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APPOINTMENT OF ARBITRATOR UNDER ARBITRATION AND CONCILIATION ACT, 1996

In light of Brahmani River Pellets Ltd. VS Kamachi Industries Ltd. CIVIL APPEAL NO. 5850 of 2019

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ABSTRACT

The arbitration and conciliation Act, 1996 is a milestone in the development of alternative dispute mechanism. One of the types – Arbitration is one of the upcoming modes of seeking justice for any disputed matter. This Act provides for various provisions regarding the procedure, challenges made, the communication of notices to parties which help the people in speedy redressal of their disputes.

This study helps in better understanding of these provisions with the view to spread awareness among people regarding the same. The objective of this legal writing is to explore the Act and see the limitations of the same. And also look into important matters such as rights and liabilities of people referring to arbitration. The scope of this writing is restricted to Indian scenario and a few aspects of international commercial arbitration are taken into consideration.[1]

INTRODUCTION

History of Arbitration in India

The mechanism for resolving disputes outside the periphery of courts is not a new concept to the world all over. The gradual growth can be determined by various factors supporting these methods. These factors includes the support provide by the courts leading to increase in the usage of ADR methods. Moreover, the alternative dispute resolution is also an ancient concept for the people of India as its usage can be seen priory in the history during the ancient and medieval times. This purely indicates the attempt to make disputes less costly and time taking with an easy and cheap process. The matters of disputes acknowledged in the ancient history were such as trade, family, property or disputes arising in the various prevalent social groups.

A perfect example of this can be looked into by the system and working of panchayats (committee of five members of village) acting as an institution performing functions for mediation for settlement of any dispute. This was the informal procedure followed in earlier times were rarely people reached out to courts for resolving any dispute. But this concept lost its significance due to rising political policies and communal issues[2].

India since a long time, been practicing the non-judicial ways of delivering justice. Before the coming up of kings adjudicating matters, people used to find peace resorting to kulas, puga etc. these methods were used traditionally and were the only way available to settle disputes.

[1] Preamble of Arbitration and conciliation Act, 1996.

[2] From the book- Mandatory Arbitration in India.

After the coming up of British, this dispute resolution system became more formal by formulating various provisions for Arbitration. This later on led to evolution of various Acts.

In the present time, the alternate dispute resolution methods are used due to factors such as reduction in the time taken for proceedings, procedure selection by the parties who are at dispute, cheap mode for settlement of dispute. People now prefer these methods rather than opting to go to court or any matter.

This is an avid result of all he awareness spreading from the earlier times until now.

The factor such as constant changes made in the rules and regulations regarding arbitration also have played an important role in its growth and acceptance in the present times all around the world.

The procedures are made according to the convenience of the parties who also have to maintain the confidentiality of matter, enabling the commercial sectors to make hefty investments without worrying about the delayed Indian legal system.

Before the enactment of Arbitration and Conciliation Act, 1996, the law guiding principles of arbitration in India were mainly described under 3 main heads-

i. The Arbitration (Protocol and Convention) Act[3] ,
ii. The Indian Arbitration Act[4] and
iii. The Foreign Awards (Recognition and Enforcement) Act[5].

Background to the Arbitration and Conciliation Act, 1996

In British India, arbitration was given specific importance by these following regulations laid down-

- Regulation of 1781

This regulation incorporates provision wherein the judge without any mandate asks the parties to adhere to arbitration.

- Regulation of 1787

This regulation laid down provisions wherein judges promoted arbitration methods by suggesting the same to the parties who have any disputed matter.

- Bombay presidency regulation VII[6]

Under this regulation, civil arbitration came into the picture. Further it was formed that the agreement made is to be done in writing and specific time availability to the parties for providing the name of arbitrators.

- Act VIII of 1857

This regulation brought in various provisions such as section 326 and section 327 which constitutes provision regarding issues etc of arbitration.

To adhere to the rising concerns and with an objective to encourage arbitration as a cost-effective and time-effective mechanism for the settlement of commercial disputes in the national and international spheres, India, in 1996, passed a new legislation called the Arbitration and Conciliation Act, 1996.

The Act also aimed to firstly grant a speedy and effective dispute resolution mechanism

[3] 1937
[4] 1940
[5] 1961
[6] 1827

in the existing judicial system which was tainted by inappropriate delays and a burden of numerous cases.

