

Highlights of Arbitration and Conciliation (Amendment) Bill, 2003

-- Editorial Team

The Arbitration and Conciliation Act, 1996, based on the United Nations Commission on International Trade Law (UNCITRAL), applies to both international and domestic arbitrations. This Act suffers from certain deficiencies and drawbacks. The important shortcomings of this Act are as follows:

- No provision exists for expediting awards or the subsequent proceedings in Courts where applications are filed for setting aside awards.
- An aggrieved part has to start again from the District court for challenging the award.
- No provision is available so as to enable the Indian parties to obtain interim measures from Indian Courts before a foreign arbitration could commence outside India.
- Multinational companies can stipulate that foreign laws could apply even if the entire contract had to be implemented in India. This provision inconsistent with the sovereignty of Indian Laws.

The Arbitration and Conciliation (Amendment) Bill, 2003 is based on the comprehensive review of the Arbitration and Conciliation Act, 1996 undertaken by the Law Commission of India in its 176th Report. The following are the salient features of the Bill:

(1) Constitution of a judicial authority to decide jurisdictional issues, where an application is made by a party raising any jurisdictional

question.

(2) Empowerment to Courts to make reference to arbitration in case all parties to a legal proceedings enter into an arbitration agreement to resolve their disputes during the pendency of such proceedings before it.

(3) Providing for the appointment of arbitrators by the Chief Justice of the Supreme Court or the High Court or his nominees and treat such appointment to be an appointment made on the judicial side so as to prevent filing of writ petitions on the basis that this is an administrative order of the Chief Justice.



(4) Providing that where the place of arbitration is in India, Indian Law will apply whether the arbitration is between the Indian Parties or an International arbitration in India.

(5) Providing for completion of arbitrations under the existing Act within one year from the commencement of arbitration proceedings, but at the end of one year the Court will fix up a time schedule for completion of proceedings until the award is passed.

(6) Empowerment to the arbitral tribunal to pass peremptory orders for implementation of interlocutory orders of the arbitral tribunal and if

they are not implemented to empower Courts to order costs or pass other orders in default.

(7) Providing for the Arbitration Division in the High Courts and also for its jurisdiction and special procedure for enforcement of awards made under the Arbitration Act, 1940 including awards made outside India.

(8) Providing for speeding up and completing all arbitrations under the existing Act, including those arbitrations under the repealed Arbitration Act, 1940 within a stipulated time.

(9) Introduction of a single member fast track arbitral tribunal wherein filing of pleadings and evidence will be on fast track basis so as to pronounce award within six months and specification of procedures to be followed by such fast track arbitral tribunal.

(10) The Bill proposes to introduce a new Section 8A to enable reference to arbitration at any stage of a civil suit pending in the City Civil Court or in the High Court or in the Supreme Court if all the parties to the dispute enter into an arbitration agreement to resolve their dispute and pay to that effect. The new provision provides for absolute liberty to the litigants to refer to arbitration the civil disputes pending at various stages such as, at the institution, appeal, revision, including those instituted under Articles 226/227 of the Constitution and appeals therefrom to the Supreme Court.

(11) **Section 12:** The Bill proposes very high degree of disclosures to be made by the arbitrator informing the party about his past, present, direct or indirect relationship with the parties to the arbitration or in any of their financial, business, professional or social dealings apart from the subject matter of the dispute.

(Full text of the bill is available at <http://rajyasabha.nic.in/legislative>)