

2018 Changes to Arbitration and Conciliation Act, 1996:

Arbitration and Conciliation (amendment) Bill 2018: Union cabinet approved the Arbitration and Conciliation (Amendment) Act bill, 2018 proposing certain amendments to the existing Arbitration and Conciliation Act, 1996 (herein after The Act), which is declared as an important effort of the Government of India to encourage Institutional Arbitration and to make India a center of robust ADR mechanism in addition to making of certain important amendments to the Arbitration and Conciliation Act, 1996. Since the Government could not pass the bill in the Parliament Session, the Government is exploring the possibility of following ordinance route. The amendments are based on the High-level Committee appointed by the Government of India under the Chairmanship of Justice Mr Srikrishna of the Supreme Court of India. The objective of the bill seems to be to take steps towards institutionalizing the arbitrations in India and to make certain changes to the Arbitration Act. The brief of the important proposed amendments to the Act are as follows:

High Court and Supreme Court recognized Arbitral Institutions: Section 11 of the Act, empowers the High Courts and Supreme Court of India to appoint arbitrators' in Adhoc-arbitration matters. By the new amendment the arbitral institutions recognized by the High Courts or Supreme Court of India can be approached by the parties directly for appointment of arbitrator and parties need not approach the High Courts for the said Matter. The Institutions shall have powers to appoint arbitrators in international commercial arbitration matters if they are recognized by the Supreme court of India and Domestic arbitration if they are recognized by the High Court. The Arbitral institutions should dispose the applications seeking appointment of arbitrator in 30 days and they require to determine the fees also.

Changes to the timelines provided under S.29A: The above said 2015 Act brought in one year time line for completion of arbitration proceedings and pronouncement of awards from the date of constitution of the Arbitral tribunal. But in High value arbitration and infrastructure arbitration, the time lines became a big challenge for ensuring effective

hearings. Hence the new amendment proposes to calculate the times lines from the date of completion of the Pleadings. The amending Act, provides six months' time for completion of pleadings and 12 months' time for pronouncement of the award in domestic Arbitrations. But these time lines are not applicable for the international commercial arbitrations seated in India. As per the present Act, the mandate of the Arbitrator comes to an end immediately after 12 months, if they don't consent for extension and after 18 months, if the court does not extend the time limit. But the present amendment keeps the mandate extended till the application filed before the court is disposed of, after the said 18 months.

Reduced Scope of Section 17: As per the present Act, a party can approach the arbitrator any time during the proceedings or at any time after making the award till it is enforced. The said powers are to be restricted to the date of making the award and arbitrators will not have powers after making award to grant any interim relief. That means after award Courts only will have powers to grant interim orders under S.9 of the Act.

Confidentiality of the Arbitration Proceedings: Globally one of the main reasons for parties resorting to arbitration is confidentiality. Hence the amendment proposes a new Section 42A, ensuring confidentiality of the arbitration proceedings except award. This amendment ensuring confidentiality will encourage foreign parties to choose India seated Arbitrations.

Arbitration Council of India(ACI): Arbitration Council of India is a statutory body created by the above said amendment Act, will grade arbitral institutions and accredit Arbitrators by laying down norms and will take all steps to encourage arbitration and other ADR mechanisms in India. The said council is going to be a body corporate headed by a retired Supreme Court Judge. The council is expected to create a system for grading/ empaneling of existing Arbitral institutions in India. India being a big country, the said effort will bring in discipline and standards among the arbitral institutions. Even though Arbitration is a private dispute resolution mechanism, it requires a regulation as well as efficient supervisory courts. ACI is expected to Act as

a regulator for Arbitral Institutions as well as Arbitrators. There is no institution in the world except Chartered Institute of Arbitrators (CIRAB), London doing any kind of certification on the knowledge and skills of the arbitrators. In India, arbitration is considered to be an opportunity for retired technocrats and Judges and in way it is a strength for us but it is time to encourage young arbitrators, the above said certification process will surely help them.

Applicability of 2015 Amendments: A new Section 87 is proposed to make it clear that the 2015 Amendments will apply to arbitrations which were initiated after 23rd October 2015 or if parties expressly adopt the same. It also makes it clear that the Courts can apply the provisions of 2015 Amendments only if the above mentioned two situations.

Qualifications and Experience of Arbitrator: The amending Act has proposed to incorporate “Eighth Schedule” to the 1996 Act, which provides a list of qualifications necessary to be an arbitrator. The said qualifications make 10 years’ experience as a lawyer or a Chartered Accountant or an Engineer or technocrat or a former Executive. Even though no country has such specified qualifications for an arbitrator, in the Indian conditions, the said conditions cannot be said to be unreasonable.