The Second Round of Amendments in 2005
This amendment took place when there was a disagreement upon a matter between two judges who then were brought to the attention of three judge bench but ultimately was brought before the constitutional bench.

The constitutional bench made it clear that section 2 (2) was limited only towards the citizens of India with lead to a declaration. It was further held, that for including the arbitration matters outside of India certain words in the provisions will be needed to be changed.

There was also a conflict between section 2(4) and section 2(5) which was decided that the provisions meant matters pertaining to inside of India. But in 1996 Act, the difference was laid down between domestic and foreign awards.

Third Round of Amendments in 2015
Under this amendment main focus was laid on that not all type of matters can resort to arbitration there upon bifurcated the various institutions which can't use arbitration as mechanism for resolving disputes. These may be a trust, trustee in a trust deed.

Need for arbitration and conciliation Act, 1996

This Act was introduced due to reasons such as-

- To remove all the defaults in the prior Act of 1940 governing the law of arbitration.
- The provisions formulated under the previous Act were getting obsolete.
- The Act did not cover many under heads such as conciliation.
- The Act was not covering international arbitration which has discouraging the foreign companies to investment in India.

Indian Background (Introduction)

Arbitration is derived from the Roman law.

The concept of arbitration is not new in India, apparently India, china and Italy claim to be the first where arbitration started.

Broad classification of arbitration is that between domestic arbitration and international arbitration.

Domestic arbitration[7] is mentioned under the Act wherein the place of arbitration is in India or at least one party is Indian. This is formulated and regulated by the arbitration and conciliation act, 1996.

Whereas in international commercial arbitration[8] as mentioned under the Act at least one party is foreigner and the Indian laws will not apply on them. The rules for the same are provided under the Geneva Convention.

The definition of Arbitration can be interpreted as follows-

The mechanism wherein any dispute or issues arising between two parties who have the legal rights followed by various legal liabilities are attributed to one person or maybe more than one person which may be the arbitral tribunal for judicial determination resulting into a binding effect by applying the law.

[7] Section 2 (7) of Arbitration and Conciliation Act.

[8] Section 2 (1) (f) of Arbitration and Conciliation Act.

The parties can refer to arbitration if there is existence of an arbitration agreement among them. The Act also states that parties may resort to arbitration at the willingness of parties with respect to all the matters of disputes agreed upon by them. The arbitration mechanism will be provided to the parties who are part o the arbitration agreement and not to the other parties involved in the matter thereof. The jurisdiction given to the appointed arbitrator is delivered to him/her in the clause of arbitration mentioned in any part of the particular contract entered between the parties.

The difference is laid down in any contract and an arbitration agreement as the latter is a separate agreement which must be in writing. Further, it isn't necessary that parties sign the arbitration agreement. The clause of arbitration is binding on the parties only by express action or implied or unspoken consent upon being agreed to referring to arbitration in case when dispute arises. As per the limitation of contract is concerned, resorting to arbitration by parties can be any time.

Bifurcation of the Act

The Act has three main heads.

Part I of the Act includes domestic arbitrations and Indian Council of Arbitration when the arbitration is seated in India. Thus, seat in arbitration in India of a foreign party and an Indian party, even if defined as Indian Council of Arbitration but is affiliated to domestic arbitration.

Part II of the Act includes only foreign awards and it's administered under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 known as New York Convention and Convention on the Execution of Foreign Arbitral Awards, 1927 known as Geneva Convention.

Part III of the Act is a statutory apotheosis of provisions relating to conciliation.

The objective of the Act

The main object of Arbitration and Conciliation Act, 1996 is as follows-

1. To provide a prompt mechanism for resolving disputes.
2. Cost-efficient method to resolve disputes which would help parties decisiveness in their disputes.
3. To cover the aspects of national as well as international arbitration.
4. To provide restrictions on jurisdiction, scope and for recording reasons for granting a particular award.
5. Minimization of the intervention of the court.
6. Validation given to settlement agreement taking place between parties.

Arbitrability under Indian Law

Arbitrability is one of the issues which involves the simplified question of kind type of issues can and cannot be conceded to arbitration.

