

Example :- A and B intends to Commenced Arbitration Proceeding A is will to appoint x as their Arbitrator, while B wants to appoint y. Both Parties failed to appoint arbitrator within 30 days.

Now both Parties has an option to approach the Court for Such appointment of arbitrator.

* Power to refer parties to Arbitration where there is an Arbitration Agreement.

- Under Section 8 of arbitration and Co of 1996. Court must refer parties to arbitration if parties request this before Submitting their first Substantive Statement.

- the application must include Original or Certified Copy of Arbitration agreement, applicant can petition the Court to obtain agreement from other Party if other Party has possession of that agreement

- If Original or Certified Copy is not available with the party applying then Party can file application along with Copy of Arbitration agreement and a petition to Call other party to produce Original agreement or it's Certified Copy.

* Ground for Challenge :-

- As per Section 12 Arbitrator must disclose Any relationship or Interest that could raise doubts about their independence.

— Arbitrator can be challenge if :-

1. Circumstances exist that give rise to Justifiable doubts about their independence. Or impartiality.

2. The Arbitrator does not Possess the qualification agreed upon by the Parties.

- Parties Can Challenge Arbitrator they appointed only for reasons discovered after the appointment.

- If Award is Set aside due to challenge, the Court decides if arbitrator is entitled to fee.

CASE LAW

in Jeevan Kumar Lohiya V. Durga datt Lohiya.

It was held that reasonable apprehension of bias or likelihood of bias in the mind of either party it is ground of termination of arbitrator.

- In Bcc developer's and promoter's Ltd Vs. DMRC.

It was observed that just because appointed arbitrator happened to be ex employee of one of the party it shall not make them ineligible for the such appointment.

- in Chennai Metro Rail Limited Vs. M/s Transstunnelstroy AtCons.

Chennai Metro and AtCons had a contract with a agreed Arbitrator fees of ₹ 11kh per session.

- Tribunal letter try to increase the fees to 21kh to which Chennai metro opposed. AtCons paid Revised fee for 5 hearings despite of objections from Chennai Metro

- Chennai Metro filed application under Section 11 before Madras High Court seeking to terminate mandate of tribunal

- H.C initially stayed the proceeding but later dismissed Chennai Metro request.

Decision: - In the SLP (Special Leave Petition) Supreme Court stated that doubts about arbitrator's impartiality must be based on specific statutory grounds.

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It was ruled that Chennai Metro Challenge is based on non statutory grounds.

Lecture - 03

20/July/24

* Competence of Arbitral Tribunal to Rule on its Jurisdiction :-

- Arbitral tribunal can decide their own Jurisdiction including objections to the existence or validity of Arbitration agreement.
- An Arbitration clause in a Contract shall be treated as an independent agreement if Contract is null and void, it does not automatically invalidate the arbitration clause.
- Jurisdictional objection must be raised by defence Statement Submission.
- Objection that arbitral tribunal is exceeding its Authority must be raised promptly.
- If arbitrator rejects such objections and continues the proceeding aggrieved party can challenge the Arbitral award under Section 34.

CASE LAW

Chloro Controls (I) P.ltd V. Severn Trent Water Purification :-

- Arbitral Tribunal has first right to decide his Jurisdiction it is a Principal Called kompetenz kompetenz.
- This Principle allows arbitrator to be the first to determine their Jurisdiction Subject to later review by the Court.

→ Types of Arbitral Award :-

① Interim Award

② Additional Award

- It is an award made by tribunal during pendency of the Matter.

- A party may request an additional Award within 30 days of receiving the arbitral award.

- the requesting party must notify the other party about the request.

- if Justified arbitral tribunal will issue additional award within 60 days of receiving the request.

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③ → Settlement award :-

- The Arbitral tribunal Can use mediation or Conciliation to encourage Settlement if both Parties agree.

- If Parties Settle the dispute, the tribunal will terminate the proceeding and Settlement Can be recorded as an Arbitral award on Agreed terms.

(सहमत) (Comprise) अर्थात्

④ - final award :-

- A award which finally determines all the issues in a dispute.

• अन्तिम अर्थात् (At the end)

Lecture - 04

22/July

* Court Assistance in taking Evidence :-

- Section 27 allows arbitral Tribunal or a party with tribunal's approval to seek Court's assistance in Obtaining evidence.

Application must Contains :-

- (a) Parties name and address
- (b) Nature of Claim
- (c) Specific Evidence required including witness details

and document description.

- Court can then order evidence to be provided directly to the tribunal, failure can result in penalties

* Award can be set aside if it Conflicts with :-

- Public Policy of India which includes :

- (a) Award influenced by fraud or Corruption.
- (b) Contravene fundamental policy of Indian law.
- (c) Conflicts with morality or Justice.

