

ARBITRATION AND CONCILIATION

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Class-room live lectures edited, enlarged
and updated**

ARBITRATION & CONCILATION ACT

Act of 1996

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Texts and REFERENCE BOOKS:

S. D. Singh : Law of Arbitration
Bare Act : Govt. of India Publication

QUESTIONS BANK

1. What is an Arbitration Agreement ?
What are its implied conditions?
2. What are the powers of the Arbitrators?
3. Explain the powers of the Court to remove an Arbitrator.
What is misconduct of an Arbitrator?
4. Explain the powers of the court to appoint an Arbitrator.
What is the law relating to the appointment of three or more Arbitrators?
5. State and explain the powers of the Court-
 - i) to modify an award.
 - ii) to remit an award.
6. When can the Civil Court set aside an award?
7. Explain when a Court can stay Legal Proceedings initiated by one of the parties to an Arbitration settlement.
8. What is a conciliatory proceeding? Detail the procedure.
9. What is a foreign Arbitration award and when it can be enforced?

CHAPTER 1

ARBITRATION AGREEMENT

Ch.I. Arbitration Agreement.

Arbitration means the determination of a dispute by the decision of one or more persons called Arbitrators. The Arbitrators form a 'tribunal', chosen by the consent of parties to adjudicate their differences. In fact, all questions which might be referred to a civil court may be referred to it.

Hence, Arbitration is a settlement of dispute by the decision of the Arbitrator in a speedy manner, so that it may not become the subject matter of further litigation between the parties.

Agreement: The Arbitration agreement is the basic foundation. It is between the two parties and must be in writing, setting out the disputes between the parties and requiring settlement by Arbitration in a quasi judicial manner.

According to Sec.3 the Arbitration agreement is deemed to include the provisions set out in the First schedule of the Act, unless the parties provide otherwise.

Hence, an agreement between the parties to refer the dispute to an arbitrator and to abide by his decision amounts to an arbitration agreement. It is this agreement that gives jurisdiction to the Arbitrator. A new agreement may supercede the original agreement.

There are eight rules provided for in the schedule mentioning the implied conditions of the Arbitration agreement.

The eight implied conditions refer to :

i) The reference may be made to a single arbitrator. But, either side may appoint one arbitrator, if they so desire. If there are two arbitrators, the arbitrator should appoint an umpire within one month.

ii) The award shall be final and binding on the parties.

iii) The arbitrators must make the award within four months or within such time, the court may extend. If not so made, either party to the agreement may treat the arbitrator as at an end.

iv) If a umpire is appointed, the award should be given in two months or as extended by the court.

v) The costs of Arbitration, shall be borne by the parties, as may be decided by Arbitrators.

vi) Parties should make submissions on oath or affirmation before the Arbitrators, and produce all evidence papers, books, documents, accounts etc.

Matters which may be referred :

Only matters of civil nature (Sn 9 C P C), may be referred to

Exceptions >

The following are matters which cannot be referred :

1. Criminal matters.
2. Matrimonial matters.
3. Insolvency, Lunacy proceedings
4. Testamentary matters.

Types:

1. Arbitration between parties, without court's intervention.
2. Arbitration with court's intervention.
3. Arbitration, when suit is pending in the court.

Binding nature:

Award of arbitrators is binding on the parties. Arbitration Act has made provisions for enforcement by passing a decree on the award.

Stay of legal proceedings : [Sns 34 or 35]

If the parties have an agreement to refer to arbitration for settlement of disputes, the suit filed by one of the parties, may be stayed by the court. Exhaustion of remedy rule applies.

CHAPTER 2

POWERS OF ARBITRATOR

Ch. 2. Powers **of the Arbitrator.** (Sn.13)

Sn.13. of the Arbitration Act provides for the powers of an arbitrator. This is an enabling provision and it is subject to the agreement made between the parties.

i) He has powers to summon parties, administer oath to them and to examine witnesses appearing before him. This is discretionary and not mandatory.

ii) He is empowered to state a special case for the opinion of the court on any question of law involved. He may in suitable cases state the award wholly or in part or refer a special case for the opinion of the court.

Eg.: Disputes as to legal validity of the arbitration agreement can be determined by the court. This power of reference may be taken away by the arbitration agreement.

Leading Case: Union of India Vs. South India Corporation.

iii) The arbitrator is empowered to make an award conditional or in the alternative. If he states one of two things to be done, then the award is in the alternative.

iv) He is empowered to administer interrogatives as it may be necessary in the opinion of the umpire.