In *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*[9], the Supreme Court discussed the concept of arbitrability in detail and held

[9] 2011 (5) SCC 532

that "the term 'arbitrability' had different meanings in different contexts:

(a) Disputes capable of being adjudicated through arbitration,

(b) Disputes covered by the arbitration agreement, and

(c) Disputes that party have referred to arbitration."

It stated that in principle, any dispute that can be decided by a civil court can also be resolved through arbitration. However, certain disputes may, by necessary implication, stand excluded from resolution by a private forum.

Such non arbitral disputes include:

(i) Disputes relating to rights and liabilities which give rise to or arise out of criminal offences;

(ii) Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, or child custody;

(iii) Guardianship matters;

(iv) Insolvency and winding up matters;

(v) Testamentary matters (grant of probate, letters of administration and succession certificate); and

(vi) Eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

Also, the Supreme Court has held, *in N. Radhakrishnan v. M/S Maestro Engineers* [10] that where fraud and serious malpractices are alleged, the matter can only be settled by the court and such a situation cannot be referred to an arbitrator. The Supreme Court also observed that fraud, financial malpractice and collusion are allegations with criminal repercussions and as an arbitrator is a creature of the contract, he has limited jurisdiction. The courts are more equipped to adjudicate serious and complex allegations and are competent in offering a wider range of reliefs to the parties in dispute.

But the Supreme Court*, in Swiss Timing Limited v. Organizing Committee, Commonwealth Games 2010, Delhi,*[11] *and World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd., AIR 2014 SC 968* held that allegations of fraud are not a bar to refer parties to a foreign-seated arbitration and that the only exception to refer parties to foreign seated arbitration are those which are specified in Section 45 of Act, i.e. in cases where the arbitration agreement is either -

(i) Null and void; or

(ii) Inoperative; or

(iii) Incapable of being performed.

Thus, it seemed that though allegations of fraud are not arbitrable in Indian Council of Arbitration with a seat in India, the same bar would not apply to Indian Council of Arbitration with a foreign seat.

The decision of the Supreme Court in *A Ayyasamy v. A Paramasivam & Ors. (2016) 10 SCC 386* has clarified that allegations of fraud are arbitrable as long as it is in relation to simple fraud. The Supreme Court held that:

[10] *2010 (1) SCC 72*

[11] *2014 (6) SCC 677*

(a) allegations of fraud are arbitrable unless they are serious and complex in nature;

(b) Unless fraud is alleged against the arbitration agreement, there is no impediment in arbitrability of fraud;

(c) The decision in Swiss Timing did not overrule Radhakrishnan.

The judgment differentiates between 'fraud simpliciter' and 'serious fraud', and concludes that while 'serious fraud' is best left to be determined by the court, 'fraud simpliciter' can be decided by the arbitral tribunal. In the same vein, the Supreme Court has held that an appointed arbitrator can thoroughly examine the allegations regarding fraud.

Arbitration Agreement:

An arbitration Agreement as defined under Section 7 of Arbitration and Conciliation Act, 1996 provides –

An agreement entered by the parties to submit to arbitration in any dispute or all disputes which may arise as a result of contract or legal relationship.

It can be further explained through the maxim consensus ad idem as referred under the case of *K. Sasidharan v. Kerala State Film Development Corporation, (1994) 4 SCC 135,* that provided that in situation where a dispute has taken place as to fulfillment of obligation by one party, then in these cases the parties may drop into the mechanism of arbitration through a tribunal. This mechanism starts its course when there is dispute of rights and inferred liabilities of parties to agreement (mentioned in case of *National Thermal Power Corporation v. Singer Company, (1992) 3 SCC 551).*

Kinds of Arbitration

There are two kind of arbitration which are as follows-

1. Ad hoc arbitration
2. Institutional arbitration

Both these kinds constitute different kind of procedure with regard the appointment of arbitrators by the parties or the concerned court.

In the case of ad hoc arbitrations, the freedom lies with respect to matters such as-

- Arbitrators selection
- Rules applicable under law
- Procedures to be followed
- The support needed by administration.

Whereas, the rules relating to payment of fees of administrative nature by parties in the process of arbitration is governed by institution. The institution gives freedom to parties to select from the various arbitrators followed up in the panel of experts brought up from all parts of the world.

