The Arbitration and Conciliation Act, 1996[1]

(Arbitration and Conciliation Act, 1996)

[Act 26 of 1996 as amended up to Act 32 of 2023 and updated as of 18th February 2025]

[16th August, 1996]

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THE SEVENTH SCHEDULE

THE EIGHTH SCHEDULE

Arbitration and Conciliation Act, 1996

[Act 26 of 1996] [*16th August, 1996*]

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An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto

Whereas the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;

And whereas the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

And whereas the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

And whereas the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;

And whereas the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

And whereas it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

Be it enacted by Parliament in the Forty-seventh Year of the Republic as follows:—

Statement of Objects and Reasons.—The Statement of Objects and Reasons for this Bill are as follows:—

The law on arbitration in India is at present substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. It is widely felt that the 1940 Act, which contains the general law of arbitration, has become

outdated. The Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have proposed amendments to this Act to make it more responsive to contemporary requirements. It is also recognised that our economic reforms may not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. There is, however, no general law on the subject in India.

2. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL Model Law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

3. Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.

4. The main objectives of the Bill are as under:—

(*i*) to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;

(*ii*) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;

(*iii*) to provide that the arbitral tribunal gives reasons for its arbitral award;

(*iv*) to ensure that the arbitral tribunal remains within the limits of its jurisdiction;

(*v*) to minimise the supervisory role of courts in the arbitral process;

(*vi*) to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;

(*vii*) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;

(*viii*) to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and

(*ix*) to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two International Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.

5. The Bill seeks to achieve the above objects.

Statement of Objects and Reasons Amending Act 3 of 2016.— The general law relating to arbitration is contained in the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act). The Act, which is based on the UNCITRAL Model Law on International Commercial Arbitration, as adopted in 1985 by the United Nations Commission on International Trade Law (UNCITRAL), applies to both international as well to domestic arbitration.

2. The Act was enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. With the passage of time, some difficulties in the applicability of the Act have been noticed. Interpretation of the provisions of the Act by courts in some cases have resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, which tend to defeat the object of the Act. With a view to overcome the difficulties, the matter was referred to the Law Commission of India, which examined the issue in detail and submitted its 176th Report. On the basis of the said report, the Arbitration and Conciliation (Amendment) Bill, 2003, was introduced in the Rajya Sabha on 22nd December, 2003. The said Bill was referred to the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and report. The said Committee, submitted its report to the Parliament on 4th August, 2005, wherein the Committee recommended that since many provisions of the said Bill were contentious, the Bill may be withdrawn and a fresh legislation may be brought after considering its recommendations. Accordingly, the said Bill was withdrawn from the Rajya Sabha.

3. On a reference made again in pursuance of the above, the Law Commission examined and submitted its 246th Report on “Amendments to the Arbitration and Conciliation Act, 1996” in August, 2014 and recommended various amendments in the Act. The proposed

amendments to the Act would facilitate and encourage Alternative Dispute Mechanism, especially arbitration, for settlement of disputes in a more user friendly, cost effective and expeditious disposal of cases since India is committed to improve its legal framework to obviate in disposal of cases.

4. As India has been ranked at 178 out of 189 nations in the world in contract enforcement, it is high time that urgent steps are taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage investment and economic activity.

5. As Parliament was not in session and immediate steps were required to be taken to make necessary amendments to the Arbitration and Conciliation Act, 1996, to attract foreign investment by projecting India as an investor friendly country having a sound legal framework, the President was pleased to promulgate the Arbitration and Conciliation (Amendment) Ordinance, 2015.

