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OVERVIEW OF THE ARBITRATION AND CONCILIATION ACT, 1996 IN RESPECT TO DOMESTIC ARBITRATION

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Abstract: The present paper attempts to explore the legal regime concerning domestic arbitration in India with reference to the provisions laid down under the Arbitration and Conciliation Act, 1996. The paper seeks to understand the arbitral process from initiation to enforcement with reference to Section 7 which provides the requisites of a valid arbitration agreement, Section 21 which triggers the arbitration proceedings, and Sections 10 to 12 which explain the constitution and independence of arbitral tribunals. The paper makes an effort to examine important judgments made by Indian courts that help in resolving disputes in areas such as unilateral appointment of arbitrators and importance of the arbitral seat in supervisory jurisdiction. The paper further explores the procedural rules relating to the conduct of arbitration proceedings through provisions of Section 23, Section 29A governing statutory timelines, Sections 9 and 17 which allow interim reliefs, and Section 16, i.e. the competence-competence clause. The paper concludes by examining the requirements of an arbitral award, the setting aside of awards, appellate remedy, and enforcement of awards.

Keywords: Arbitration agreement, party autonomy, arbitral tribunal, domestic arbitration, judicial intervention, seat of arbitration, interim measures, competence-competence, arbitral award.

INTRODUCTION

A dispute arising out of a contract or agreement containing an arbitration clause is deemed to commence when, in accordance with Section 21 of the Arbitration and Conciliation Act, 1996, a request for arbitration is received by the opposite party. Section 21 therefore marks the triggering point of arbitral proceedings. The essential requirement is that a request to refer the dispute to arbitration must be sent by one party and must be received by the other party.

A fundamental prerequisite for the commencement of arbitral proceedings is the existence of a valid arbitration agreement. Section 2(1)(b) defines an "arbitration agreement" by referring to Section 7 of the Act, which sets out the requirements for a valid arbitration agreement.

Under Section 7, an arbitration agreement must satisfy the following conditions:

1. The agreement must be in writing.
2. It must record the intention of the parties to submit disputes to arbitration.
3. It may take the form of an arbitration clause contained in a contract or a separate arbitration agreement.
4. The agreement may be evidenced through signed documents, exchange of letters, emails, electronic communications, pleadings, or any other means that provide a record of the agreement.

It is important to note that Section 7 does not invariably require a formally signed document. Following the 2015 amendments and judicial interpretation, an arbitration agreement may be established through various forms of written communication, provided there is clear evidence of consensus between the parties.

Section 7 further provides that disputes capable of being referred to arbitration may arise out of a defined legal relationship, "whether contractual or not". Consequently, disputes arising from family settlements, partnership arrangements, joint ventures, or other legal relationships may also fall within the ambit of arbitration, provided the subject matter is arbitrable and the parties have agreed to arbitrate.

CONTENTS OF SECTION 7

An arbitration agreement must contain the following:

1) Seat of arbitration
2) Language
3) Applicable law
4) Number of arbitrators

Once a notice invoking arbitration has been issued under Section 21, the question arises as to the period within which the opposite party must respond. Section 11(5) addresses this situation in cases involving the appointment of a sole arbitrator. It provides that if the parties fail to agree upon the appointment of an arbitrator within thirty days from the receipt of a request by one party from the other to so agree, either party may approach the court for appointment.

Section 11 embodies the principle of party autonomy in the constitution of the arbitral tribunal. The parties are generally free to determine the procedure for appointing arbitrators. In the case of a three-member arbitral tribunal, Section 11(3) provides that each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator, who acts as the Presiding Arbitrator.

Section 10 deals with the number of arbitrators. It provides that the parties are free to determine the number of arbitrators, subject to the condition that such number shall not be an even number. At first glance, the provision appears to prohibit the appointment of an even-numbered tribunal.

The nature of Section 10 came up for consideration before the Supreme Court in ***Narayan Prasad Lohia v. Nikunj Kumar Lohia***[1]. In this case, the parties had agreed to constitute an arbitral tribunal consisting of two arbitrators. One party subsequently challenged the validity of the award on the ground that Section 10 prohibits an even number of arbitrators.