Ad hoc arbitration:

Ad hoc arbitration is a type of arbitration wherein it is not administered by the will of an institution which inculcates facilities regarding arbitration.

But on the other hand, all the various aspects are embodied upon the free will of parties to govern the aspects of procedure, appointed arbitrators, the law which is to be applicable in the dispute proceedings, and all the support which will be provide by the administration.

These provisions find its place in the Arbitration and Conciliation Act.

Institutional arbitration:

An institutional arbitration means a institution which is specialized with functions of intervention in promotion and carry out the process of arbitration according to the rules provided. The appointment of tribunal is governed by the parties or in other case by the institution. Generally, the clause of arbitration under the agreement of arbitration entered by parties states the procedure and rules to be followed by the rules of institution which is designated. For the same reason as mentioned above, the institution may levy charges on the parties for the administration provided.

The cons of institutional arbitration are-

- Ad valorem fee of administration and lay upon the amount which is claimed which results in increased fee which may be more for dispute with large money involvement.
- The rigidity of rules and procedure to be followed leads to disheartening of parties and reducing their satisfaction upon the matter at face.
- The procedure for all the proceeding dealing with the dispute carries upon them the restriction regarding limitation of time which makes it very difficult to settle disputes within that provided time frame.

The pros of institutional arbitration are-

- The fees for all provided services are claimed by the winning party from the losing party.
- Provisions for assistance in administration are made.
- Expertise by qualified arbitrators are available to the parties who resort to this procedure for dispute resolution.
- Appointment of arbitrators can also be done by institution if there is consent of the parties
- Many facilities are provided such as hearing room etc.
- A structured procedure and determined rules are provided during the proceedings.

The number of arbitrators

The Arbitration and Conciliation (Amendment) Act, 2015 makes provisions wherein parties have freedom to appoint an arbitrator mutually.
The Act[12] provides that the number of such appointed arbitrators shall not amount to an even number.
However, the parties can appoint a sole arbitrator.
The procedure for appointment of arbitrator is given in Section 11 of the Act.
The section also provides that if the parties fail to appoint an arbitrator then request can be made to the Supreme Court or any person or any institution formulated or resolution of arbitration matters.

Nationality of the arbitrator:
Parties have the freedom to consent to the nationality of appointed arbitrator. The

[12] Section 10 of Arbitration and Conciliation Act.

nationalities of parties are not of question while appointing arbitrators. Any nationality person is free to appoint a person of any other nationality.

It also adds discretion on chief Justice by the usage of word "may".

Appointment of arbitrators

Section 11(3) of the Act states - The parties have the freedom upon agreement regarding the procedure of appointing the arbitrator(s). The agreement can deal with provision regarding three arbitrators and each particular party may appoint one arbitrator and then followed by two appointed arbitrators appointing the third arbitrator who will be called as the presiding arbitrator.

Section 11[13] of the Act further states - If any one of the parties fails to appoint an arbitrator under the time frame of 30 days, or if the two appointed arbitrators by the parties fail to appoint the third arbitrator in the period of 30 days, the Chief Justice of High Court may appoint arbitrators. They can appoint any person or institution to further appoint an Arbitrator.

As per the Amendment Act, If one of the parties is not appointing any arbitrator in 30 days, or if the two appointed arbitrators are not appointing the third arbitrator within 30 days, the parties can appeal the Supreme Court or relevant High Court (as may be applicable) to appoint an arbitrator – as per section 11(6) of the Act. The Supreme Court/High Court again can ask any person or institution to appoint an arbitrator as per Section 11(6)(b).

In case of a domestic arbitration, the respective High Courts who have territorial jurisdiction will appoint the Arbitrator. The Amendment Act also gives powers to the Supreme Court in an India-seated Indian Council of Arbitration and the High Courts in arbitration relating of domestic nature to review the existence of an arbitration agreement at the time of making such appointment according to Section 11 (6)(a).

After focusing on a recent decision of Delhi High Court decision in the case of *Picasso Digital Media Pvt. Ltd. v. Pick-A-Cent Consultancy Service Pvt. Ltd.,*[14] it was emphasized that the courts, while reviewing decision for an application for the appointment of an arbitrator they must restrict their enquiry to the presence of an arbitration agreement.