6. It is proposed to introduce the Arbitration and Conciliation (Amendment) Bill, 2015, to replace the Arbitration and Conciliation (Amendment) Ordinance, 2015, which inter alia, provides for the following, namely—

(*i*) to amend the definition of "Court" to provide that in the case of international commercial arbitrations, the Court should be the High Court;

(*ii*) to ensure that an Indian Court can exercise jurisdiction to grant interim measures, etc., even where the seat of the arbitration is outside India;

(*iii*) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days;

(*iv*) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues;

(*v*) to provide that the arbitral tribunal shall make its award within a period of twelve months from the date it enters upon the reference and that the parties may, however, extend such period up to six months, beyond which period any extension can only be granted by the Court, on sufficient cause;

(*vi*) to provide that a model fee Schedule on the basis of which High Courts may frame rules for the purpose of determination of fees of

arbitral tribunal, where a High Court appoints arbitrator in terms of Section 11 of the Act;

(*vii*) to provide that the parties to dispute may at any stage agree in writing that their dispute be resolved through fast track procedure and the award in such cases shall be made within a period of six months;

(*viii*) to provide for neutrality of arbitrators, when a person is approached in connection with possible appointment as an arbitrator;

(*ix*) to provide that application to challenge the award is to be disposed of by the Court within one year.

7. The amendments proposed in the Bill will ensure that arbitration process becomes more user friendly, cost effective and lead to expeditious disposal of cases.

8. The Bill seeks to replace the aforesaid Ordinance.

Statement of Objects and Reasons Amending Act 33 of 2019.— The Arbitration and Conciliation Act, 1996 (the said Act) was enacted to consolidate and amend the law 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. The said Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015 to make arbitration process cost effective, speedy, with minimum court intervention.

2. The promotion of the institutional arbitration in India by strengthening Indian arbitral institutions has been identified critical to the dispute resolution through arbitration. Though arbitral institutions have been working in India, they have not been preferred by parties, who have leaned in favour of ad hoc arbitration or arbitral institutions located abroad. Therefore, 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.

3. The terms of reference of the Committee, inter alia, include,—

(*a*) to examine the effectiveness of existing arbitration mechanism by studying the functioning and performance of arbitral institutions in India;

(*b*) to devise a road map to promote institutional arbitration mechanisms in India; and

(*c*) to evolve an effective and efficient arbitration eco-system for

commercial dispute resolution and suggest reforms in the Arbitration and Conciliation Act, 1996.

4. The High Level Committee submitted its Report on 30th July, 2017. With a view to strengthen institutional arbitration in the country, the said Committee, inter alia, recommended for the establishment of an independent body for grading of arbitral institutions and accreditation of arbitrators, etc. The Committee has also recommended certain amendments to the said Act to minimise the need to approach the Courts for appointment of arbitrators. After examination of the said recommendations with a view to make India a hub of institutional arbitration for both domestic and international arbitration, it was decided to amend the Arbitration and Conciliation Act, 1996.

5. Accordingly, a Bill, namely, the Arbitration and Conciliation (Amendment) Bill, 2018 was introduced in Lok Sabha on the18th July, 2018 and was passed by that House on the 10th August, 2018 and was pending in Rajya Sabha. However, the Sixteenth Lok Sabha was dissolved and the Bill got lapsed. Hence, the present Bill, namely, the Arbitration and Conciliation (Amendment) Bill, 2019.

6. The salient features of the Arbitration and Conciliation (Amendment) Bill, 2019, inter alia, are as follows—

(*i*) to amend 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*) in case where no graded arbitral institutions are 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*) to insert a new Part 1-A to the Act for the 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, etc.;

(*iv*) to amend Section 23 of the Act relating to "Statement of claim and defence" so as to provide 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;

(*v*) to provide that the arbitrator, the arbitral institutions and the parties shall maintain confidentiality of information relating to arbitral proceedings and also 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; and

(*vi*) to clarify that Section 26 of the Arbitration and Conciliation

(Amendment) Act, 2015, is applicable only to the arbitral proceedings which commenced on or after 23rd October, 2015 and to such court proceedings which emanate from such arbitral proceedings.

7. The Bill seeks to achieve the above objectives.

► **Interpretation of provisions — External aids**.—Model Law on International Commercial Arbitration adopted in 1985 and judgments and literature thereon cannot be taken to be a guide to the interpretation of the Arbitration and Conciliation Act, 1996, in particular Section 11 thereof, *Konkan Railway Corpn. Ltd.* v. *Rani Construction (P) Ltd.*, (2002) 2 SCC 388.

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Arbitration and Conciliation Act, 1996.

(2) It extends to the whole of India:

[2][* * *]

Explanation.—In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (*f*) of sub-section (1) of Section 2, subject to the modification that for the word "arbitration" occurring therein, the word "conciliation" shall be substituted.

