

## COURT SUPPORT FOR ARBITRATION IN ITS THREE STAGES: BEFORE, DURING AND POST RENDERING OF THE ARBITRAL AWARD

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### Introduction

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Arbitration is a method of settlement of disputes through third person called arbitrator without having recourse to a court of law. "An independent and efficient judicial system is one of the basic structures of our constitution.. It is our constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases"<sup>1</sup> Fair, economic, rational and speedy deliverance of justice is the endeavour of every legal system. However, at present, there is a growing crisis of judicial delay and arrears before the Courts. Arbitration is one of the alternatives to remedy the situation. The main objective of the Arbitration and Conciliation Act 1996 is to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration and to minimise the supervisory role of courts in the arbitral process and to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in settlement of disputes. Section 5 of the Act brings out

clearly the object of the New Act namely that of encouraging resolution of disputes expeditiously and less expensively and when there is an arbitration agreement, the Court's intervention should be minimal.<sup>2</sup>

Notwithstanding the fact that the act aims at finding speedy disposal of cases in economic and commercial transactions, such speedy disposal shall not be at the cost of Justice. The Act also prudentially contemplated to enable the court to intervene whenever justice appears to be trampled for the purpose of targeting speedy disposal of cases. Supreme Court and High Courts being courts of justice are vested with the power to render justice even in economic and commercial transactions in matters that come under its purview of arbitration. The intervention of the court implies justice is done. Intervention of the Judiciary may appear to be delaying the case, but judicial consideration of commercial disputes implies justice is done in the proper sense. Speedy disposal of the case is one aspect but justice is an important aspect of jurisprudence. Speedy justice is the blend of both and it is the need of the hour in the matters related to economic and commercial transactions including arbitration matters.

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### Judicial Intervention Before Arbitration

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<sup>1</sup>*Brij Mohan Lal V. Union of India & Others* 2002 4 Scale 433

<sup>2</sup>*P. AnandGajapathiRaju V. P.V.G. Raju*AIR 2000 SC 1886



The general principle pertaining to the extent of judicial intervention is emphasised in Section 5 of the Arbitration and Conciliation Act 1996<sup>3</sup>. It is analogous to Article 5 of UNCITRAL Model Law as well as the general principle as stated in Part 1 of the English Arbitration Act 1996. Section 5 is a new section as there was no analogous provision in the old Act of 1940.

It is a clear recognition of the need to limit and define the Court's role in arbitration. Party Autonomy and the independence and authority of arbitrators are the hallmarks of this Act.

The Supreme Court in *Surya DevRai V. Ram ChanderRai*<sup>4</sup> had observed as follows: "The parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait jacket formula. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because

the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. Thus, the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

Function of Judicial Authority begins with the application to stay court proceedings, which have been brought in contravention of the arbitration agreement. The court has no power to compel arbitration save indirectly by refusing the claimant a remedy through the courts, so that if he wants to pursue his claim he can only do so by arbitration.

A party to a judicial proceeding can seek a reference of the dispute to arbitration by virtue of invoking Sections 8 of the Arbitration and Conciliation Act, 1996<sup>5</sup>,

<sup>3</sup>Section 5: Extent of Judicial Intervention: 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.

<sup>4</sup>*Surya DevRai V. Ram ChanderRai* , AIR 2003 SC 3044

<sup>5</sup>**Section 8: Power to refer parties to arbitration where there is an arbitration agreement:-**

(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 so applies

not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(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.

(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.



Sections 45<sup>6</sup> and 54<sup>7</sup> of the Arbitration and Conciliation Act, 1996 depending upon the context therein.<sup>8</sup> Section 8 relates to domestic arbitration coming under Part-I of the Act while Sections 45 and 54 of this Act relate to International Commercial Arbitration under the New York Convention Awards and the Geneva Convention Awards respectively dealt with under Part-II of the Act.

**POWER TO REFER PARTIES TO ARBITRATION**

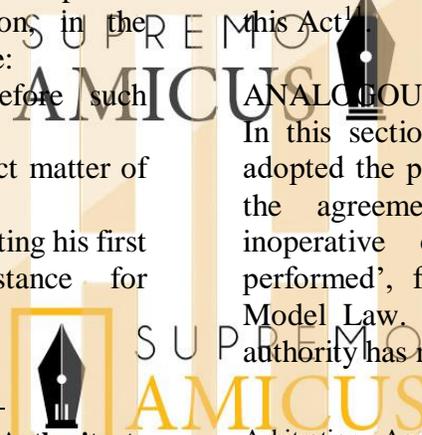
Under Section 8, power is conferred upon the Judicial Authority to refer the parties to the dispute to arbitration, in the circumstances, namely, where:

1. an action is brought, before such judicial authority;
2. the matter brought is subject matter of an Arbitration Agreement;
3. a party applies while submitting his first statement on the substance for reference:

4. the application so filed by a party is accompanied by original arbitration agreement or its certified copy.