The question of issue of arbitrability may be decided by the arbitral tribunal and not by the courts. The appointment of an arbitrator application in front of before the Supreme Court or any particular High Court, as the case may require, is to be disposed of as promptly as possible and an effort shall be made to do the same in the period of 60 days;

This type of appointment made will not be a judicial power delegation but is will amounting to an administrative decision.

The concern which arises in India is with respect to the time which is taken for arbitrators appointment which is caused because of the present procedure of courts and the present jurisprudence. Therefore the limitation provide for arbitrators appointment should be within 12-18 months. Thereby this amendment redresses the delay by enactment of provisions regarding limitation and

[13] Section 11 (3)

[14] *2016 SCC Online Del 5581*

making crystal clear as to what procedure is to be followed for appointment and that the same is the administrative powers which the courts exercise.

Notice of Arbitration and Commencement of Arbitration

According to the Act, arbitral proceedings would commence on the date of service of a notice for appointment of an arbitrator. The notice must be issued to and received by the respondent indicating that the claimant seeks arbitration of the disputes. If the request / notice is not received or there is a denial by the respondent of such receipt, the burden is on the party making the request to show that the respondent can be deemed to have received the request. This may be so in a situation where the request is sent by registered post and the acknowledgement to which bears the signature of the respondent.

Request to appoint an arbitrator need not be in express and precise language, it may be implied. The test is to determine whether the 'communications were in their context sufficiently clear and unambiguous to leave a reasonable recipient in no reasonable doubt that they were intended to operate as a call for the appointment of an arbitrator.

Qualification of arbitrators

The parties in the arbitration clause agree to the procedure to be followed in the arbitration proceedings and upon the failure of that, an application is to be filed in court which will result in appointment of arbitrator by the chief justice as he may appoint any person or institution for this task. The importance during this shall be laid down on the various provisions provided for the qualification of arbitrator as included in the agreement which was made by the parties.

In furtherance with this appointment, it is pointed out that this appointment of arbitration can be challenged in the period of 15 days after the fact comes into the light regarding the dis-qualification of arbitrator.

Requirements for Filing an Application for the appointment of an arbitrator

The essential pre-conditions which are to be upon satisfaction before an application is to be filed for appointment of arbitrator are-

1) Presence of arbitration clause in the contract with regards to section 7.

2) Awareness of the agreement by the parties who are filing the application.

3) There should be a dispute which has arisen in respect of the agreed contract by parties.

4) Issuance of notice to be received by other party for the conjuring of arbitration clause.

Challenge to appointment of Arbitrator

The two main principles followed in an arbitration proceeding is autonomy and impartiality by an arbitrator. If there is a situations wherein the circumstances are such that it questions the main principles which are autonomy i.e. independence and impartiality, then it can be challenged after providing all

the circumstances which directs the alleged biased appointed arbitrator.

Section 12(1) of the Act states

Appointment of an arbitrator can be challenged only if –

a. Circumstances exist that give rise to justifiable doubts as to his/her independence or impartiality; or

b. He/she does not possess the qualifications agreed upon by the parties.[15]

The Amendment Act in the new Fifth Schedule inculcates a form for disclosure which goes hand in hand with internationally agreed upon practices for arbitration proceedings which is have applicability commencing on or after October 23, 2015. The result of Non-disclosure will be severe consequences for appointed arbitrator. These consequences may be such as termination of their mandate, even when they are not assigned work or give payment by the party which is concerned in that matter, as said under the case of *C & C Construction Ltd. v. Ircon International Ltd., 2018 SCC OnLine Del 9240.*

The arbitrator has the flexibility to govern himself regarding the challenge which is of the appointment. In the case of the non-acceptance of challenge by the arbitrator, he or she may carry on with the further proceedings of arbitration as required followed by granting Award of Arbitration.

The Supreme Court, in a recent judgment, *TRF Ltd. v Energo Engineering Projects Ltd, (2017) 8 SCC 377* ruled that a court can be approached to plead the statutory disqualification of an arbitrator under the provisions of the Arbitration and Conciliation Act, 1996 and that it is not necessary to approach the arbitrator for obtaining such a relief. Further, the Court held that when the designated arbitrator nominated under a contract is also responsible for appointment of an alternate arbitrator, he/she would lose his/her authority to preside and/or nominate an arbitrator if he/ she stands disqualified under the amended provisions of the Act.

