

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In *Brijendra Nath v. Mayank*, the court held that where the parties have acted upon the arbitral award during the pendency of the application challenging its validity, it would amount to estoppels against attacking the award.

When an arbitral award is aside by the court, then it will no longer remain enforceable by law. The parties will restore their former position. Setting aside an award indicates that it is rejected as invalid. Once again, the matter will be open for decision making, and the parties are free to go back, either to Arbitration or through Court.

However, an amendment to Section 17 of the Act has clarified that an order of the tribunal would be enforceable like an order passed by a Court. Case Law:

However, after the amendment in Arbitration Act, India's legislature, courts, and parties are working to reduce the use of Section 9 once the tribunal is established, it may be some time before the remedy under Section 17 becomes fully effective. The wide power granted by Section 9 has been exercised with caution so far, and as India moves closer to being an arbitration-friendly jurisdiction, our courts' careful approach to granting injunctive relief will help immensely.

Limitation of the Court: The court cannot substitute its views upon the findings of the arbitrators–

In a recent case, ***Ssangyong Engineering & Construction v. National Highways Authority of India****, the Division Bench of Delhi High Court, while dismissing Petition under Section 34 of the Act, opined that if a Contract can be interpreted in two ways, then it is not open for the Court to interfere with an arbitral award, just because the Court prefers the other view. In this case, the Appellant had challenged the order of Single Judge; wherein the Single Judge had dismissed the Appellant's petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral award. The Court in the case also observed that* Court could not substitute its view over that of the Arbitrators.

In this case, the Court stated that the 1996 Act makes provision for the supervisory role of Courts for the review of the arbitral award only to ensure fairness.

The Court further observed that ***intervention of the Court is envisaged in a few circumstances only, like, in case of fraud or bias by the Arbitrators, violation of natural justice, etc. The Court cannot correct errors of the Arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the Court at a minimum level, and this can be justified as parties to the agreement make a conscious decision to exclude the Court's***

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jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

Procedure to enforce the Arbitral awards: Section 36 of the Act.

The following govern the procedure for enforcement and execution of the Domestic awards and Foreign awards primarily:

(i) The Arbitration and Conciliation Act, 1996 and

(ii) The Code of Civil Procedure, 1908.

Moreover, It enforces arbitral awards as a decree of the Court, and principles of natural justice apply to the execution proceedings. Further, It deals with the execution of the domestic awards under Part I of the Arbitration and Conciliation Act 1996. While it deals with the foreign awards under Part II of the Act.

Regarding enforcement of domestic awards, after the period for applying under section 34 for setting aside the arbitral award is over and irrespective of whether a separate application under Section 34 is filed or not, **Section 36** (as per the 2015 Amendment Act) mandates that the award shall be enforced as if it were a decree of the court as per the Code of Civil Procedure 1908 unless the court grants an order of stay of the operation of the arbitral award for payment of money on such a separate application with due regard to Code of Civil Procedure 1908.

Appropriate Court for the execution of the Arbitral Award

In the case of domestic awards, the jurisdiction for the execution of arbitral awards would be:

(i) The Commercial Courts exercising such jurisdiction which would ordinarily lie before any Principal Civil Court of original jurisdiction in a district, and

(ii) The Commercial Division of the High Court in the exercise of its ordinary original civil jurisdiction.

The Supreme Court, in ***Sundaram Finance Ltd. v. Abdul Samad and Anr***, has stated that 'the enforcement of an award through its execution can be filed anywhere in the country where such a decree can be executed, and there is no requirement for obtaining a transfer of a decree from the Court, which would have jurisdiction over the arbitral proceedings.

The execution can be filed where the respondents reside, carries their business, or where the properties of the respondents/judgment debtors situate.

Limitation Period for filing of execution:

Since it executes the domestic awards as a decree of the court, the Limitation Act of 1963 applies to Arbitration. Under the Act, it prescribes 12 years to enforce such an award.

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Stamping and registration of Awards

Section 35 of the Stamp Act 1899 states that an insufficient stamp award is inadmissible. Moreover, The amount of the stamp duty varies from state to state depending upon where the award was made. Also, under section 17 of the Registration Act 1908, registration of awards is mandatory. If it affects the immovable property, it will render else invalid.

The arbitral award has been treated at par with the decree of the court. The arbitral award will be treated in the same manner as a decree of a law court. There is no specified provision for appeal against the arbitral award and to get some remedy against it. But what an aggrieved party can do is to recourse to the law court for setting aside the arbitration award.

VII. REMEDIES

The Supreme Court, in a case, held that "an arbitrator is a judge, to whom the parties appoint themselves. And, the award passed by the arbitrator judge should not be taken lightly". But it also doesn't mean that there will be no check on the arbitrator's conduct. To assure proper conduct of the proceeding, the law provides certain remedies against an arbitral award.

