

The Arbitration and Conciliation Act, 1996: An Overview

By Kamal Kumar

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- What is Arbitration?
- Why do we need Arbitration?
- How is it different from the Court Proceedings ?

History

- Arbitration has a long history in India. In ancient times, people often voluntarily submitted their disputes to a group of wise men of a community—called the Panchayat—for a binding resolution
- The first Arbitration law in India was the Arbitration Act 1899 which was based on the English Arbitration Act 1899.
- Thereafter, the Arbitration Act, 1940 was enacted in India to consolidate and amend the law relating to arbitration effective from 1 July 1940
- The Arbitration and Conciliation Act was again modified in 1996 with the aim and the objective to give effect to the UNCITRAL Model Laws as adopted by the United Nations Commission on International Trade Law on 21 June 1985.

Objectives of the Arbitration Act

- To cover both international & domestic arbitration & conciliation
- To make provisions for an arbitral procedure which is fair, efficient and capable of meeting the needs of the arbitration
- To permit an arbitral tribunal to use mediation & conciliation to encourage settlement of disputes
- To provide that a settlement reached by the parties as a result of conciliation proceedings will have the same status and affect as an arbitral award
- To provide that the arbitral tribunal gives reasons for its arbitral award
- To provide that every arbitral award is enforced in the same manner as if it were a decree of the court

Principal Characteristics

- Arbitration is consensual
- The parties are free to choose the arbitrator(s)
- Arbitration is neutral
- Arbitration is a confidential procedure
- The decision of the arbitral tribunal is final and easy to enforce

Advantages of Arbitration

- Choice of Decision Maker (Arbitrator)
- Cost Effective & Efficient
- Privacy
- Court intervention is minimum
- Convenience
- Strict rules of CPC and Evidence Act are not required to be followed, the Arbitrator is free to frame his own procedure to conduct arbitration proceedings
- Finality of Decision

Disadvantages of Arbitration

- Unenforceability of the interlocutory orders of Arbitrator
- Waiver of the right to access the court
- If there are multiple arbitrators in the arbitration tribunal, delays can happen due to juggling of their schedules for fixing hearing dates

Scope of Arbitration

Examples of non-arbitrable disputes are:

- Disputes relating to rights and liabilities which give rise to or arise out of criminal offences;
- Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;
- Guardianship matters;
- Insolvency and winding up matters;
- Testamentary matters (grant of probate, letters of administration and succession certificate);
- Eviction or tenancy matters governed by special statutes

Arbitration Agreement and its Essential Elements

Arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship and has following essential elements:

- It must be in writing
- It must have all the essential elements of valid contract
- It must be to refer a dispute, present or future, to arbitration
- It may be in the form of an arbitration clause in a contract or in the form of a separate agreement or in the form of a reference in a written contract containing an arbitration clause

Process of Arbitration Proceedings

- Initiating Arbitration
- Appointment of Arbitrator
- Preliminary Meeting
- Filing of Statement of Claims & other Pleadings
- Hearings
- Framing of Issues for determination
- Interchange of Evidence by way of Affidavits
- Deposition of the Witnesses
- Passing of Award

Arbitrator

The person who is appointed to determine the disputes is called the arbitrator. Arbitrator(s) can be appointed by any of the following manners:

- By the parties as per agreed procedure
- Each party may appoint one arbitrator and then the third arbitrator is appointed by the two arbitrators
- Appointment by the court

Challenge to appointment of an Arbitrator- an appointment of the arbitrator can be challenged on the grounds of:

- his independence or impartiality; or
- He does not possess the requisite qualifications

The appointment of the arbitrator can be challenged by submitting a written statement before the arbitration tribunal.

Powers & Duties of Arbitrator

Powers

- Pass Interim Orders
- Decide the procedure of the arbitration proceedings
- Termination of Proceedings
- Appoint an Expert
- Seek Court assistance in taking evidence
- Correction in errors in, and interpretation of, award

Duties

- To see his appointment is in order
- Adjudicate the matter timely
- Act judicially & impartially
- Declare in writing any circumstances likely to give rise to doubts as to his impartiality
- Encourage settlement
- Shall not misconduct
- Pass a final award

Arbitration Award and Recourse **against it**

- The decision of an arbitrator is called an award. The award shall be made in writing and shall be signed by the arbitrator(s) and shall also state the reason upon which it is based, unless agreed by parties otherwise. The award shall also state its date and place.

Recourse against Arbitral Award

- An award can be challenged before the Courts by the aggrieved party. However, the Arbitration Act provides very limited grounds on which, the award can be challenged.

Arbitration vis-à-vis Cost Accountants

- Role of a Practicing Cost Accountant in Arbitration Proceedings
 - An arbitrator has been given powers (under section 26 of the Arbitration Act) to appoint one or more experts to report it on specific issues. Therefore, a practicing Cost Accountant can also be appointed during arbitration proceedings to give his expert opinions.
 - A cost accountant can also be a part of the arbitration tribunal, if parties agree on appointing a cost accountant as an arbitrator.

Thank You !