The Supreme Court rejected this contention. The Court held that Section 10 is a derogable provision and not a mandatory one. Since the parties had voluntarily agreed to the constitution of a two-member tribunal and had participated in the proceedings without raising a timely objection under Section 16 of the Act, they were deemed to have waived their right under Section 4 to challenge the composition of the tribunal. The Court observed that party autonomy is a cornerstone of arbitration law and that an arbitral tribunal consisting of two arbitrators is not invalid merely because it contains an even number of members.

Thus, following *Narayan Prasad Lohia*, it is settled law that although Section 10 states that the number of arbitrators should not be even, parties may nevertheless agree to an even-numbered tribunal, and such an arrangement will not automatically render the proceedings or award invalid.

APPOINTMENT AND INDEPENDENCE OF ARBITRATORS

Under Section 12 of the Arbitration and Conciliation Act, 1996, every nominated arbitrator is required to make disclosures regarding any circumstances that may give rise to justifiable doubts as to his or her independence, impartiality or neutrality.

More specifically, Section 12(5), introduced by the 2015 Amendment, provides that any person whose relationship with the parties, counsel, or the subject matter of the dispute falls within any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. The parties may waive the applicability of Section 12(5) only through an express written agreement entered into after the disputes have arisen.

Accordingly, an arbitrator is required to disclose, inter alia:

[1] Narayan Prasad Lohia v. Nikunj Kumar Lohia, (2009) 17 SCC 359.

1. Whether any relationship exists with either of the parties, their affiliates, or their legal representatives, whether financial, professional, business-related, or otherwise;
2. Whether the arbitrator has any direct or indirect interest in the subject matter of the dispute;
3. Whether any circumstances exist that could reasonably affect the arbitrator's independence, impartiality, or neutrality.

The Fifth Schedule sets out circumstances that may give rise to justifiable doubts regarding an arbitrator's independence or impartiality, while the Seventh Schedule specifies relationships that render a person de jure ineligible to act as an arbitrator.

Thus, the three fundamental attributes of an arbitrator are independence, impartiality, and neutrality. These principles have been recognised as the cornerstone of arbitral adjudication by leading commentators such as **Redfern and Hunter** and **Mustill & Boyd** on International Commercial Arbitration.

Unilateral Appointment of Arbitrators

The issue of unilateral appointment of arbitrators came before the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***[2]

In this case, the arbitration clause empowered the Chairman and Managing Director (CMD) of one party to appoint the sole arbitrator. The question before the Court was whether a person who is himself interested in the outcome of the dispute could possess the exclusive power to appoint an arbitrator.

A Bench led by Justice U.U. Lalit answered this question in the negative. The Court held that once a person is rendered ineligible to act as an arbitrator under Section 12(5), such person cannot indirectly achieve the same result by exercising the exclusive power to appoint an arbitrator. The power of unilateral appointment by an interested party was therefore held to be invalid.

The Court observed that the principle underlying Section 12(5) is to ensure neutrality in the arbitral process. Consequently, a person who has a direct interest in the dispute cannot have a decisive role in constituting the arbitral tribunal.

A related issue arose in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)***[3].

In this case, the arbitration clause provided for the selection of arbitrators from a panel prepared by the Railways. The Supreme Court, speaking through Justice R. Banumathi, upheld the validity of such a clause. The Court reasoned that where the opposite party is given a choice from a broad panel of arbitrators, the requirement of fairness is substantially satisfied.

However, the reasoning in *CORE* was seemingly in conflict with the principles laid down in *Perkins Eastman*.

The question essentially is whether a panel prepared exclusively by one interested party can satisfy the requirement of independence and neutrality mandated by Section 12(5).