By the consent of the parties, the matter may be referred to arbitration even after the submission of the first statement of the party before the judicial authority and conversely by implication, if a party objects to the application, such a reference cannot be made<sup>9</sup>

The requirement that the judicial authority shall refer the parties to arbitration is mandatory<sup>10</sup>. This section has been described as one of the pillars of



**ANALOGOUS PROVISIONS**

In this section, the legislature has not adopted the phrase ‘unless satisfied that the agreement is null and void, inoperative or incapable of being performed’, from Article 8 (1) of the Model Law. Consequently the judicial authority has no jurisdiction to determine

Arbitration Agreement, whether referring to present or future differences, which is valid under that Section and capable of being carried into effect, shall refer the parties on the Application of either of them or any person claiming through or under him to the decision of the Arbitrators and such reference shall not prejudice the competence of the Judicial Authority in case the agreement or the arbitration cannot proceed or becomes inoperative.”

**<sup>6</sup>Section 45. Power of Judicial Authority to refer parties to arbitration .—**

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a Judicial Authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.”

**<sup>7</sup>Section 54. Power of Judicial Authority to refer parties to arbitration .—**

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a Judicial Authority, on being seized of a dispute regarding a contract made between persons to whom Section 53 applies and including an

<sup>8</sup> This extract is taken from *Kotak Mahindra Bank Ltd.V. Sundaram Brake Lining Ltd.*, (2008) 4 CTC 1

<sup>9</sup>*Sudarshan Chopra V. Company Law Board* 2004 (2) Arb LR 241, 259 (P & H) (DB)

<sup>10</sup>*Hindustan Petroleum Corporation Ltd., V. Pink City Midway Petroleums*, (2003) 6 SCC 503

<sup>11</sup> Binder, *International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions*, second edn, 2005 pg 88 para 2079



the question of existence and validity’ of the arbitration agreement<sup>12</sup>. It has been left to the jurisdiction of the tribunal to be decided under section 16 which provides ‘the arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement’.

### COMPARATIVE ANALYSIS

The three provisions of section 8, 45 and 54 of the 1996 Act it is seen that Section 8, 45 and 54 of the Act has been inserted by the Law Makers in such a fashion having its own distinct and different features in the area of its operation, scope and ambit. From the overall comparative analysis of these three provisions the following distinctions would emerge<sup>13</sup>.

Part II of the 1996 Act contains a provision for approaching the Court. It is reiterated that *Non obstante* clause are the opening words in Sections 45 and 54. It is the foremost objective and the purpose upon the Judicial Authority while

entertaining the Application at the instance of a party which alleges that there exists an Arbitration Agreement to refer the parties to arbitration. But however discretionary power is conferred to the Judicial Authority not to refer the parties to arbitration if it finds that the agreement is null and void, inoperative or incapable of being performed. Obviously such a leverage conferred upon the Judicial Authority in the later part of Section 45 is absent in Section 8.

### Judicial Intervention During Arbitration

Intervention by the Court at the instance of a party to arbitral proceedings is provided in Section 9 of the Arbitration and Conciliation Act 1996<sup>14</sup> provides for intervention by the Court at the instance of a party to arbitral proceedings.

This section details out the nature of interim measures of protection that can be

<sup>12</sup>*Renusagar Power Co Ltd., V. General Electric Co* (1984) 4 SCC 679

<sup>13</sup>*Kotak Mahindra Bank Ltd V. Sundaram Brake Lining Ltd., (2008) 4 CTC 1*

<sup>14</sup>**Section 9: Interim measures etc. by Court –**

A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it becomes decree of a Court, apply to a Court

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters namely,

a. the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement.

b. Securing the amount in dispute in the arbitration.

c. The detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land, or building in the possession of any party, or authorizing any samples to be

taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

d. Interim injunction or the appointment of a receiver.

e. Such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power of making orders as it has for the purpose of, and in relation to, any proceedings before it.



obtained as an order from the court. These orders are aimed at preserving assets, protecting the position of the parties, maintaining status quo, and procuring evidence. This power of the court is mandatory. The parties cannot avoid the provisions of this Act by agreeing otherwise. These powers are to be exercised strictly in accordance with the provisions of the statute in respect of the matters listed in it. Indian law on arbitration signifies the importance of minimal judicial interference. Furthermore, these powers are not available where the seat of arbitration is outside India or the place has not been designated or determined.

