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SETTING ASIDE ARBITRAL AWARD

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ABSTRACT

Sec.-34 of the Arbitration and Conciliation Act: the uncertainty of the legal interpretation "is a matter of genuine concern and importance in the area of legal interpretation of the grounds for setting aside arbitral awards. The clause addresses the involvement of the court with any argument brought against an arbitral award by the Arbitration Tribunal. In this relation, the Arbitration Act of 1940 and the Arbitration and Reconciliation Act of 1996.

In a way, it neglected to provide a particular dimension to the word 'Public Policy' along with the other reasons for setting aside the Arbitral Awards and, as a result, it offered a large opportunity and an instance for the Judiciary to intervene in the field of Arbitration. The numerous changes made in the Arbitration and Conciliation Act 1996 have somehow managed to bring a so-called near end to the concept of 'public policy,' but it is still a field which needs to be changed in a number of ways in order to make the process of setting aside the Arbitral award an exception rather than a standard practice. In this Article, the various changes made in Section 34 of the Arbitration and Conciliation Act, 1996 are as follows. As assessed, with focus on disadvantages and loopholes that promote the non-performance of arbitral awards.

Keywords - *Legal interpretation, public policy, Arbitration*

INTRODUCTION

Arbitration, a private conflict settlement process or a procedure and part of an alternative dispute resolution system, where a dispute involving any arrangement between the parties is proposed as a remedy to one or more arbitrators who, having reviewed the facts and evidence, make binding decisions in relation to such dispute. The decision handed down by the arbitrator through the arbitral tribunal shall be referred to as an award and shall be congruent with the decision or judgement handed down by the arbitral tribunal. In recent times, due to the dynamic growth of industrialization and globalisation, the disproportionate pressure of justice that has resulted from a large number of cases pending due to lengthy court processes has made arbitration a time-efficient and effective way to settle conflicts not only in India but throughout the world. In addition, arbitration, by adding flexibility to the conflict settlement process, also allows for a much more comprehensive and broader framework for negotiation between the parties to the dispute. The key goal behind the implementation of arbitration as a dispute redress system was to ensure a swift and speedy dispute resolution process and to make it cost-effective compared to the general court procedure. However, in recent times, owing to the intervention of the Courts in matters relating to the removal of arbitral awards, it has somehow entered the scope of the law and has thus impaired the primary purpose of arbitration, i.e. the rapid and rapid resolution of disputes outside the Court of Justice. The provisions for the annulment of arbitral awards, as set out in Section-34 of the Arbitration and Conciliation Act, 1996.

The parties are unable to appeal the validity of an arbitral decision and the court can not intervene with its validity. The Supreme Court acknowledged that "an arbitrator is a judge chosen by the parties and, as such, an award passed by him cannot be lightly interfered with." But this does not mean that the conduct of the arbitrator is not reviewed. The statute allows such remedies against an award in order to ensure fair operation of the proceeding.

Three remedies were available against an award- change, remission and setting aside under the repealed 1940 Statute. Those solutions have been put into two categories under the 1996 Act. It was turned over to the parties and the Tribunal and the degree to which the redress was for rectification of errors. The solution for setting aside has been moulded with the restoration of the grant for the exclusion of defects to the Tribunal.

INCAPACITY OF PARTIES

If a party to an arbitration is not capable of taking care of his or her own interests and is not by an official who is capable of defending his or her interests, the award shall not be binding on him or her and can, on appeal, be set aside.

If a minor or an individual of an unsound mind is a party, a suitable guardian must be duly represented, otherwise the award will be liable to be set aside. Such a person is not deserving of being bound by a contract and is not, thus, bound by an award under a contract.

Section 9 of the 1996 Act requires him, for the purposes of arbitral hearings, to appeal to the court for the appointment of a guardian for a minor or a person of an unsound mind. If the incompetent individual represented is represented by a parent, the basis for incapacity will cease to be accessible.

INVALIDITY OF AGREEMENT

It is possible to dispute the legitimacy of an arrangement on any of the grounds on which the legitimacy of a contract can be questioned. In situations where an arbitration provision is used in a settlement, if the settlement is void, the arbitration clause will be void.

- *Brijendra Nath v. Mayank*

the court held that if, during the pendency of the request questioning its legitimacy, the parties acted upon the arbitral decision, it will amount to estoppel against attacking the decision.