For a considerable period, this remained an unsettled area of law. However, Supreme Court decisions have increasingly favoured the principle that a party interested in the dispute should not possess a dominant role in the constitution of the tribunal. The Constitution Bench in *CORE* struck down clauses requiring a private party to choose an arbitrator exclusively from a panel curated by the government authority and that one-sided appointment panels violate the fundamental principles of equal treatment enshrined in Section 18 of the Arbitration Act. The

[2] Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.

[3] Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712.

jurisprudence continues to move towards greater institutional neutrality in arbitral appointments.

MODES OF APPOINTMENT SAVED UNDER THE ACT

The Act primarily recognises three methods of appointment:

1. **Ad hoc arbitration**, where the parties themselves constitute the tribunal and determine the procedure.
2. **Institutional arbitration**, where an arbitral institution administers the proceedings and facilitates appointment in accordance with its rules.
3. **Court appointment,** where parties have failed to concur in the appointment of an arbitrator, the court intervenes under Section 11 to appoint an arbitrator.

All three forms are recognised and preserved under the Act, subject to compliance with the requirements of independence and impartiality.

SEAT OF ARBITRATION AND JURISDICTION

The designation of the seat of arbitration is of considerable significance under the Arbitration and Conciliation Act, 1996. The Supreme Court in ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.***[4] held, in paragraph 19, that once a seat of arbitration is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause. Consequently, the courts exercising jurisdiction over the seat alone possess supervisory jurisdiction over the arbitral proceedings.

This principle was reiterated in ***Swastik Gases Private Limited v. Indian Oil Corporation***[5] and in ***Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.***[6], where the Supreme Court held that where parties specify the jurisdiction of courts at a particular place only, such courts alone will have jurisdiction as the parties intended to exclude all other courts.

A further elaboration of this principle is found in ***M/s Engineering Projects India Ltd. v. M/s Balaji Projects***[7]**.** In that case, the parties had agreed that disputes would be referred to arbitration seated at Chennai. Nevertheless, a Section 11 application was filed before the Karnataka High Court. The Court held in paragraph 20 that Chennai courts possessed exclusive jurisdiction to the exclusion of all other courts.

The Court further observed in paragraph 23 that although, in ordinary civil proceedings, jurisdiction is a condition precedent and cannot ordinarily be conferred ex post facto, arbitration is fundamentally different because the arbitral tribunal is a creature of contract. Since party autonomy, consent and continuing consent are foundational principles of arbitration law, parties may validly agree upon a seat of arbitration even where no part of the cause of action has arisen at that place. The Code of Civil Procedure principles governing territorial jurisdiction therefore do not strictly control the determination of arbitral jurisdiction.

The Court of Appeal of the Republic of Singapore in ***ST Group Co. Ltd. v. Sanum Industries***[8] has dealt extensively on the concept of 'arbitral seat' and has held as follows. The choice of an arbitral seat is one of the most important matters for parties to consider when negotiating an arbitration agreement because the choice of seat carries with it the national law under whose auspices the arbitration shall be conducted. Arbitration is built on autonomy and free choice. The model law recognises the autonomy of the parties in relation to the seat. It provides specifically by Article 20(1) that the parties are "free to agree on the place of

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[4] Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. (2017) 7 SCC 678.

[5] Swastik Gases Private Limited v. Indian Oil Corporation, 2013 9 SCC 32.

[6] Brahmani River Pellets Ltd. v. Kamachi Industries Ltd. (2020) 5 SCC 462.

[7] M/s Engineering Projects India Ltd. v. M/s Balaji Projects (2020) AIR 2021 MAD 139.

[8] ST Group Co. Ltd. v. Sanum Industries (2019) SGCA 65.

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arbitration". Additionally, Article 31(3) provides that the award is to state "its date and the place of arbitration" as determined in accordance with Article 20(1), which means the award must state what the seat was.

CONDUCTION OF ARBITRAL PROCEEDINGS

A significant feature of arbitration is procedural flexibility and party autonomy.

Section 19 expressly provides that the arbitral tribunal shall not be bound by the provisions of:

- the Code of Civil Procedure, 1908; or
- the Bharatiya Sakshya Adhiniyam, 2023 (formerly the Indian Evidence Act, 1872).