.The Arbitrator shall sign the award and shall give notice in writing to the parties thereof. It shall mention the amount, if charges and fees are payable.

vi) Some powers under C.P.C. as are applicable to an Arbitrator may be exercised, by him.

vii) Clerical errors may be corrected by him.

Award

The award in writing should be signed by the Arbitrator and should give notice to parties. He should file his award, with documents within 30 days of service, depositions etc to the court with this he becomes functus officio.

CHAPTER 3

POWERS OF THE COURT

Ch. 3.1 Power of the court to modify an award (Sn 15)

Sn.15 empowers a court to modify the award in the following circumstances:

- i) If the award is in respect of something not referred to, the arbitration at all. The court may strike out that which is not applicable.
- ii) If the award is in an imperfect form, it may suitably amend the award.
- iii) If it contains errors, the court may correct the obvious errors (i.e without affecting the decision).

If the award contains clerical mistakes, accidental slips or omissions the court may correct them.

Only these powers may be exercised by the court to modify. Even Sn 151 C.P.C. inherent powers, is not applicable. Only the court in which the order is file may exercise these powers.

Ch.3,2 Power of the court to remit an award (Sn 16)

Sn. 16 provides for the power of the court to remit an award i.e., it may send it to the arbitrator or umpire for re-consideration, on such terms as it thinks fit in the following circumstances:

- i) If the award has not decided any of the matters referred to arbitration.
- ii) If the award determines any matter not referred -at all for arbitrator (matter inseparable).
- iii) If the award is so indefinite as to be incapable of execution.
- iv) Where an objection to the legality of the award is clear from the face of the award.

The court may also remit the award.

- a) When there is mis conduct of arbitrator
- b) Additional evidence is available
- c) Arbitrator himself seeking on ground of mistake done by him

The court shall also fix the time within which the arbitrator should submit his decision to the court. If he does not submit his decision within the time so fixed, the award becomes void. In such a case the court may supersede the arbitration reference and may order that the arbitration agreement shall cease to have effect.

Ch.3.3 Power of the Court to remove Arbitrator (Sns. 11&12)

The court cannot suo-moto remove an arbitrator or umpire. But,

- i) On the application of a party, the court may remove him,

If the arbitrator fails to do his work without reasonable delay or if there is inordinate delay, ie., he must enter on reference being made to him and use reasonable despatch and make the award. (Sn 11)

The arbitrator must observe the well-known rules relating to Administration of justice. He must strictly be impartial. He must apply the principles of natural justice. He must observe the fundamental rules relating to judicial proceedings. However he need not follow these too minutely. Hence latitude is allowed.

An arbitrator must follow the legal proceedings. He must try to find out the legal rights of the parties.

Leading cases: Dutt Vs. Sossom & Co.,

ii) If the arbitrator has grossly misconducted himself, he may be removed.

Eg.: Corruption is misconduct, riot giving notice of the meeting amounts to misconduct. Bias, or being partial, secret interest in subject matter, admitting evidence when inadmissible etc amount to

misconduct. In such a case the affected party may put an application to the court. The court may thereupon remove the arbitrator by an order. Such an arbitrator is not entitled to receive any remuneration for his services.

Ch.3.4. Award Set-aside by a Court (Sn.30)

An award shall not be set aside except in one or more of the following grounds namely :(Sn.30).

i) If an arbitrator or umpire has misconducted himself, ii) If he has misconducted the proceedings.

Hi) If the award has been made after the courts order of supersession.

iv) If the award is improperly procured. v) If the award is otherwise invalid.

Sec.33 relates to the procedure which is to be adopted for getting the award set-aside whereas Sec.30 contains the power and jurisdiction of the court to do it.

It is difficult to give-an exhaustive definition of what amounts to misconduct on the part of the arbitrator or umpire. The expression is of wide import including briefly, corruption and also a mere mistake as to the scope of his authority. Examples of the misconduct: Hearing only one party in the absence of another; acting in excess of authority; refusal to record oral evidence tendered; abuse of power; absence from deliberation on material dates etc.

The procedure before the arbitrator may be regulated either by the statute or-by the agreement between parties which is not contrary to law. He is expected to give notice to both the parties, hear all material evidence, grant adjournment, reasonably arrange to get the presence of both parties, should not have private communication and private enquiry. Arbitrator, shall not abdicate, should not go beyond reference, otherwise, it amounts to misconduct of proceedings.

If the power of the arbitrator is revoked and reference is superseded by the court the arbitrator ceases to have e any power to make an award.

i) Award obtained during the operation of an order of injunction.

ii) Arbitration award made without jurisdiction, are illustrations of awards, improperly

obtained.