In HRD Corporation v. GAIL (India) Limited, 2017 (10) SCALE 3 , the Supreme Court propounded certain important principles of law, such as: (i) if the arbitrator has passed as award in an earlier arbitration between the same parties about the same dispute, that does not mean that there are justifiable grounds for challenging his impartiality under Clause 16 of Fifth Schedule;

(ii) While a challenge based on the Fifth Schedule can be decided only on the basis of the facts of the case and can be brought before the court post-award, one based on the Seventh Schedule renders the arbitrator ineligible ipso facto and can be brought pre-award.

However, in such cases, the application for setting aside the arbitral award can be made to the court under Section 34 of the Act. If the court agrees to the challenge, the arbitral award can be set aside according to section Section 13(5) of the Act.

Thus, even if the arbitrator does not accept the challenge to his/ her appointment, the other party cannot stall further arbitration proceedings by rushing to the court. The arbitration can continue and challenge can be

[15] Section 12(3)(b)

made in court only after the arbitral award is made.

In *Aravalli Power Company Ltd. v. Era Infra Engineering Ltd., AIR 2017 SC 4450,* the Supreme Court held that the employee named as an arbitrator in the arbitration clause should be given effect to, in the absence of any justifiable apprehension of independence and impartiality.

However, the appointment of an employee as an arbitrator is not invalid and unenforceable in arbitrations invoked prior to October 23, 2015.

Judgment on the issue- Appointment of arbitrator cannot be challenged[16]

The Appellant submitted that it can directly approach the High Court for appointment of an independent arbitrator under Section 11(6) of the Act. The Supreme Court placed reliance on its judgment in Antrix Corporation Limited v. Devas Multimedia Private Limited wherein it was held that, if a party is dissatisfied or aggrieved by the appointment of an arbitrator in terms of the agreement by other party/parties, her remedy would be by way of petition under Section 13 of the Act, and, thereafter by challenging the award to be set aside under Section 34 of the Act. The Supreme Court upheld this view and stated that in the present case, the arbitrator had been appointed pursuant to Clause 65 of the Contract and the provisions of law. Therefore, the arbitration agreement could not be invoked again under Section 11(6) of the Act.

Going a step further, the Supreme Court stated that the arbitrator in the present case had terminated the proceedings under Section 25(a) of the Act without issuing a notice of warning to the Appellant. Therefore, the Supreme Court directed that the order of termination of the arbitrator be set aside and that, pursuant to Clause 65 of the Contract, the Chief Engineer, HPPWD should appoint an arbitrator and proceed with the matter in accordance with law. V. Analysis the Supreme Court has reinstated the settled procedure that must be followed by parties to challenge the appointment of the arbitrator. A party must file an application with the arbitral tribunal under Section 13, and if such application is rejected, the party can challenge the resultant arbitral award under Section 34. It has been made amply clear that a party may not flout this route by directly approaching the court under Section 11(6) of the Act to appoint a fresh arbitrator. However, with regard to the applicability of Section 12(5) to arbitral proceedings commenced prior to, but pending at the time of enforcement of, the Amendment Act, the Supreme Court has not provided sufficient clarity as to what constitutes an agreement between parties to apply the amendments to A&C[17] Act, in order to invoke the condition in Section 26 stating unless the parties otherwise agree".

In the case of Ratna Infrastructure, the Delhi High Court had dealt with an identical clause but recorded a diametrically opposite finding. It had held that the phrase "any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration..." was sufficient to show an agreement by the parties

[16] under Section 11(6)

[17] Arbitration and Conciliation Act, 1996

to apply the provisions of the Amendment Act.

The Supreme Court did not sufficiently justify why Clause 65 of the Contract did not meet the test of agreement between the parties, despite having drawn attention to an identical clause and the corresponding ruling of the Delhi High Court. It did not delve into the situations which could be considered as an agreement between parties to apply the Amendment Act. It simpliciter considered the date of commencement of the arbitral proceedings, to rule that Section 12(5) of the Amendment Act did not apply in the present case rendering the employee arbitrator ineligible. In this regard, it would not be incorrect to state that the Supreme Court has missed an opportunity to further clarify the nuances of applicability of the Amendment Act where parties agree to subject arbitral proceedings to a statutory modification or reenactment of the A&C Act.