This provision embodies the principle of party autonomy. The parties are free to agree upon the procedure to be followed by the tribunal, and in the absence of such agreement, the tribunal may conduct the proceedings in such manner as it considers appropriate.

However, this procedural freedom is not absolute. The arbitral process must comply with the fundamental Principles of Natural Justice, even though the rigour of the procedural laws is not binding.

These requirements are further reflected in Section 18, which mandates equal treatment of parties and a full opportunity to present their respective cases, that is, Audi Alteram Partem.

Section 5 embodies one of the central objectives of the Act. It provides that judicial authorities shall not intervene in matters governed by Part I of the Act except where such intervention is expressly provided. The rationale is to ensure speedy resolution of disputes, procedural efficiency, finality of awards and reduced court interference.

The limited scope of judicial intervention under the Act was emphasised by the Supreme Court in ***McDermott International Inc. v. Burn Standard Co. Ltd.***[9] In paragraph 52, the Court observed that intervention of the court is envisaged only in limited circumstances such as fraud, bias by arbitrators, or violation of the principles of natural justice. The Court further held that courts cannot correct errors committed by arbitrators and can only quash the award, leaving the parties free to commence arbitration afresh if necessary.

Section 29B contemplates a faster arbitration procedure by which, at any stage, either before or at the time of appointment of the arbitral tribunal, the parties may agree in writing to resolve the disputes through fast track procedure prescribed under sub-section (3) without oral evidence.

TIME LIMITS FOR COMPLETION OF PROCEEDINGS

To prevent delays in arbitral proceedings, the Act prescribes specific timeline for completion.

Section 23(4) requires that the statement of claim and statement of defence (i.e., the pleadings) be completed within six months from the date on which the arbitrator or all arbitrators receive notice of their appointment.

Once pleadings are completed, Section 29A governs the timeline for making the arbitral award.

Under Section 29A:

- Section 29A(1) provides that the award must ordinarily be made within twelve months from the date of completion of pleadings.
- Under Section 29A(3), the parties may, by mutual consent, extend this period by a further six months.

[9] McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181.

- Section 29A(4) states that any extension beyond this period requires approval of the competent court.

The court may grant such extension upon being satisfied that sufficient cause exists. It may also substitute the arbitrator if the delay is attributable to the arbitral tribunal.

INTERIM MEASURES DURING ARBITRAL PROCEEDINGS

During the pendency of arbitration, parties may require urgent protection of their rights or property. The Act, therefore, provides for interim measures through both courts and arbitral tribunals.

Section 9: Interim Measures by Courts

Section 9 empowers the court to grant interim measures:

- before the commencement of arbitration;
- during the pendency of arbitral proceedings; and
- after the award is made but before its enforcement.

Examples include injunctions, appointment of receivers and preservation of evidence.

Section 17: Interim Measures by Arbitral Tribunal

Section 17 empowers the arbitral tribunal itself to grant interim measures once it has been constituted. The Supreme Court in ***Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.***[10], examined the relationship between Sections 9 and 17 of the Arbitration and Conciliation Act, 1996 and observed that the language of Section 17, particularly after the 2015 amendments, substantially mirrors Section 9. In other words, Section 17 is the "mirror image" of Section 9. The objective is to reduce dependence on courts and strengthen the authority of arbitral tribunals.

The principal distinction between the two provisions is temporal:

- Section 9 may be invoked before, during, or after arbitration (until enforcement of the award).
- Section 17 may be invoked only after the arbitral tribunal has been constituted and while the arbitral proceedings are pending before it.

Following the 2015 amendments, orders passed by an arbitral tribunal under Section 17 are enforceable in the same manner as orders of a court, significantly enhancing the effectiveness of tribunal-granted interim relief.

TERMINATION OF MANDATE OF ARBITRATORS: SECTIONS 14 AND 15

Sections 14 and 15 deal with the termination of the mandate of an arbitrator and the substitution of arbitrators.