Ch.3.5. Powers of court to stay legal proceedings (Sn.34)

This comes under exhaustion of local remedies. The rule is that if there is an Arbitration agreement, the parties should solve their dispute by arbitration. But, if one party directly goes to the civil court, the court may issue an order for stay of proceedings. The reason is, the remedy available to the parties, i.e., arbitration has not been exhausted before going to the Civil Court.

The leading case is *Anderson V. Moran Co.*

The court has power to exercise its discretion to make an order for stay if the following conditions are fulfilled:

- i) There has been a valid subsisting arbitration agreement, ii) Proceedings in court have been commenced by a party.
- iii) The Proceedings are in respect of matters agreed to be referred to arbitration in the agreement.
- iv) There should be an Application for stay of proceedings prayed for by the party.
- v) It should have been made before filing a written statement and taking any other step.
- vi) Party applying for stay (defendant) was and is ready and willing to do all things necessary to the proper conduct of the arbitration.⁸⁰

Once it is shown that the dispute is covered by an arbitration clause, no matter whether the dispute was, brought to the notice of the plaintiff or not, the defendant is entitled to the stay. But, merely because there is an arbitration agreement, the party is not precluded from filing a suit. The court has discretion to stay, if these conditions are fulfilled.

Ordinarily, a stay granted by the court is on permanent basis and it is an order imposing some terms. By granting stay, the court is not divested of its power & duties in disposing of a suit. It is its duty to see that the parties do not delay the proceeding before the arbitrator.

CHAPTER 4 APPOINTMENT

Ch. 4-1 Appointment of Arbitrators by the Court.

Sec.8. The object of Sec.8 of the Arbitration Act is that, the default of a party to refer or even the default of one of the arbitrators should not result in the arbitration agreement becoming abortive (useless). This section confers upon the court, powers to appoint an arbitrator in certain cases. The right to make an application under this section is not a right arising from the contract but it is a statutory right. This provision is applicable under the following circumstances:

- i) When there is a provision in the arbitration agreement for the appointment, by common consent of all the parties, for one or more arbitrators and that consent cannot be got due to want of

concurrence to appoint an arbitrator.

ii) Where appointed arbitrator or umpire neglects or refuses to act or is incapable of acting or is dead, or

iii) The parties or the arbitrators, as the case may be, do not supply the vacancy contravening the arbitration agreement.

Procedure:

If an arbitrator or umpire is not appointed in any of the contingencies mentioned above, any party may serve the other party with written notice of 15 days to concur in the appointment or to concur in supplying the vacancy. If the requisition is not complied with, he may make an application to court, for appointment of an arbitrator or umpire. The court may on hearing the other party, take a suitable decision in the matter at its discretion. It may appoint or supply the vacancy.

Ch. 4.2. Law relating to the appointment of three or more Arbitrators

Sn.10. deals with arbitration agreement which provides for reference to three (or more) arbitrators. In case the reference is to three arbitrators, out of three each one is to be appointed by the two parties & the third is to be appointed by the two appointed arbitrators, who is called an umpire. If three arbitrates are to be appointed by the consent of the parties themselves, the award of the majority will prevail. In case the arbitrators are more than three, the award of the majority will prevail, and if the arbitrators are equally divided the award of the umpire shall prevail.

An umpire can only be appointed if there are even number of arbitrators and the arbitrators would themselves appoint an umpire. An umpire may be appointed by the (selected) arbitrators or by the consenting parties. The umpire acts only when there is difference between arbitrators themselves.

When arbitration agreement contains a term that arbitrators shall appoint umpire before they proceed with reference and if umpire is not appointed, the arbitrators do not acquire jurisdiction to proceed with the reference.

Ch.4.3 Death of an Arbitrator

If there are two Arbitrators and one of them dies, then the party who appointed him may appoint a new arbitrator in his place. If the appointed arbitrator dies and if the arbitration agreement does show that it was intended that the vacancy should not be filled up, then the party may proceed to supply the vacancy. He must serve notice to the other parties to concur in the appointment. If the appointment is not made within 15 days after service of notice, the court may, on the application of the person, appoint an arbitrator. The court must give notice and hear the other parties.

Ch.4.4 Revocation of Authority of Arbitrator :- Sn 5

The arbitration on agreement is the foundation for the appointment of an arbitrator. Hence if he is so appointed, his authority to act as arbitrator cannot be revoked. He gets an irrevocable authority to proceed with the matter, even if one of the parties, refuses to submit to the arbitrator.

However, his authority can be revoked only-(i) if arbitration agreement has provided for it or (ii) with the permission of the court

Grounds :

The court .in its discretion, grant leave under sn 5 to prevent any miscarriage of justice. The leading case is Amarchand V. Ambica Jute Mill.

