
Government of India deletes Schedule VIII that banned foreign legal professionals from sitting as Arbitrators in India seated Arbitrations

S Ravi Shankar¹

On 4th November 2020, Government of India Ministry of Law and Justice promulgated an ordinance in the name of Arbitration and Conciliation Amendment Ordinance 2020. The said ordinance brought in two major changes to the existing arbitration and conciliation act 1996 (herein after the Act), which is the procedural law governing the international and domestic arbitrations seated in India. The First and the most important aspect is deletion of Schedule VIII, of the Act, that banned the foreign qualified legal professionals from sitting as arbitrators in India seated arbitrations. It is important to note that the **author** challenged the above said Schedule VIII to the Arbitration and Conciliation Act, 1996 by way of a Writ Petition in the Supreme Court of India W.P (civil) 76 of 2020 (S Ravi Shankar Vs Union of India) in Public interest in which the Hon'ble Supreme Court Bench consisting of Justice Mr RF Nariman and Justice Mr Rama Subramaniam issued notice on 27th January 2020 to Government of India. Now it is a welcome News that Government of India has come forward to delete Schedule VIII from the Act.

Schedule VIII of the Act by prescribing qualifications for the arbitrators that are applicable for all the India seated arbitrations, banned various category of persons from sitting as arbitrators in India, including Foreign qualified lawyers and Judge. Hence the main challenge in the above said Writ Petition was regarding the ban on Foreign arbitrators (including foreign lawyers, Judges, Foreign qualified accountants etc.,) sitting as arbitrators in the International arbitrations seated in India. The other challenges include the mandatory requirement of Arbitral institutions registering themselves before High Courts and Supreme Court of India. The petitioner also challenged the mandatory requirement of the complete legal knowledge for an arbitrator, to be appointed as arbitrator in India, since it would disqualify thousands domain experts including Engineers, technical experts, Finance Experts etc., from sitting as arbitrators. This is because the beauty of Arbitration is that an arbitrator who is a legal expert when sits as arbitrator can appoint a domain expert as Expert witness and domain experts when they sit as arbitrators can appoint lawyers as expert witnesses, hence the requirement of full knowledge of law on all legal subjects is unnecessary to an arbitrator. The Petitioner also has challenged the requirement of 10 year's experience in any field for getting appointed as an arbitrator, since such a classification does not allow young arbitrators even to take up

¹ The Author is an Arbitration International and Domestic lawyer and Senior Partner of Law Senate Law Firm based out of New Delhi. He can be contracted through email ravi@lawsenate.com



small arbitrations. The said Writ petition stated that the classification made by the Schedule VIII of the act, prescribes qualifications for arbitrators that are unreasonable and does not satisfy the requirement of satisfaction of principle of “intelligible differentia” and hence violative of article 14 of the Constitution of India.

It is further contended that Arbitration and Conciliation Act, 1996 was enacted to bring our arbitration law in line with the rest of the world by adopting UNCITRAL Model law on Arbitration. But the 2019 amendment Act, is violative of the objectives since it is no more similar to the above said Model law. Hence, the amendment makes India an unpredictable and backward seat of arbitration. In addition to that the above amendments are a huge setback for India’s dream of becoming a hub of International Arbitration. This is because Foreign companies won’t prefer a seat where foreign legal experts are not allowed to sit as arbitrators. The said classification also was a big blow on the party autonomy to choose arbitrators which is the foundation of arbitration. Government of India should be appreciated for coming forward to delete the said Schedule VIII and now Foreign qualified legal professionals and Chartered Accountants can sit as Arbitrators in India seated arbitrations.