This Section is invoked only as an interim measures pending commencement in course of the arbitral proceedings. It is not a substantive relief<sup>15</sup>. An application under section 9 under the scheme of the Act is not a suit. The relief sought for in an application under section 9 of the Act is neither in a suit nor a right arising from a contract. The court under section 9 of this Act only formulates interim measures so as to protect rights under adjudication before the arbitral tribunal from being frustrated<sup>16</sup>. Obviously it is not within the scope of this section to inquire into the claim and the counter claim made by both the parties in regard to the custody of the articles beyond what has been admitted by the respondent.

“A PARTY MAY APPLY”

“The right conferred by section 9 of the Act cannot be said to be one arising out of a contract. The qualification which the person invoking jurisdiction of the Court must possess is of being a ‘party’ to an arbitration agreement. This has relevance only to his locus standi as an applicant. The court under section 9 is only formulating interim measures so as to protect the right under adjudication before the Arbitral Tribunal from being frustrated”<sup>17</sup>

#### TERRITORIAL JURISDICTION

As far as the court having territorial jurisdiction is concerned the “Court” mentioned in Section 9 refers to the Court as defined in Section 2(1)(e) of the Arbitration and Conciliation Act 1996 which reads: “Court” means the Principal Civil Court of Original Jurisdiction in a District, and includes the High Court in exercise of its Ordinary Original Civil Jurisdiction, having jurisdiction to decide the questions forming the subject matter of the 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 Principal Civil Court, or any Court of Small Causes”.

#### STAGE

A court can make appropriate interim measures specified in this Section before or during arbitral proceeding or at any time after the making of the award but before the same is enforced in accordance with Section 36 of the Arbitration and

<sup>15</sup>*Liverpool and London Steamship Protection and indemnity Association Ltd., V Arabian Tankers Company* 2004 (1) RAJ 311 (Bom)

<sup>16</sup>*Firm Ashoka Traders V. Gurumukh Das Saluja* 2004 (3) SCC 155

<sup>17</sup> *Ibid.*



Conciliation Act 1996<sup>18</sup>. This contemplates three situations for making the application (i) after entering into the contract up to the commencement of arbitral proceedings. (ii) during the arbitration proceedings up to the termination of the mandate of the arbitrator; and (iii) at any time between the making and enforcement of the arbitral award.in accordance with Section 36 of the Act<sup>19</sup>.

#### GENERAL PRINCIPLES FOR APPOINTMENT OF RECEIVER

General principles for grant of interim injunction are laid down in Order 39 Rules 1 and 2 read with Section 151 and for appointment of receiver in Order 40 Rule 1 of Civil Procedure Code 1908. Appointment of guardian for a minor or a person of unsound mind is regulated by Order 32 of the Civil Procedure Code. The principles incorporated in the CPC will mutatis mutadis apply to the proceedings under this Section also<sup>20</sup>.

#### APPOINTMENT OF A GUARDIAN

The appointment of a guardian is for the limited purposes (minor or person of unsound mind) of the arbitral proceedings. The object for appointment is to ensure that the interest does not suffer and that he is properly represented.

#### INTERIM MEASURE OF PROTECTION

The Court cannot adjudicate or decide any issue related thereto on the merits of the disputes. The powers of Court for passing orders with respect to interim measures specified in the Section only is to protect the rights of the party pending adjudication of its claim in the arbitral proceedings.

This section provides the following interim measures of protection.

1. Preservation, custody and sale of goods.
2. Securing the amount in dispute.
3. Detention and preservation of property.
4. Interim injunction or appointment of a receiver and
5. Just and convenient: Pre award attachment.

#### RULES COMMITTEE

Rules Committee for framing of rules is to be emphasized. In the case of *Hinduja Leyland Finance Limited Rep by its legal manager R. Kumaran V. Jaffer Khan and others*<sup>21</sup> while dealing with the question to be determined in those cases Hon'ble Court had an occasion to consider another aspect which calls for our attention. Hon'ble Court observed that "...Section 82 of the 1996 Act gives the High Court power to make rules consistent with the Act.

