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for June 20***

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On behalf of **TEAM YES**

CS Vikas Vohra CA CS Harish A. Mathariya
Founders



INTRODUCTION

- a. In the very starting it was The Arbitration and Conciliation Act, 1996 relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith or incidental thereto. It was amended by Arbitration and Conciliation (Amendment) Act, 2015 to make arbitration process cost effective, speedy, with minimum court intervention.
- b. Even then it was not preferred by parties, so in order to identify the roadblocks to the development of institutional arbitration, examine specific issues affecting the Indian arbitration landscape and also to prepare a road map for making India a robust centre for institutional arbitration both domestic and international, the Central Government constituted a High Level Committee under the Chairmanship of Justice B. N. Srikrishna, Former Judge of the Supreme Court of India.
- c. The High-Level Committee submitted its Report on 30th July, 2017.
- d. The said Committee, inter alia, recommended:
 - i. for the establishment of an independent body for grading of arbitral institutions and accreditation of arbitrators, etc.
 - ii. The Committee has also recommended certain amendments to the said Act to minimise the need to approach the Courts for appointment of arbitrators.
- e. So, in order to inculcate the recommendations, The Arbitration and Conciliation (Amendment) Act, 2019 passed by the Parliament.
- f. The salient features of the Arbitration and Conciliation (Amendment) Act, 2019, are as follows: —
 - i. Amended to section 11 of the Act relating to “Appointment of Arbitrators” so as to change the present system of **appointment of arbitrators by the**





Supreme Court or High Court, to a system where the arbitrators shall be appointed by the "arbitral institutions" designated by the Supreme Court or High Court;

- ii. Establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of grading of arbitral institutions and accreditation of arbitrators,

Note: In case where there are no arbitral institutions available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions;

- iii. Section 23 of the Act relating to "Statement of claim and defence" has also been amended, earlier it did not provide any time limit for filing of statement of claim, but now the amended section provides that the statement of claim and defence shall be completed within a period of six months from the date the arbitrator receives the notice of appointment;
- iv. Enhanced provisions to protect the arbitrator or arbitrators from any suit or other legal proceedings for any action or omission done in good faith in the course of arbitration proceedings.

Details of the Arbitration and conciliation (Amendment) Act, 2019

Appointment of Arbitrators

- i. According to Section 11(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
- ii. Section 11(2) states that the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
- iii. Section 11(3) states that failing any agreement stated above, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators, shall appoint the third arbitrator who shall act as the presiding arbitrator.



- iv. According to Section 11(3A) of the Act, the Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-1, for the purposes of the Act. It may be noted that in respect of those High Court jurisdictions, where no graded arbitral institution is available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution
- v. It further provides that:
- a) If any party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party;
- or
- b) the 2 appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, then appointment shall be made, on an application of the party, where they need to apply to the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration.
- c) Section 11(5) of the Act is also the same which states that if the same happens in an arbitration with a sole arbitrator and the parties fail to agree on the arbitrator within 30 days from receipt of a request by one party from the other party, "the appointment shall be made in the same manner as stated above. Section 11(6) states that where, either the parties or the appointed
- d) arbitrators fail to comply with the appointment procedure then the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be.





- e) Section 11(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.
- f) According to Section 11(8) of the Act, the arbitral institution referred above, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator and shall give due regards to -
- (a) any qualifications required for the arbitrator; and
 - (b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.”
- g) Section 11(9) provides that in the case of appointment of sole or third arbitrator in an international commercial arbitration, the arbitral institution designated by the Supreme Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.
- h) Section 11 (11) states that where more than one request has been made to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.
- i) According to Section 11(12) of the Act, an application for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of 30 days from the date of service of notice on the opposite party.
- j) Section 11(14) states that the arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule. It may be noted that Section 11(14) shall not apply to international commercial arbitration and where it is already decided between parties.