INTERPRETATION OF PUBLIC POLICY

No definition was found in the word "public policy" The Act of Arbitration and Conciliation, 1996 and the word was therefore vague. Owing to the incorrect meaning of the word public policy, it has a general definition, thereby making it a general definition. The courts are free to view it in compliance with their comprehension. The term is taken in order to suggest a broader public

interest or general benefit This provides an analytical description, however, of the word without assigning it a definite meaning. Therefore, the clarification added to the sub-clause

(ii) specified by means of the Amendment Act

The scope and sense of the word in which the granting of an arbitration award is envisaged. If the prize happened to be against public policy, persuaded or in breach of theft or misconduct and the basic agenda is Law of India. Basic notions of morals and justice in politics.

- **Renusagar Power Co. Ltd. v General Electric Co. 1994] AIR 860 (SC)**

The apex court here held that an award against public policy would be an award that was passed in contravention of “(i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality”

The court extend the scope of this case i.e.,

- **ONGC Ltd v Western GECO Ltd 'Public Policy'. [2015] AIR 363 (SC)**

"In this decision, after considering the decision in Saw Pipes Case, the three-judge bench observed that the judgement was silent on the sense of" fundamental Indian Law regulation. The 'Fundamental Policy of Indian Law' was interpreted by the court and defined three distinct and fundamental legal concepts that must necessarily be considered as part and parcel of Indian Law's Fundamental Policy. The first is the "legal approach," the second is the ideals of natural justice, and ultimately, any judgement must be logical and not perverse or unreasonable.

Under section 34 of the Act, this decision extended the reach of 'Public Policy'.

- **Associate Builders v Delhi Development Authority [2015] AIR 620 (SC)**

While reading public policy again, the supreme court held that an award can be contested on certain grounds and can be set aside if an award must be set aside on the ground of justice if the "award" would be such that the Court's conscience would be surprised. In comparison, an award against morals was judged to be something against the mores of the day that would shake the Court's conscience.

The Court further found out that by reassessing or re-appreciating the facts, a court cannot appeal the award of an Arbitral Tribunal. Only on the grounds mentioned in Section 34(2) of the Act will an award be contested. Furthermore, the Court added that, in the absence of any excuse under Section 34(2) of the Statute, it is not possible to re-examine the evidence in order to decide whether it is possible to make a different decision.

NOTICE TO THE PARTY NOT GIVEN

Section 34(2)(a)(iii) requires the award to be contested whether the party has not been given adequate notice of the assignment of an arbitrator, or the party has not been given adequate notice of the arbitral hearings, or the party has been unable to make the argument for such purposes.

The Arbitral Tribunal shall decide, according to Section 23(1), the period during which the statements must be filed. This decision must be conveyed by sufficient warning to the parties. Section 24(2) requires that, for the purposes of reviewing records, products or other property, the parties be given ample advance notice of any hearing or meeting of the Tribunal.

When a plaintiff is prohibited from appearing and arguing its evidence to the Tribunal for any reasonable cause, the award would be liable to be set aside when the plaintiff is considered to have been deprived of the right to hear the theory of natural justice.

- *Vijay Kumar v. Bathinda Central Co-operative Bank and ors.*

It is a common situation in which the arbitrator corrupted the proceedings and misled himself as well. On May 17, 2010, the arbitrator held the first and only hearing. No points were framed for resolution or problems. The bank filed affidavits of four workers. The opportunity for the appellant to cross-examine them was not granted. The chance to produce proof was refused him. The provisions of statute, process, and rules of justice were granted a full go bye. It can also be seen that the appellant was not in a state to make his case.

TIME LIMITATION FOR APPLICATION DISPOSAL

Another important addition is the addition of subsection 6 to section 34, which provides the time period for the disposition of the application. The primary purpose behind the introduction of this sub-section is to facilitate the timely settlement of disputes, taking into account the number of cases occurring in commercial arbitration. The courts are also expected to comply with the time limit and to dispose of the appeal as quickly as possible, thereby retaining the object of timely dispute resolution. The primary object of dispute resolution in the arbitration process is timely resolution.

And this is the main explanation that persons turn to arbitration rather than protracted legal hearings. This is not an uncertain fact. It takes a long time for legal cases in India to settle conflicts, even when a group carries them. Therefore, bearing this condition in view, an amendment has been made where the application shall be determined by the Court by the expiry of one year. Hence the maximum delay which the court can render in disposing the application is one year.

ARBITRAL PROCEDURE ILLEGALTY

Section 34(2)a) (v) states that, in the absence of procedural agreement, the proceeding prescribed by the Act has not been pursued by, or the protocol agreed to by the parties in conduct of the proceeding can be questioned in the event that the Tribunal's makeup has not come into effect in accordance with the Agreement.