<sup>18</sup>*Sundaram Finance Ltd., Rep. By The Assistant Manager (Legal) V. M.K. Kurian* 2006 (1) RAJ 493(Mad)

<sup>19</sup>*Globe Cogeneration Power Ltd., V. Sri HiranyakeshiSahakariSakkereKarthaneNiyamatS ankeshwar*, 2004 (4) RAJ 263 (Kar)

<sup>20</sup>*Right Approach Group Ltd., V. M/s. Rosoboronexport*2004 (2) RAJ 484 (Del) M/s.

*Global Company V. M/s. National Fertilizers Ltd.*, AIR 1998 Del 397

<sup>21</sup>*Hinduja Leyland Finance Limited V. Jaffer Khan and others* , 2013(2) LW 401, Judgement dated 5.4.2013 Coram Hon'bleMr. Justice Vinod Kumar Sharma



It would be helpful if such rules deal with the procedure to be followed by the Courts while exercising jurisdiction under Section 9 of the Act. The rules may provide for the manner in which the application should be filed, the documents which should accompany the same and the manner in which such applications will be dealt with by the Courts. The High Courts are, therefore, requested to frame appropriate rules as expeditiously as possible so as to

facilitate quick and satisfactory disposal of arbitration cases.

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**Judicial Intervention After Arbitration**

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A party who is discontent with an arbitral award shall proceed to challenge the award by preferring an application for its setting aside arbitral award.<sup>22</sup> Section 34

<sup>22</sup>**Section 34 of the Arbitration and Conciliation Act 1996: Application for Setting Aside**

**Arbitral Award** (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if –

(a) the party making the application furnishes proof that –

- (i) a party was under some incapacity, or
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected or, failing any indication thereon, under the law for the time being in force; or
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration :Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such

agreement, was not in accordance with this Part; or

(b) the Court finds that –

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is in conflict with the public policy of India.

**Explanation :** Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal :

**Provided** that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so request by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such take action



of the Act 1996 carves out the permissible grounds only upon which the award can be subject to challenge. The Court does not sit in appeal over any award<sup>23</sup>. The Tribunal under the pretext of exercising its power cannot travel beyond terms of reference.

#### DOMESTIC AWARD AND FOREIGN AWARD

Any arbitration conducted in India or enforcement of award there under (whether domestic or international) is governed by Part I while enforcement of any foreign award to which the New York Convention or the Geneva Convention applies, is governed by Part II of the Act. The provisions of Part II of the Act give effect to the New York Convention under Chapter I and the Geneva Convention under Chapter II.

There are very limited grounds for setting aside the domestic arbitral award, which are as follows: -

1. A party to the arbitration agreement was under some incapacity.
2. The arbitration agreement is not valid under the law.
3. The applicant that is the party making the application was not given proper notice of appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
4. The arbitral award deals with matters outside the scope of submission or reference to arbitration.

5. The constitution of the arbitral tribunal or the procedure of arbitration was not as per agreement of the parties.
6. The subject matter of dispute is not capable of settlement by arbitration.
7. The arbitral award is in conflict with the public policy of India.
8. The award is founded on matters relating to conciliation proceedings between the parties, which are confidential in law or is based on admissions, suggestions or proposals made in conciliation for an attempted settlement of dispute.

Limited grounds for refusing enforcement of foreign award are

1. Incapacity that a party to the arbitration agreement was under the law applicable to him under some incapacity<sup>24</sup>,
2. Invalid arbitration agreement that the arbitration agreement was invalid under the law to which the parties subjected it, or failing any indication thereon, under the law of the country where the award was made<sup>25</sup>
3. Due process that a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case<sup>26</sup>
4. Jurisdictional defect that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration. Provided

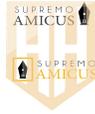
as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

<sup>23</sup>*P.R. Shah, Shres and Stock Broker (P) Ltd., V.B.H.H. Securities (P) Ltd.*, AIR 2012 SC 1866

<sup>24</sup> Section 48 (1) (a)

<sup>25</sup> Ibid.