Interim Measures Ordered by Arbitral Tribunal

Section 17(1) provides that a party may, during the arbitral proceedings apply to the arbitral tribunal:

- (i) For the appointment of a guardian for a minor or 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
 - d. interim injunction;
 - e. any other interim measure as the tribunal may deem fit.

Note: The arbitral tribunal shall have the same power for making orders, as the court has for the purpose of any proceedings before it. Any order issued by the arbitral tribunal shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.

Statements of Claim and Defence

Section 23(1) provides that within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars





Section 23 (4) states that the statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.

Time Limit for Arbitral Award

Section 29A (1) provides that the award in matters other than international commercial arbitration shall be made:

- a. Within 12 Months from the completion of pleading under section 23(4).
Note: The parties may, by consent, extend the period specified in subsection (1) for making award for a further period not exceeding six months.
- b. Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose off the matter within a period of twelve months from the date of completion of pleadings under section 23(4).
- c. Section 29A (2) - if the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.
- d. If the award is not made within the period specified above, the mandate of the arbitrator(s) shall terminate unless the Court has extended it.
Note: Provided that while extending the period under this subsection, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay. Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.
- e. Section 29A (6) provides that while extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of



the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

f. As per Section 29A (9) an application filed under this section shall be disposed of by the Court as expeditiously as possible and endeavor shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party

Application for Setting Aside Arbitral Award

Section 34 (2) states that an arbitral award may be set aside by the Court only if:

- a. the party making the application establishes on the basis of the record of the arbitral tribunal 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 it; 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 falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration

Note: 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.





v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties,

b. the Court finds that:

i. the subject-matter of the dispute is not capable of settlement by arbitration, or

ii. the arbitral award is in conflict with the public policy of India.

Note: For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if:

(i) the making of the award was induced or affected by fraud or corruption;
or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Appealable Orders

This is dealt under section 37 of the act under which section 37(1) states that notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders to the Court authorised by law to hear appeals from original decrees:

a. refusing to refer the parties to arbitration under section 8;

b. granting or refusing to grant any measure under section 9;

c. setting aside or refusing to set aside an arbitral award under section 34.

Further Section 37(2) extends the list mentioned above by adding:

a. accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

b. granting or refusing to grant an interim measure under section 17.

Further Section 37(3) states that no second appeal shall lie from an



order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Confidentiality of information

Section 42A states that the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

Protection of action taken in good faith

Section 42B of the Act, no suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

ARBITRATION COUNCIL OF INDIA (ACI)

Establishment and incorporation of Arbitration Council of India

- a. Section 43B empowers the Central Government to establish the Arbitration Council of India to perform the duties and discharge the functions under the Arbitration Conciliation Act, 1996.
- b. The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.
- c. The head office of the Council shall be at Delhi. The Council may, with the prior approval of the Central Government, establish offices at other places in India.





Composition of Council

According to Section 43C of the Act, the Council shall consist of the following Members, namely:

- i. a chairperson, to be appointed by the CG in consultation with the chief justice of India, who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration.
- ii. Member, to be nominated by the CG, who is an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international.
- iii. Member, to be appointed by the CG in consultation with the Chairperson, who is an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws
- iv. Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary-Member, ex officio.
- v. Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary- Member, ex officio;
- vi. One Part-time Member appointed by the CG - representative of a recognised body of commerce and industry, chosen on rotational basis; and
- vii. Chief Executive Officer-Member-Secretary, ex officio.

Note: The Chairperson and Members of the Council, other than ex officio Members, shall hold office as such, for a term of three years from the date on which they enter upon their office. Chairperson or Member, other than ex officio Member, shall not hold office after he has attained



the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member. The salaries, allowances and other terms and conditions of the Chairperson and Members as may be prescribed by the Central Government.