1. When the arbitrator was in fraudulent collusion with a party
2. When he had no jurisdiction in the dispute
3. Where arbitrator was a debtor to a party in the arbitration
4. Where was clear bias
5. When the arbitrator acted with a closed mind, prejudging issues.

The remedy is discretionary & the court may refuse to revoke authority unless a strong case is made out.

CHAPTER 5**Conciliation Proceedings :**

Conciliation is an_ alternate dispute resolution -a method to resolve disputes. The origin is the U.S. Here, the two parties to a dispute agree to have a conciliator The conciliator meets the two parties separately and helps to resolve their differences. The main feature is that the two parties do not meet each other face to face. Hence this helps to reduce confrontations, and tensions. A practical and shrewd conciliator improves communications, interprets issues, and brings about a negotiated settlement..Actually he has no legal standing, and hence no authority to seek evidence or call witnesses. He does not write down any decision or award .

Sns.61 to 72 of the Arbitration and Conciliation Act provides for such a Conciliation proceeding.

Subject matter

Disputes arising out of legal relationship—contractual or not—and to all connected matters. There are disputes which cannot be referred to conciliation e.,g criminal matters

Appointment:

The two parties agree to appoint a sole conciliator. Both may appoint two or more .If there are three, then one will preside over the proceedings. Both may seek assistance of an Institution to recommend an impartial and independent persons for appointment

Invitation:

One party initiates the proceeding by writing an invitation to the other , bringing out the subject of conciliation. If the other party accepts within 30 days, the proceeding starts. If not the conciliation comes to an end. He shall inform the other party about the end of conciliation.

Statements:

On appointment, he calls both parties to send each other ,their written statement giving

details of the nature of the dispute and points at issue differences and grounds and evidence .Each party shall send to the other.

Proceedings:

The conciliator may call for further information from the parties

Proceedings are very informal and does not follow the Evidence Act or C P C. He follows the basic principled of objectivity, fairness and Justice and examines the rights and obligations of the two parties ,custom and usages ,business practices if any.

He may, after taking into consideration the facts and circumstances take steps for speedy disposal. The parties do not meet before him and so he will have more room to help each party to accept his proposal which may be oral or in writing.

If he so prefers he may call the parties to meet him at a place agreeable to both . [confidential information not to shared with the other party]

Cooperation of the parties is the sole criterion for success. Hence suggestions are taken by the conciliator

Agreement : When a stage reaches, the conciliator may formulate his terms of settlement, get the opinions of parties and draw up the settlement , The parties sign the agreement.

Final : Such a signed settlement becomes final and binding ,The conciliator signs and give copies to the parties. The effect is the same as arbitration award ,

With this the proceedings **are terminated**

Costs are fixed by the conciliator and are met equally by both parties.

Barred During these proceedings, parties are barred from going to any arbitral or judicial proceedings.

THE END

REFERENCE SECTION

Selected Sections

THE ARBITRATION AND CONCILIATION ACT, 1996

(f) " **international commercial arbitration**" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-

- (i) an individual who is a national of, or habitually resident in, any country other than India; or
- (ii) a body corporate which is incorporated in any country other than India; or
- (iii) a company or firm or association or a body of individuals whose central management and control is exercised in any country other than India; or
- (iv) the Government of a foreign country;

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part-

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

CHAPTER II **Arbitration agreement**⁷.

(1) In this Part, 'arbitration agreement' means 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, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in subsection (1) shall not be entertained unless it is accompanied

by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9. Interim measures etc. by Court. A party may, before, or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

(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 and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any part or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

1 CHAPTER III **Composition of arbitral tribunal**

10. Number of arbitrators.

(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

11. Appointment of arbitrators.

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), 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.

(4) If the appointment procedure in sub-section (3) applies and-

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made upon request of a party, by the chief justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice of any person or institution designated by him.

- (6) Where, under an appointment procedure agreed upon by the parties,-
- (a) a party fails to act as required under that procedure; or
 - (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
 - (c) a person, including an institution, fails to perform any function entrusted him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (7) A decision on a matter entrusted by sub- section (4) or sub- section (5) or sub section (6) to the Chief Justice or the person or institution designated by him is final.
- (8) The Chief Justice or the person or institution designated by him, in appointing arbitrator, shall have due regard to-
- (a) any qualifications required of the arbitrator by the agreement of the parties and
 - (b) other considerations as are likely to secure the appointment of an independent, and impartial arbitrator.
- (9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

12. Grounds for challenge.

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.
- (2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub section (1) unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if-
- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
 - (b) he does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reason, of which he becomes aware after the appointment has been made.