<sup>26</sup> Section 48 (1) (b)



that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced.<sup>27</sup>

5. Composition of the tribunal and procedure that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, with the law of the country where the arbitration took place<sup>28</sup>.
- 6.
7. Ineffective award that the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which or under the law of which, it was made<sup>29</sup>.
- 8.
9. Ex officio court jurisdiction may refuse to enforce a foreign award if it finds that that award is in respect of a matter which is not capable of settlement by arbitration under the laws of India<sup>30</sup> and that the enforcement of foreign award would be contrary to public policy of India<sup>31</sup>. The court may decide these two issues suo motto.

Section 35 of this Act provides that a domestic award shall be final and binding on the parties and persons claiming under them respectively. While section 36 provides that after the expiry of the prescribed time, the award shall be enforceable under the Code of Civil

Procedure 1908 in the same manner as if it were a decree of the court. Section 36 cautions that enforcement is available only after the expiry of the time for making an application to set aside the arbitration award under section 34 has expired or when such application having been made stands refused. In case amendment of award is called for in a given case three months is provided from the date on which the application prescribed under section 33 has been made and further discretion has been given to the court to extend the time under section 33 for correction.

#### GROUPS FOR SETTING ASIDE DOMESTIC AWARDS

Challenge to an arbitrator can be made on the grounds of lack of independence or impartiality or lack of qualification as provided under Section 13 of the Act which is corresponding to Article 13 of the Model Law. Initially the challenge to an arbitrator ought to be raised before the arbitral tribunal itself. If the challenge is rejected by the tribunal then it is open for the tribunal to continue with the arbitral proceedings and make an award. Then the only recourse for the party challenging the arbitrator is to make an application for setting award the arbitral award under Section 34 of the Act raising the same ground. This is corresponding to Article 34 of the Model Law. Therefore the occasion for the party to resort to court is only at the post award stage.

<sup>27</sup> Section 48 (1) (c)

<sup>28</sup> Section 48 (1) (d)

<sup>29</sup> Section 48 (1) (e)

<sup>30</sup> Section 48 (1) (a)

<sup>31</sup> Section 48 (1) (b)



Section 16 of the Act provides that the arbitral tribunal can decide as to the preliminary objection to rule on its jurisdiction and conferred with jurisdiction to decide the dispute as to the existence or validity of the arbitration agreement. If the arbitral tribunal negatives any objection in the case where it rejects any objection as to its jurisdiction, the arbitral tribunal as usually can proceed to conduct the arbitral proceedings and pass the award. Then even here the only recourse for the party is to make an application for setting aside the arbitral award under Section 34 of the Act raising the same ground. Therefore the occasion for the party to resort to court is only at the post award stage.

To put in other words in addition to the grounds contained in Section 34 of the Act, there are yet another two grounds for challenge of the award as contained in Section 13 (5) and 16(6) of the Act.

The Delhi High Court in *Hindustan Fertilizer V. J.M.Boxi and Co*<sup>32</sup> and the Madras High Court in *Central Warehousing Corporation V. A.S.A.Transport*<sup>33</sup> have taken the view that the Court has no power to remit the matter back to the Arbitrator. Therefore, in such circumstances even if the application for setting aside arbitration award is allowed, the Court cannot remit the matter back to Arbitrator and the only option to the court is to leave it open to

the parties to work out their remedies in a manner known to law.

#### TIME LIMIT

An aggrieved party can make an application to the court for setting aside an arbitral award within three months from the date of receipt of the award only on the grounds mentioned in Section 34 of the Act. However, the aforesaid time limit can be extended maximum by another 30 days by the court where the applicant was prevented by sufficient cause from filing it timely "but not thereafter."

Supreme Court of India in *the State of Maharashtra & Ors. V. M/s. Ark Builders Pvt. Ltd*<sup>34</sup> has held that the application for setting aside the award to be made within the period of limitation which would start commencing only from the date when the signed copy of the award is delivered to/received by the party making the application.

Also, Hon'ble Supreme Court of India in the case law *State of Maharashtra V. M/s. Hindustan Construction Company Ltd.*<sup>35</sup> has observed that the very objective of the 1996 Act uphold the conclusion that the court cannot by applying section 5 of the Limitation Act and extend the time-limit prescribed under Section 34 to challenge an award.

#### SCOPE OF ENQUIRY AND NATURE OF PROCEEDINGS

<sup>32</sup>*Hindustan Fertilizer V. J.M.Boxi and Co*<sup>32</sup> , 2008 (3) RAJ 464 (Delhi)

<sup>33</sup>*Central Warehousing Corporation V. A.S.A.Transport*, 2008 (3) MLJ 382 Mad-DB

<sup>34</sup>*State of Maharashtra & Ors. V. M/s. Ark Builders Pvt. Ltd* , (2011) 4 SCC 616

<sup>35</sup>*State of Maharashtra V. M/s. Hindustan Construction Company Ltd.*, AIR 2010 SC 1299



Scope of enquiry in proceedings under Section 34 is restricted to consideration whether any one on grounds mentioned exists for setting aside award. Application under Section 34 of Act is single issue proceeding.