Duties and functions of Council

The Council may—

- (a) frame policies governing the grading of arbitral institutions;
- (b) recognise professional institutes providing accreditation of arbitrators;
- (c) review the grading of arbitral institutions and arbitrators;
- (d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;
- (f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;
- (g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) promote institutional arbitration by strengthening arbitral institutions;
- (i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;
- (j) establish and maintain depository of arbitral awards made in India;
- (k) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and
- (l) Such other functions as may be decided by the Central Government.





Note: Vacancies, etc., not to invalidate proceedings of Council Section 43E states that no act or proceeding of the Council

Resignation of Members According (Section 43F)

The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office.

Provided they shall continue the office until they are permitted by the Central Government to relinquish his office or until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

General norms for grading of arbitral institutions Section 43-I

States that the Council shall make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations.

Norms for accreditation Section 43J

Provides that the qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule.

VERY VERY IMPORTANT NOTE: Eight Schedule of the Act authorizes a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary to act as an arbitrator under the Act.



According to the 'Eighth Schedule of the Act, a person shall not be qualified to be an arbitrator unless he—

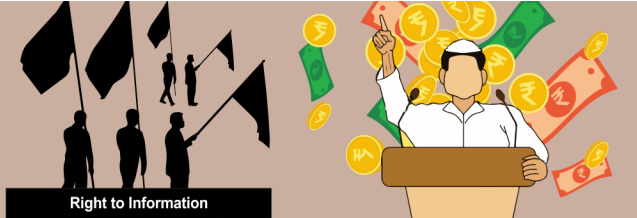
- (i) is an **advocate** within the meaning of the Advocates Act, 1961 having **ten years of practice experience** as an advocate; or
 - (ii) is a **chartered accountant** within the meaning of the Chartered Accountants Act, 1949 having **ten years of practice** experience as a chartered accountant; or
 - (iii) is a **cost accountant** within the meaning of the Cost and Works Accountants Act, 1959 having **ten years** of practice experience as a cost accountant; or
 - (iv) is a **company secretary** within the meaning of the Company Secretaries Act, 1980 having **ten years** of practice experience as a company secretary; or
 - (v) Has been an officer of the Indian Legal Service; or
 - (vi) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or
 - (vii) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed; or
 - (viii) is a person, in any other case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, information technology, Intellectual Property Rights or other specialised areas in the Government, Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector, as the case may be.
- Section 43K - the Council shall maintain an electronic depository of arbitral awards made in India.





- *Section 43L empowers the Council may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under the Act.*





The Act has been enacted by the Parliament so as to provide that the term of office of, and the salaries, allowances and other terms and conditions of service of, the Chief Information Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners, shall be such as may be prescribed by the Central Government.

Term of Office and Conditions of Service of Central Information Commission

Section 13 of the Right to Information Act provides that the Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and not more than 65 years of age and shall not be eligible for reappointment.

Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner.

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information

The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government

Term of Office and Conditions of Service of State Information Commission

Section 16 of the Right to Information Act provides that the State Chief



Information Commissioner shall hold office for such term as may be prescribed by the Central Government and not more than 65 years of age and shall not be eligible for reappointment.

Every State Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such state Information Commissioner

Provided that every State Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief State Information Commissioner.

Provided further that where the state Information Commissioner is appointed as the Chief State Information Commissioner, his term of office shall not be more than five years in aggregate as the Information

The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government





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Adv Chirag Chotrani

Adv Chirag Chotrani is a young yet experienced faculty in the field of Law. From being the topper of his batch, to creating many All India Rankers in the Field of Company Secretary, Chirag has proved his academic capabilities time and again.

Chirag is a Commerce and Law Graduate and holds a Masters Degree in Corporate Law, earned specialisation in Corporate Laws and in Arbitration Law and is currently completing his PHd in Corporate Laws.

The ease with which this faculty introduces the concepts is commendable and every student who has studied under him has passed in his subjects with flying colours. From the start of his career till now he has always been into teaching and has served in many Prestigious Institutions and is presently the Top Educator for CS Category at UNACADEMY Platform which currently caters to 10 Million students across the country.



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