Section 14 applies where an arbitrator becomes **de jure** or **de facto** unable to perform his functions, or for any other reason fails to act without undue delay. In such circumstances, the mandate of the arbitrator terminates. Section 15 supplements Section 14 by providing for the withdrawal, replacement, and substitution of arbitrators.

SECTION 16: COMPETENCE-COMPETENCE CLAUSE

Section 16, commonly known as the "competence-competence clause", is a fundamental principle of modern arbitration law.

Under Section 16(1), the arbitral tribunal is empowered to rule on its own jurisdiction, including:

- whether a valid arbitration agreement exists;
- whether the arbitration agreement is enforceable; and

[10] Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., 2021 SCC OnLine SC 797.

- whether the tribunal has jurisdiction over the dispute.

This principle ensures that the arbitral tribunal itself has the first opportunity to determine jurisdictional objections, thereby minimising premature judicial intervention.

The competence-competence principle has also been reinforced by judicial decisions. In ***Quippo Construction Equipment Ltd. v. Janardan Nirman Pvt. Ltd.***[11], the Supreme Court held that a party which failed to raise an objection regarding the tribunal's jurisdiction before the arbitral tribunal must ordinarily be deemed to have waived such objection.

Further, under Section 16(3), a party may contend that the arbitral tribunal is exceeding the scope of its authority or jurisdiction. Such a plea must be raised as soon as the matter alleged to be beyond the tribunal's authority arises during the proceedings.

If the tribunal accepts the jurisdictional objection, the proceedings terminate to that extent. If the tribunal rejects the objection, Section 16(5) permits the tribunal to continue with the proceedings and make an award.

Importantly, where the tribunal rejects a jurisdictional challenge under Section 16 and proceeds to render an award, such rejection is **not appealable**. The aggrieved party must wait until the final award is passed and thereafter challenge the award under Section 34.

However, the Supreme Court in ***Lion Engineering Consultants v. State of Madhya Pradesh***[12] clarified that there is no absolute bar on raising a jurisdictional objection under Section 34 merely because such an objection was not raised under Section 16. A plea relating to jurisdiction may still be urged while challenging the award under Section 34.

FORM AND CONTENT OF ARBITRAL AWARD

Section 31 of the Act prescribes the form and content of the award. The award made by the tribunal should be signed by the arbitrator(s). it should also contain the date and place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place. The Section stipulates that the signed copy shall be determined to each party.

The tribunal is also empowered to pass interim award under Section 31(6) of the Act on admitted facts at the request of the parties.

Under Section 31A, the tribunal has the power to impose costs on the completion of the same in terms of Section 32. The arbitral proceedings are deemed to have been terminated. On receipt of the award, a party may either choose to abide by the decision or challenge the same.

CHALLENGE TO AN ARBITRAL AWARD

What if either party is dissatisfied with the award passed by the arbitral tribunal?

The Arbitration and Conciliation Act, 1996 does not provide for a regular appeal against an arbitral award. Instead, Section 34 provides a limited mechanism for judicial interference through an application for setting aside the award.

Under Section 34(3), an application for setting aside an arbitral award must be filed within three months from the date on which the party making the application receives the arbitral award. The proviso to Section 34(3) empowers the court to condone a delay of up to thirty additional days if sufficient cause is shown. However, the court cannot condone any delay beyond this additional thirty-day period, as the thirty-

[11] Quippo Construction Equipment Ltd. v. Janardan Nirman Pvt. Ltd. 2020 SCC OnLine SC 419.

[12] Lion Engineering Consultants v. State of Madhya Pradesh (2018) 16 SCC 758.

day period would constitute the extent of time the court is empowered to condone the delay.

A proceeding under Section 34 is commonly referred to as a "challenge procedure." It is neither an appeal, a revision, nor a full-fledged review. The court does not sit in appeal over the findings of the arbitral tribunal, nor does it reassess the merits of the dispute or the reasonableness of the reason as the arbitral tribunal has the sole power to appreciate evidence adduced by the parties. The Wednesbury principle embodies this. Section 34 rather provides for a limited review under Section 34, which is confined to the specific grounds enumerated in the provision.