13. Challenge procedure. (1) Subject to sub- section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub- section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in subsection (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub- section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

14. Failure or impossibility to act.

(1) The mandate of an arbitrator shall terminate if-

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

- (b) he withdraws from his office or the parties agree to the termination of his mandate.
- (2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.
- (3) If, under this section or sub-section (3) of section 12, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. Termination of mandate and substitution of arbitrator.

- (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-
 - (a) where he withdraws from office for any reason; or
 - (b) by or pursuant to agreement of the parties.
- (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV Jurisdiction of arbitral tribunals

16. Competence of arbitral tribunal to rule on its jurisdiction.

- (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-
 - (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
 - (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.
- (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- (4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.
- (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
- (6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. Interim measures ordered by arbitral tribunal.

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.
- (2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

CHAPTER V Conduct of arbitral proceedings

- 18. Equal treatment of parties.** The parties shall be, treated with equality and each party shall be given a full opportunity to present his case.

19. Determination of rules of procedure.

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. Place of arbitration. (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

21. Commencement of arbitral proceedings. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

23. Statements of claim and defence.

(1) 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, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. Hearings and written proceedings.

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials: Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. Default of a party. Unless otherwise agreed by the parties, where, without showing sufficient cause,-

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1)

of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegation of the claimant;

(c) a party fails to appear at an oral hearing or to produce documentary evidence. the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. Expert appointed by arbitral tribunal.

(1) Unless otherwise agreed by the parties, the arbitral tribunal may-

(a) appoint one or more expert to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

27. Court assistance in taking evidence.

(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify-

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

CHAPTER VI Making of arbitral award and termination of proceedings

28. Rules applicable to substance of dispute.

(1) Where the place of arbitration is situate in India,-

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,-

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

29. Decision making by panel of arbitrators.

(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

30. Settlement.

(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

31. Form and contents of arbitral award.

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(a), "costs" means responsible costs relating to-

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

32. Termination of proceedings.

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in, obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

CHAPTER VII Recourse against arbitral award

34. Application for setting aside arbitral award.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof 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, failing any indication thereon, under the law for the time being in force; 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 contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: 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; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. Explanation.- Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by **fraud or corruption** or was in violation of section 75 or section 81.

(3) An application for **setting aside** may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. CHAP Finality and enforcement of arbitral awards
CHAPTER VIII Finality and enforcement of arbitral awards

35. Finality of arbitral awards. Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

36. Enforcement. Where the time for making an application to set aside the arbitral award under award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908). in the same manner as if it were a decree of the Court. CHAP Appeals CHAPTER IX Appeals

37. Appealable orders.

43. Limitations.

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings

in court.

55. Foreign awards when binding. Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

57. Conditions for enforcement of foreign awards.

(1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that--

- (a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) the subject- matter of the award is capable of settlement by arbitration under the law of India;
- (c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) the enforcement of the award is not contrary to the public policy or the law of India.

Explanation.- Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(2) Even if the conditions laid down in sub- section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that-

- (a) the award has been annulled in the country in which it was made;
- (b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration: Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub- section (1) and clauses (b) and (c) of sub- section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

PART III **CONCILIATION**

61. Application and scope.

(1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

62. Commencement of conciliation proceedings.

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. Number of conciliators.

(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

64. Appointment of conciliators.

(1) subject to sub- section (2),-

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,-

(a) a party may respect such an institution or person to recommend the names of suitable individuals to act as conciliator, or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person: Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

65. Submission of statements to conciliator.

(1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position mid the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate. Explanation.- In this section and all the following sections of this Part, the term conciliator" applies to a sole conciliator, two or, three conciliators, as the case may be.

66. Conciliator not bound by certain enactments. The conciliator is not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 . (1 of 1872).

67. Role of conciliator.

(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

68. Administrative assistance. In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

69. Communication between conciliator and parties:

(1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. Disclosure of information. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate: Provided that when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

71. Co- operation of parties with conciliator. The parties shall in good faith co- operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

72. Suggestions by parties for settlement of dispute. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

73. Settlement agreement.

(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator

may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be, final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. Status and effect of settlement agreement. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

75. Confidentiality parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

76. **Termination of conciliation proceedings.** The conciliation proceedings shall be terminated-

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

77. Resort to arbitral or judicial proceeding barred during proceedings

78. **Costs.**

(1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

different apportionment. All other expenses incurred by a party shall be borne by that party.

79. **Deposits.** The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

81. **Admissibility of evidence in other proceedings.** The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,-

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course-, of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator

THE END