Important Judgement-

The Hon'ble Supreme Court set aside the order of Madras High Court and held that if parties have agreed to have the "venue" of arbitration at certain place, the High Court which has jurisdiction over the said place alone can entertain the petition seeking appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act.
The said ruling was held in the case of *"Brahmani River Pellets Limited vs Kamachi Industries limited" (Civil Appeal No. 5850/2019)* decided by Hon'ble Supreme Court on 25.07.2019.

Challenge:

Whether the Madras High Court could exercise jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 despite the fact that the agreement contains the clause that venue of arbitration shall be Bhubaneswar?

Held:
"The Apex Court held that if the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. The court further held that non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference."

The Arbitration and Conciliation (Amendment) Bill, 2019

- The Arbitration and Conciliation (Amendment) Bill, 2019 was brought in Rajya Sabha by the Minister for Law and Justice, Mr. Ravi Shankar Prasad, on July 15, 2019.
- It's a step to make changes i.e. amend the Arbitration and Conciliation Act, 1996. The same Act includes laws relating to domestic and international arbitration, and construes the law for any conduct of conciliation proceedings.
- Main characteristics of the Bill passed on 15th July, 2019 are as follows-

Arbitration Council of India:

The Bill has introduced a body which will act independently known as the Arbitration Council of India (ACI) for the advocacy of

alternative dispute redressal tools such as arbitration or method of mediation or resorting to conciliation.

The organization intends to work in the following activities-

i. Structuring policies for institutions of arbitration and controlling arbitrators with virtue of various aspects.
ii. Setting out policies for the institutions, working and **perpetuation of consistent standards of professionalism for all matters relating to seek remedy under ADR.**
iii. Up keeping records of arbitral awards which are the judgments passed in India and abroad.

Structure of the ACI:

The first member of ACI will be a Chairperson who is either:

- a Supreme Court Judge; or
- A High Court judge; or High Court Chief Justice; or
- A person with expert knowledge in matters affiliated to arbitration.

Other members will be such as-

- An arbitration practitioner,
- an academician with knowledge and practice in arbitration,
- Any person appointed by the government.

Appointment of arbitrators:

Earlier parties were provided the freedom to choose their arbitrators and in matters where there was any dispute regarding the appointment of the same, the parties may resort to supreme court or high court concerned in their case or any particular person such as an institution authorized by the above-mentioned court to be appointed as an arbitrator in the parties case.

Now after the amendment made by the passed Bill, to lessen the burden of Supreme Court and high court the authorization is provided to various institutions which the parties may approached for matters adhering to appointing arbitrators in disputed matters.

In cases which constitute commercial arbitration of an international matter, supreme court authorized institutions will be making the appointments.

In cases which involve disputes with reference to domestic arbitration, the said High court will designate it to institutions to make appointments.

In case when a provision for any arbitral institutions is not available, a panel of various appointed arbitrators may be formed to perform the work of an arbitral institution to be formulated by the Chief Justice of High Court prescribed in that particular matter.

The limitation of disposing of an application is 30 days which is relating to arbitrators appointment.

Relaxation of time limits:

Under the Act of 1996, the limit provided for forming an arbitral Award is within the time frame of 12 months for matters relating to any arbitral proceeding. The Bill removed this period of limit in cases of international commercial arbitrations. It further states that

tribunals in 12 months must complete any international arbitral matter.

Completion of written submissions:

Currently, the law is silent on the time limit to be filed in an arbitral tribunal for written submissions.

Further, The Bill provisions imply that the proceeding of arbitration should complete its course within the time of 6 months after the date of appointment of arbitrators.

Confidentiality of proceedings:

The 2019 bill focuses on confidentiality of any information with the exception of information relating to arbitral award in various circumstances. These circumstances can be when the importance of disclosure is complimented to implementation or enforcement of the same award.

Applicability of Arbitration and Conciliation Act, 2015:

The Bill makes it clear that Act of 2015 applies to arbitral proceedings commencing on or after October 23, 2015.