The Supreme Court in ***The Project Director, National Highways v. M. Hakeem***[13] reaffirmed the limited scope of Section 34. In paragraph 21, the Court held that Section 34 does not permit a challenge on the merits of the arbitral award. Further, in paragraph 29, the Court clarified that a court exercising jurisdiction under Section 34 has no power to modify or vary an arbitral award. The court may only set aside the award on the grounds specified in the provision.

The grounds for setting aside an award are exhaustively contained in Section 34(2) and include, inter alia:

1) Incapacity of a party;
2) Invalidity of the arbitration agreement;
3) Lack of proper notice regarding the appointment of an arbitrator or the arbitral proceedings;
4) Inability of a party to present its case;
5) The award dealing with disputes beyond the scope of the arbitration agreement;
6) Improper composition of the arbitral tribunal or procedural irregularity;
7) Non-arbitrability of the subject matter; and
8) Conflict with the public policy of India, including patent illegality in domestic awards.

These grounds are exhaustive and not illustrative.

The Supreme Court in ***McDermott International Inc. v. Burn Standard Co. Ltd.***[14] reiterated that courts exercising jurisdiction under Section 34 cannot correct errors committed by arbitrators. The power of the court is confined to setting aside an award on legally recognised grounds and does not extend to rewriting or modifying the award.

In ***Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.***[15], Justice M. Jagannadha Rao referred to the grounds under Section 34 as distinct and limited "pigeon-holes" through which a challenge must fit. The phrase has subsequently been used to emphasise the narrow scope of judicial review under the Act.

The Supreme Court further elaborated upon the contours of Section 34 in ***BGS SGS Soma JV v. NHPC Ltd.***[16] Although the principal issue in that case concerned the determination of the arbitral seat, the Court reiterated the fundamental principle that judicial interference with arbitral awards must remain minimal and strictly confined to the grounds prescribed by statute.

In several judgments, including decisions authored by **Justice M. Sundar** in arbitration matters concerning ***Kamarajar Port Limited***, it has been held that the parties have to prove on the face of the award that any of these parameters are fulfilled.

The decision in ***The Project Director, National Highways v. M. Hakeem***[17] further reinforces this approach by emphasising that Section 34 operates through narrowly defined statutory grounds and does not permit a reassessment of the merits of the dispute or modification of the award.

Does the Limitation Act apply if a party does not file the application to set aside the award within the stipulated time period, that is, 120 days? Section 43 affirms that the Limitation Act applies. However, the

[13] NHAI v. M. Hakeem, (2021) 9 SCC 1.
[14] McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181.
[15] Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333.
[16] BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234.
[17] NHAI v. M. Hakeem, (2021) 9 SCC 1.

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court cannot condone the delay beyond 120 days, because the proviso gives the additional 30 days as the limited window period for condonation of delay, therefore affirming the finality of the award passed, if it is not challenged in the said period.
The only exception to the stipulated period of 120 days is given under Section 33, for clerical and other similar errors, if the parties otherwise agree.

Section 33 permits the tribunal, within 30 days, or, if both parties consent, to correct the award if it relates to:

1) correction of clerical, typographical, computational, or similar errors;
2) interpretation of a specific part of the award, where agreed by the parties; or
3) an additional award in respect of claims presented but omitted from consideration.

Where such an application is made and the arbitral tribunal passes a corrected or additional award, the limitation period under Section 34 begins to run from the date on which the request under Section 33 is disposed of, and not from the date of the original award.

In ***The Tamilnadu Civil Supplies Corporation v. M/s Lakshmi Export & Another,*** the Hon'ble Division Bench of the High Court of Madras in this judgement dated 16.02.2024 passed in OSA (CAD). Nos. 161 &164 of 2023 has held in Paragraph 9 that once the power under Section 33 of the Act is exercised by the arbitrator, the second part of Section 34(3) of the Act would automatically come into play and the time limit to file an application under Section 34 would be within 90 days from the date of disposal of the request under Section 33. Any other interpretation would be doing violence to the provisions to intendment of the legislature.