Proceedings under Section 34 of the Act are summary proceedings with provision for objections by respondent, followed by opportunity to applicant to prove existence of any ground under Section 34(2) of the Act. Proceedings under Section 34 is differ from regular civil suits.

### Suggestions And Conclusion

Arbitration as an alternative to dispute. It is much recognized practice of affording an opportunity to the aggrieved party to exhaust the appeal remedy against the decision of lower forum.

Judicial Intervention in arbitration proceedings plays a very imperative role as the rear of the arbitration legislation.

In my research work, it is not out of point to high light few of the suggestions to be incorporated in the arbitrary legislation subject to trial to guarantee speedy justice both in the nature of quality and quantity.

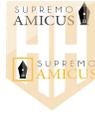
1. Award shall be enforced under the Code of Civil Procedure in the same manner as if it were a decree of a civil court as contemplated under Section 36. This section cautions that enforcement is available only after the expiry of the time for making an application to set aside the arbitration award under

section 34 has expired, i.e. 3 months from date of receipt plus 30 days as the case maybe; or when such application having been made stands refused.

Such arbitral award which has become final can be enforced in accordance with Section 141 read with Order 21 of the Civil Procedure Code. The court which executes the decree has to satisfy itself before issuing the process of execution that no proceedings are pending to set aside the award, be it contested or exparte. At this stage the proposal – would be that the enforcement of the decree shall be only before the court which could maintain application for setting aside.

2. One other problem that may arise is the issue relating to Limitation to enforce the award. Section 36 of the Arbitration and Conciliation Act 1996 merely says that award shall be enforced in the same manner as if it were a decree of a court. Limitation to execute the decree of a civil court is prescribed for in Article 136 of the Limitation Act, which is Twelve years from the date of decree. What is the date of decree is respect of award?

Assuming that even in respect of awards pendency of application to set aside or appeal even in the absence of any orders of stay could be excluded, even so, in the absence of any indication in the enactment that the date of the decree shall be the date of the award or the date on which it came to be communicated to the successful party, or the date on which it is filed before a civil court for execution, the



difficulties are bound to crop up. Therefore under Section 36 of this Act, a proviso has to be incorporated indicating that date of the award shall be the date on which the arbitral tribunal affixed its signature and seal and the time taken to communicate the award and the time during which the application under section 34 of this Act, or the appeal thereof was pending shall be excluded and part II of the Limitation Act shall apply mutatis mutadisviz sections 12 to 24 of the Act to such executions.

3. Though the 1996 Act confers greater autonomy on arbitrators and insulates them from judicial interferences, it does not fix any time period for completion of proceedings. Fixing of time period for completion of proceedings would really be much more productive.
4. Under Section 16(1) of the Arbitration Act, 1940, the Court had the power to remit the Award for reconsideration, under three contingencies listed therein. But there is no corresponding provision in the Arbitration and Conciliation Act 1996.

The Delhi High Court in *Hindustan Fertilizer V. J.M.Boxi and Co* and the Madras High Court in *Central Warehousing Corporation V. A.S.A.Transporthave* taken the view that the Court has no power to remit the matter back to the Arbitrator. Therefore, in such circumstances even if the application for setting aside arbitration award is allowed, the Court cannot remit the matter back to Arbitrator and the only option to the court is to leave it open to the parties to

workout their remedies in a manner known to law. Therefore an eye opener is required to scrutinize such a scenario to adopt the provision thereby enabling the power of the court to remit the award for reconsideration since the same would be vital in appropriate and genuine cases.

Judicial Intervention in arbitration proceedings plays a very vital and predominate role in the arbitration proceedings as the back bone of the arbitration legislation. Its unique and distinct functionary role to come and play where ever it has been vested with jurisdiction with limitations, applying with concrete interpretation of the provisions of the statute. It is needless to mention that the judicial intervention will certainly cater the needs of exploding population to have their redressal before the arbitration proceedings in the day to day affairs efficaciously, economically and expeditiously resulting in speedy justice both in the nature of quality and quantity.