SUGGESTIONS FOR IMPROVING MECHANISMS

There has been a significant change in the ADR methods. But there are a suggestions nocks to be worked upon which may be as follows-

- The arbitration process gives right and freedom to the arbitrator in granting award but the court can still interfere with these affairs.
- There should be more awareness spread regarding these new modes which are available to the people. If people do not know about these mechanisms them how will they seek help by using these methods. Provisions for setting up Camps for spreading awareness should be done.
- The people should also be welcoming the change and accepting these modes, and should more likely reply on them.
- If proper laws are made, along with it there should be proper implementation and follow for looking into the results of these mechanisms.
- The capacity of the system should be increased i.e. the powers should be enhanced so that better judgment and help to the people can be provided.
- Centres for various modes of alternate dispute resolution should be made so that more and more people can reach out.
- It should cater to needs to all and everyone should be able to afford the process fee etc.
- More the numbers of cases are settled outside court, lessens the burden of the courts regarding all the disputes. And the people also get justice in a speedy manner.
- Infrastructural changes should be made, these changes can be in the tribunals for their better working or appointing of more needed staff or appointed and vacant experts or building up committees which will help people in addressing their issues
- Research work should be done for betterment, growth and advancing the

Arbitration process and other dispute resolution.

All these suggestions not only help the economy to grow but also help in creating a sense of belongingness among people who are always adamant to the concept of going to court and seeking justice. This helps in seeking remedy by more people and ultimately leading to increase in the standards of living of the people. Today's economy has a urgent of arbitration as more and more people having disputes are coming up.

The increase in the foreign investment which helps in growth of economy also is due to reasons such as a good remedy availability by the courts in various provisions made by the government. Government should also inculcate the idea in people's mind of seeking remedy by other method which are not bound by court and its prolonged procedure, but these upcoming and new methods helps grating and settling dispute in speed. So there should be constant changes made for achievement of the goal of a polished economy.

Conclusion

With the constant growth of the economy and coming up of new technological ideas, the market are flooded with foreign investors seeking interest in the Indian economy. One of the few things which put them to step back is the involved risks with regards o the delayed legal system. Therefore with the coming up of Alternate dispute resolution, people are opting arbitration for commercial entrepreneurs.

India was not always on speed with the international policies due to which even after being part of New York convention, it took 5 years for India to build up enough mechanism, policies and principles for arbitration and other ADR methods. But with the upcoming of the same, Indian judiciary now relies upon matters of great concern to the interpretation by the arbitrators.

It can be said that arbitration policies and its formulation are still in the development phase.

But it has helped in many ways among which the most significant is the corporate world which has benefitted from the same.

To conclude the Arbitration and Conciliation Act, 1996 the summary is as follows provided by way of bullet notes-

- The provision firstly asks the parties to submit an application which is deemed necessary to be written and shall not be oral.
- If there is occurrence of any dispute then the parties can go to the court and then the court may ask parties to refer the matter to arbitration depending upon the case and the seriousness of the case.
- The party is required to give notice to the other party. It should additionally be made sure that the notice is properly communicated to the other party.
- There is provision for interim measures which the parties can resort to, the time limit to which is 90 days.
- If an arbitral tribunal is already setup then the parties can go there or else in case where there is no arbitral tribunal then the provision says that an arbitral tribunal will be set up.
- There is a provision wherein the any one of the parties can challenge the appointed arbitrator. The grounds for challenging the arbitrator can be such as :
  - ✓ If the arbitrator is biased.

✓ If there is no qualification as required.

✓ If a situation develops where she / he is not in position to complete the arbitration proceedings.

✓ Does not fall under the jurisdiction.

- The arbitration proceedings shall immediately after the set up of the tribunal.
- The statement of claim and other documents should be filed along with the copy to the other party.
- The statement of defense shall be made to the arbitral tribunal and a copy of the same shall be provided to the other party.
- If there is any claim of withdrawal or any settlement which might happen, shall take place before the granting to the arbitral award.
- Then comes into the picture are the evidences after which expert assistance is taken depending upon the facts of the case and the matter at dispute.
- The tribunal shall hear the both parties to dispute which is based on the principle of natural justice. This principle states that both the parties in any matter have the right to be heard and shall be given a chance to explain their side of the story regarding the concerned matter.
- After all this, an award maybe granted by looking into all the facts and evidences as brought up in the case.

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