

Proposed Amendment to the Arbitration Law of India

The Arbitration and Conciliation (Amendment) Bill, 2015, has been approved by the Union Cabinet on August 26, 2015. It is hoped that the Bill will be introduced and passed by the Parliament in the Winter session and will become law by early next year.

While the draft of the Bill is yet to be scrutinised in full, the salient features of the proposed amendments have been released and are as follow:

1. **Appointment of arbitrator:** Under Section 12 of the Act, a proposed arbitrator shall be required to disclose in writing about the existence of any interest of relationship which can create justifiable doubts regarding his neutrality. This amendment has been brought into effect keeping in mind the international best practices, and to bring the Indian arbitration practice in conformity with the IBA Guidelines on Conflicts of Interest.

Furthermore, Section 11 has been amended to provide that the an application for appointment of an arbitrator shall be disposed of by the High Court or the Supreme Court, as the case may be, expeditiously, with the Court endeavouring to do so within 60 days. Unfortunately, the recommendation of the Law Commission Report that this function be regarded as an administration decision by the Court, has not be implemented by the proposed amendment. This is rather ill-advised this controversy has created significant debate and delay in India (**Refer: SBP & Co. v. Patel Engineering (2005) 8 SCC 518**).

2. **Time Period:** A new provision shall impose a time restriction of 12 months on the Tribunal to make its award, with incentives being prescribed if the award is rendered in 6 months by the Tribunal. The 12 month time-period can be extended up to a period of 6

months by the Parties consensually, but after that the time-period can only be extended by the Court, on sufficient cause. The Court is empowered to reduce the fees of the Arbitrators if it finds that the delay was attributable to the Tribunal. This provision is not found in the arbitration laws of most countries since it can potentially interfere with justice in cases which are lengthy and complicated and need more time for resolution. Thus, it would be interesting to see how the Courts in India respond to it, in the event that the amendment is passed.

3. Interim Measures: Under Section 17, the Tribunal shall be now empowered to grant all kinds of interim measures which the Court is empowered to grant under Section 9, and these orders “*shall be enforceable in the same manner as if it is an order of Court.*” This will certainly add more teeth to the [arbitral process in India](#).

4. Fast Track Procedure: A provision regarding fast-track procedure for dispute resolution is proposed. If the Parties agree to the same, the awards shall be given in 6 months.

5. Challenge of Awards: The grounds for setting aside of an award under Section 34 (2) (b) of the Act, that is in cases where the award violates the public policy of India have been explained with the intention of negating the consequences of **ONGC v. Saw Pipes (2003) 5 SCC 705**. The grounds for the same would be limited to the following four conditions:

- Award was induced or affected by fraud or corruption,
- Award is in contravention with the fundamental policy of Indian Law,
- Award is in conflict with morality or justice.

Furthermore, the amendment provides that an application challenging an award need to be disposed of by the Court within one year. It is interesting to note that the law laid down in and **ONGC Ltd. v. Western Geco International Ltd.**, (2014) 9 SCC 263 clarifying fundamental policy of Indian law has not been amended or discussed by this proposed amendment. This is rather unfortunate, since this case has crippled the arbitration process by causing an award to be challenged on multiple grounds.

Additionally, Section 36 has been amended to provide that the filing of an application under Section 34 to set aside an award will not automatically stay the execution of the award. The execution can only be stayed if the Court passes a specific order to that effect.

6. Costs: The law has also sought to regulate costs in ad-hoc arbitration by insertion of Section 31A into the law.

7. Sections 2(1)(e) , 2(1)(f)(iii), 7(4)(b), 8(1) and (2), 9, 11, 14(1), 23, 24, 25, 28(3), 31(7)(b), 34 (2A) 37, 48, 56 and in Section 57 are also proposed to make the law more effective.

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