

---

### **After Conclusion of arguments if an Arbitrator wishes to withdraw, the majority tribunal can proceed and pass the Award in India**

An arbitral tribunal normally consists of either one or three arbitrators. In a three member, arbitral tribunal, the award may be passed by all the three arbitrators together or a majority award along with a dissent award. Normally, arbitrators meet after the arguments are concluded, discuss each of the issues raised by the parties and then decide the award. In some cases, all arbitrators may take the same view, in such a situation there will be only one joint award. There are cases where majority of the arbitrators may take a view and one arbitrator may not agree with them and take a different view. In such cases the majority award may be accompanied by a dissenting award given by the arbitrator who is not concurring with the view of the majority. In some cases, one arbitrator fails or refuses to sign the majority award but still the majority award is valid and enforceable in law in India.

In a recent case of CIMMCO<sup>1</sup>, Delhi High Court dealt with an arbitration where one of the arbitrators after conclusion of the proceedings and prior to pronouncement of the arbitration award wanted to opt out of the tribunal but the other two arbitrators pronounced the award without the signature of the third arbitrator. As per Section 31 of the Arbitration Act of India<sup>2</sup> (The Act), if the third arbitrator is not signing the award, the majority arbitrators can go ahead and pronounce the award with their signatures but they should state in the award, the reasons for not having the signature of the third Arbitrator on the award. The above said award was challenged by the above said CIMMCO, under S.34 of the Act, on various grounds including the ground that the majority arbitrators ought not to have issued the award, since one Arbitrator withdrew from the Arbitral tribunal. The petitioner also contended that the impugned award was liable to be set aside under the provisions of Section.34 (2)(v) of the Act as the composition of the Arbitral tribunal was not accordance with the arbitration agreement between the parties. It was also contended that once an arbitrator withdraws from the arbitration proceedings, the mandate of the Arbitral tribunal gets terminated automatically and such a situation can be remedied by immediate substitution of the arbitrator and there can be no adjudication qua the reasons given for withdrawal by an arbitrator from the Arbitration Proceedings.

Hon'ble Delhi High Court vide a detailed Judgment dated 15<sup>th</sup> March 2019 rejecting the above said contentions, held that withdrawal of an arbitrator from the tribunal after conclusion of the proceedings and just before the pronouncement of an award does not make the arbitral tribunal ineligible to pronounce the award. It further stated that in view of S.31 of the Act, an

---

<sup>1</sup> CIMMCO Vs Union of India (2019) SCC Online Del 7655

<sup>2</sup> Arbitration and Conciliation Act,1996



award signed by majority of the arbitral tribunal is valid and enforceable in law and the only caveat is the requirement of recording the reasons by the majority with regard to the missing signature of one arbitrator. Since the above said award fulfilled the said requirement since the majority arbitrators recorded the reasons, the award was upheld by the Court.