The repealed Act of 1940 provided three types of remedies against an arbitral award:-

1. Modification
2. Remission
3. Setting aside

But under the Act of 1996, the remedies are as follows:

- Concerning the remedy for rectification of errors, it has been handed over to the parties and the tribunal.
- The remedy for setting aside the matter has been constructed by returning the award to the tribunal for removal of its defects.

VIII. AMENDMENT OF 2020

The Arbitration and Conciliation (Amendment) Ordinance 2020, the third series of constitutional amendments to the Indian Act, was promulgated by the President of India on November 4, 2020. The 2020 Ordinance incorporates two significant changes to the framework that governs Indian-seated conflicts.

The object of these amendments is to (i) clarify uncertainties on when a court can grant an unconditional stay on the enforcement of arbitral awards in light of the amendments introduced by the 2015 Amendment Act, and (ii) respond to criticisms on the introduction of limits

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imposed by the 2019 Amendment Act on who can sit as an arbitrator in an Indian-seated arbitration.

The amendments are summarized below.

Stay on enforcement of arbitral awards :

The filing of objections under Section 34 for setting aside the award before the 2015 Amendment Act immediately stayed the execution of an arbitral award until the set-aside application was eventually determined. This resulted in dilatory tactics, with groups being encouraged to appeal awards to postpone compliance. The 2015 Amendment Act aimed to fix this issue. The entire section 36 on the enforcement of arbitral awards in Indian seated cases has been repealed, and at present, as per the amendment made in the Act, Section 36 stipulates that the submission of a set-aside application/objections u/s 34 of the Act does not ipso facto deprive the party for seeking the enforcement of an arbitral award.

Instead, under Section 36(2), a party is required to file a separate application for seeking the relief of stay of enforcement of the award, and the court will look into the matter and will decide about the stay of proceedings or not.

Section 36(3) also states that the court will place requirements on a stay application that it "may deem fit." The "Court shall, in considering the appeal for grant of stay in the case of an arbitral award for payment of a property, have due regard to the conditions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908," according to a proviso to Section 36(3).

The 2020 Ordinance aims to clarify the situation on the award of an unconditional stay by adding an extra proviso to Section 36(3) but only in cases of bribery or corruption. When a court is "satisfied that a prima facie argument is worked up," the current proviso states that:

a. "the arbitration agreement or contract which is the basis of the award," or

b. "the making of the award" is "induced or affected by fraud or corruption," then the court "shall stay the award unconditionally pending" a resolution of any set-aside application. While the current Proviso is a significant move forward, four main questions need to be addressed.

First, an appeal under Section 36(2) of the Act must be made before a court can issue an order under Section 36(3) (or the latest Proviso) of the Act. The submission is also based on the status of a challenge to the award lodged under Section 34 of the Act.

Surprisingly, Section 34 makes no explicit provision for setting aside or refusing to impose an

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award if the "arbitration arrangement or contract on which the award is based" was caused or effected by bribery or corruption. The only basis for denying compliance (in situations containing charges of fraud or corruption) is where "the making of the grant" was caused or influenced by fraud or corruption, according to Section 34(2)(b)(ii) of the Act.

So, if a ground isn't eligible for setting aside an award, how will it be available to a claimant requesting a stay in enforcement?

Second, whether an arbitration clause or a contract has been tainted by bribery or misconduct is a question of evidence that the parties may have debated during the arbitration hearings. In most cases, the tribunal must have conducted a thorough investigation. Second-guessing the tribunal's logic and re-appreciating the facts would be a breach of the Act's Proviso, which specifies that "an award shall not be set aside simply based on an improper interpretation of the statute or by re-appreciation of proof." Finally, a counter-argument may be that Section 34(2)(a)(ii) of the Indian Constitution allows for the setting aside of an award where "the arbitration arrangement is not legitimate under the statute under which the parties have subjected it," meaning that an arbitration agreement caused by bribery or misconduct will be null and void under Indian law. However, this raises the following question: How will the compliance of the same award stay for illegality dependent on bribery or misconduct, provided that Section 34(2A) forbids the court from setting aside an award in an international commercial arbitration even though the award is vitiated by patent illegality on the face of it? Furthermore, identifying such illegality might not be an easy task. Though corruption in the "making of an award" can be detected by examining the tribunal's actions and is more of a process issue, corruption in the "purchasing of the underlying deal" is a merits issue that will necessitate more than a prima facie examination of facts.

Changes to India's arbitration laws are of special concern to the international arbitration community and companies with a presence in India, given the growing use of Arbitration by Indian parties.

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