APPEALS UNDER SECTION 37

While Section 34 provides for a challenge to the award itself, Section 37 provides a limited appellate remedy. Section 37 is also exhaustive in nature. An appeal lies only in the situations specifically enumerated by the provision.

Broadly, appeals may be filed against:

1) Orders granting or refusing interim measures under Section 9;
2) Orders setting aside or refusing to set aside an arbitral award under Section 34;
3) Certain orders of the arbitral tribunal, including orders accepting a plea under Section 16(2) or 16(3) regarding jurisdiction or granting/refusing interim measures under Section 17.

The Arbitration Act does not prescribe a separate limitation period for appeals under Section 37. Consequently, the Limitation Act applies as enjoined under Section 43.

The leading authority is ***Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt. Ltd.***[18] In this case, the Supreme Court examined the applicability of Section 5 of the Limitation Act to appeals under Section 37. The Court held that Section 5 may apply to Section 37 appeals. However, delay cannot be condoned mechanically and courts must keep in mind the legislative objective of speedy resolution of arbitral disputes.

SETTLEMENT THROUGH MEDIATION AND CONCILIATION: SECTION 30

Lastly, if the parties are of the view that the dispute can be resolved amicably, Section 30 of the Arbitration and Conciliation Act, 1996 encourages the arbitral tribunal to facilitate settlement between the parties.

[18] State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd., (2021) 6 SCC 460.

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The settlement may be recorded in the form of an arbitral award on agreed terms under Section 30(2). Such an award has the same status and effect as any other arbitral award on the merits of the dispute and is enforceable in the same manner.

The section empowers the tribunal, with the consent of the parties, to embark upon the process of mediation even prior to the commencement of arbitration proceedings, or after the conclusion but prior to passing and publishing the award.

ASSISTANCE OF COURTS

The Act, to ensure that the parties are not left remediless, in the event that the tribunal is unable to give an interim relief to a party, under Section 27 of the Act empowers the tribunal, or a party with the approval of the tribunal to apply to court for assistance in taking evidence. The court may, under Section 27(3), execute the request by ordering that the evidence be provided directly to the arbitral tribunal. Under Section 27(5), a disobedience of such direction would constitute contempt or abuse of process.

ENFORCEMENT AWARD

The award passed by the arbitral tribunal should be published and must be sent to the parties. Service on the parties is mandatory as the period of Limitation under Section 34 commences to run from the date where the parties receive the award. Service on the counsel would not suffice. On receipt of the award, the parties can either challenge the same under Section 34 or accept it. Either way, when the award reaches finality, the same can be enforced under Section 36.

The award is enforced in accordance with the provisions of the Code of Civil Procedure. Therefore, the arbitral award is deemed to be a decree, which is enforceable under Order XXI, CPC.

CONCLUSION

The Arbitration and Conciliation Act, 1996 enshrines the procedural aspects that need to be taken care of from the validity of the agreement under Section 7 to the enforceability of an award under Section 36. Thus, this statute is aimed at ensuring party autonomy, efficiency, self-sufficiency, finality and judicial non-interference while allowing for judicial involvement where absolutely necessary. Case laws such as *Perkins Eastman Architects DPC v. HSCC (India) Ltd., Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. and The Project Director, National Highways v. M. Hakeem* have laid down the jurisprudence on arbitration, reiterating the key principles of impartiality, finality and non-intervention that form the backbone of arbitration proceedings. The statutory time limit under Sections 23 and 29A, competence-competence rule under Section 16 and exhaustive ground for challenge of an award under Section 34 all indicate that there is an earnest effort on the part of lawmakers to create confidence in arbitration as a process for dispute resolution. With the development of arbitration law in India through constitutional bench decisions as well as legislative enactments, the said Act forms the basis of an effective arbitration regime in India.

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