Procedural misconduct is the non-observance of the accepted process or procedure prescribed by the Statute. When the arbitral tribunal takes the case clearly outside its expertise, it is the arbitrator's wrongdoing. The arbitrator shall be misconducted by an award which the arbitrator knowingly deviates from the terms of reference and of arbitration.

- *Bathinda Central Co-operative Bank's Case*

the Court noted that "it is a standard case in which the arbitrator has deceived and misbehaved the trials. The provisions of statute, procedure and the laws of statute have been completely ignored.

ARBITRABLE DISPUTE WHICH ARE NOT ARBITRAL

The Arbitral Tribunal is a private court appointed by the parties to the conflict in order to resolve their civil or commercial disputes. Any legal and economic dispute will be tried by arbitration, so that the integrity of the Arbitral Tribunal is not prohibited. According to the 1996 (as amended) Arbitration and Conciliation Act ("the Act"), types of legal or contractual disputes are not expressly exempt from arbitrability.

Article 8 of the Act provides for the reference of the parties to arbitration, subject to exceptions in Section 8 of the Act in proceedings before the Judicial Body which are subject to an arbitration arrangement. Section 8 of the Act grants the Judicial Power the obligation to apply to arbitration within the context of the Arbitration Arrangement. The Act does not, obviously, exclude the type of conflicts to be regarded as non-arbitrable. However, under some types of disputes, the courts refuse, under Section 8 of the Act, to refer the parties to arbitration. Each of the types of disputes reserved strictly for litigation by the Legal Fora i.e. (Courts and Tribunals) constituted by statute are commonly known as non-arbitrable disputes.

RESEARCH METHODOLOGY

To accomplish the abovementioned paper which I discussed, we have followed the secondary research, we have taken into account i.e. newspaper, books, articles, guidance of professor's and senior's and data available on the internet etc.

INTERNATIONAL SCENERIO

In general, the reasons for appealing an award are limited and the ruling of an arbitral tribunal does not authorise appeals from certain nations. Awards can only be contested in countries which have implemented the UNCITRAL Model Legislation on International Commercial Arbitration by requesting their 'annulment' at the seat of the arbitration. By opposing their compliance in a position where the winning group tries to implement them, awards may even be contested. This does not actually preclude it from being applied in another jurisdiction, even though an award is annulled or if compliance is refused.

Many difficulties will be taken to the judges. While each nation with an arbitration statute will have its own concept for questioning arbitral awards.

Certain rules of arbitration allow for "private" problems. In the ICSID arbitration rules, the most detailed clause is to be found for the appeal of arbitral awards by an independent evaluation process. In the case of an appeal for the annulment of the award, the ICSID is constituted by an ad hoc committee of three members to determine the appeal. If the award is annulled, in full or in part, each party will order that the dispute be taken to a new tribunal, which may re-examine the dispute and then grant a new (and final) award.

CONCLUSION

When framing the Arbitration Legislation under the Arbitration and Conciliation Act, 1996, the primary purpose of the legislature was to limit judicial interference and offer an alternative mechanism for settling contractual disputes that allows a speedy framework for the administration of justice. The changes adopted under Section 34 of the Act under the Arbitration and Conciliation (Amendment) Act, 2015 have settled several problems to a large degree and reduced judicial interference at the same time, and have also explained to a certain degree the word "Indian public policy" that was not precise prior to the legislation.

Amendment and the incorporation of patent unlawfulness as another ground. The implementation of subsection 6, which lays down a time limit for courts to resolve a dispute within a span of one year, was another mechanism for curbing judicial interference under section 34 following the amendment.

However, it must be noted that while the Arbitration and Conciliation Act offers an alternative to the mechanism of lawsuits, it is not a complete deviation from the judicial machinery, but rather co-exists with it.

Bearing in mind the current condition of the appointment of arbitrators, where most of them are government officials appointed by the central government and are generally retired judges, they are mainly accustomed to the tradition of carrying out the hearings solely in compliance with the

Policy and Procedures in the other hand, by analysing the other side of the coin, it is shown that the primary aim of the parties' option of arbitration is to settle their joint legal interests and obligations by an arbitral tribunal rather than a court of law. It also requires minimal or no interference from the judiciary. However, as the key purpose of the tribunal is to ensure that a fair tribunal is delivered in the interest of justice, the statute requires the courts to participate in the arbitration process.