Application for set aside must be resolved within 1 year from notice date.

CASE LAW

In State of Maharashtra Vs. Hindustan Construction Company.

- it was held that grounds for challenging an arbitral award must be raised within the prescribed time limit. Any new grounds cannot be introduced after period expires.

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* Enforcement :-

- Awards are enforce like Court's decree Once time to challenge an arbitral award has pass.
- Award remains enforceable unless stay is granted.
- Award must be stayed if fraud or Corruption is showed.

Lecture - 05

23/July/24.

CASE LAW

- in Augmont gold Pvt Ltd. Vs. 197 Communication Ltd.
 - It was held that no appeal shall lie to Court if Order of tribunal has been made Under Section 17. (interim Award)
↳ Section 17.
- in Obulapuram Mining Company Pvt. Ltd. Vs. R.K Mining Pvt.
 - High Court of Andhra Pradesh ruled that Commercial Courts have the authority to executive Arbitration award.
 - This despite, came decide arguments that only regular Civil Court will do so. the Court clarity that intent of Commercial Court was to improve procedures for handling Commercial disputes.

- It means they can effectively perform functions like execution of arbitration award.

- in Case Brahmani River Pellets Ltd Vs. Kamachi Industries Ltd.

- Supreme Court of India ruled that only Odisha High Court had jurisdiction over arbitration and not the Madras High Court.

- The dispute involved a sale of Iron Ore Pellets where appellant fail to deliver goods. Parties agreed to Bhubaneswar as arbitration venue. but respondent filed the petition in Madras H.C.

- Supreme Court decided that agreement of Bhubaneswar as venue meant that only Odisha High Court could handle the case.

- in Union of India Vs. Hardy Exploration and Production.

- It was held that place and seat can be used interchangeable.

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* Admissibility of Evidence in Other Proceedings :-

- Section 81 ensure that any Statement, Suggestion, admission or proposal made during Conciliation Cannot be use as evidence in Subsequent arbitral or Judicial Proceeding.
- This includes Views on Settlement, admissions during Conciliation, Conciliator's proposal and indications of willingness to accept Settlement Proposal.
- This provisions maintain Confidentiality and promote Open and honest Communication.

* Mediation :-

According to Civil Procedure ADR & Mediation rule 2003.

" Mediation is a process where mediator helps party to resolve dispute by facilitating discussions identifying issues and exploring compromises.

* key features of mediation are :-

1. Parties Control the process of and outcomes.
2. A neutral third party aids in Communication and negotiation.

3. Parties play a central role with support from the mediator.

4. Address both legal issues & underlying interest.

- Mediation is efficient, effective, Speedy, Convenient, less expensive.

CASE LAW :-

- In Salim Advocate Bar Association V. Union of India.
 - Supreme Court of India upheld amendment to CPC particularly ~~in~~ Section 89 which promotes alternative dispute resolution to reduce Court's burden.
 - The Court highlighted that ADR Methods like arbitration, Conciliation, Judicial Settlement and mediation are intended to expedite Case resolutions.
 - Section 89 mandates that specific procedure of mediation to be established.
 - Court noted that in India ADR efforts do not automatically remove a Case from Courts docket. If ADR fails Case will eventually proceed to trial.

* Section 50 to 54.

Central govt. State govt., their officers, MCI member (, Mediators. and Mediation Provider are protected from legal actions for Acts done in good faith.

- Central govt. Can make rules for the Act.
- MCI Can make regulations for its functions.
- Rules and regulations must be done in Parliament for 30 days.
- And Parliament Can modify them.
- Central govt. Can make provisions to Address difficulties in implementing the Act upto 5 years.

* Mediation rules by High Court :-

Rule 5 :- Rule 5 provides rules relating to procedure for reference by Court to different modes of Settlement.

Rule 4 :- High Court must organize training for understanding ADR.

Rule 2, 3 :- talks about appointment of mediator. (Part-2)

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Rule 4 part 2 :- It talks about Qualification of mediator.

- Retired Judge of S.C of India
- Retired Judge of H.C
- Retired district and Session Judge, legal practitioners with 5 years of experience.
- expert with 15 years of standing or retired Senior professional.

Rule 5 (part 2) :- talks about disqualification of Mediator.

- (i) Insolvent person.
- (ii) Those with pending or convicted Criminal charges.
- (iii) Convicted for offence involve moral turpitude.
- (iv) Person against whom disciplinary proceeding is initiated.

CASE LAW

• At Con infra. Ltd vs. Cherian Varkey Construction Co. Ltd :-

- S.C of India allows a Court to refer Parties to arbitration without their Consent

- The Court held that arbitration and Conciliation require Consent of all the parties.

If other ADR Process Such as lok adalat, mediation of Judicial Settlement which do not require party Consent.