(3) It shall come into force on such date[3] as the Central Government may, by notification in the Official Gazette, appoint.

STATE AMENDMENTS

Union Territory of Jammu and Kashmir.—In its application to the Union Territory of Jammu and Kashmir, in sub-section (1), *omit* the proviso and Explanation. [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh, in sub-section (1), *omit* the proviso and Explanation. [*Vide* S.O. 3774(E), dated 23-10-2020 (w.e.f. 23-10-2020)].

Part I

ARBITRATION

► **Regulation of Arbitrations**.—Parts I and II are mutually exclusive of each other. Pt. I governs only arbitrations which have their juridical or legal seat within India (domestic arbitrations). Part II governs arbitrations which have their juridical or legal seat outside India (foreign arbitrations), *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

Chapter I

GENERAL PROVISIONS

2. Definitions.—(1) In this Part, unless the context otherwise

requires,—

(*a*) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

(*b*) "arbitration agreement" means an agreement referred to in Section 7;

(*c*) "arbitral award" includes an interim award;

[4][(*ca*) "arbitral institution" means an arbitral institution designated by the Supreme Court or a High Court under this Act;]

(*d*) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

[5][(*e*) "Court" means—

(*i*) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(*ii*) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]

(*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*) [6][* * *] an 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;

(*g*) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who

intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(*h*) "party" means a party to an arbitration agreement.

[7][(*i*) "prescribed" means prescribed by rules made under this Act;

(*j*) "regulations" means the regulations made by the Council under this Act.]

(2) Scope.—This Part shall apply where the place of arbitration is in India.

[8][Provided that subject to an agreement to the contrary, the provisions of Sections 9, 27 and [9][clause (*b*)] of sub-section (1) and sub-section (3) of Section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.]

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Construction of references.—Where this Part, except Section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue.

(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.

STATE AMENDMENTS

Uttar Pradesh.—In its application to the State of Uttar Pradesh, in sub-section (1), for clause (*e*), the following clause shall be *substituted*, namely—

"(*e*) 'Court' means the principal Civil Court of original jurisdiction in a district, which shall include the court of the Additional District Judge where so assigned by the District Judge and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to the decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of suit, or any Court of small causes.". [*Vide* U.P. Act No. 16 of 2019, S. 4, w.e.f. 29-11-2019].

► **"Court"**.—Jurisdiction conferred upon "court" under Section 2(1)(*e*) which is limited to Part I of 1996 Act, confers jurisdiction upon courts where seat of arbitration is located within India. On the other hand, Section 47 which is in Part II of 1996 Act defines "court" as a court having jurisdiction over subject-matter of the award i.e. court within whose jurisdiction asset/person is located, against which/whom enforcement of foreign award (under Part II) is sought, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Arbitration cases in India**.—Foreign law firms/companies or foreign lawyers cannot practise law in India either in litigation or non-litigation side. Casual "fly in and fly out" visits to give advice on foreign law or their own system of law and on diverse international legal issues is permissible, so long as they did not amount to "practice", *Bar Council of India* v. *A.K. Balaji*, (2018) 5 SCC 379.

► **Juridical or legal seat of arbitration**.—Once the seat of arbitration is designated or determined, the same operates as an exclusive jurisdiction clause, as a result of which only the courts where the seat is located would have jurisdiction over the arbitration, to the exclusion of all other courts, even courts where part of the cause of action may have arisen. However, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or has not been so determined by the Arbitral Tribunal, or the so-called "seat" is only a convenient "venue", then there may be several courts where a part of the cause of action arises, that may have jurisdiction over the arbitration, *BGS SGS SOMA JV* v. *NHPC Ltd.*, (2020) 4 SCC 234.

► **Determination of seat of arbitration**.—Mere expression "place of arbitration" in the arbitration clause, held, cannot by itself be the basis to determine the intention of the parties that they have intended that place as the juridical "seat" of arbitration. Intention of the parties as to the "seat" should be determined from reading all clauses in arbitration agreement as a whole, as to

whether there are any clear indicia which indicate the seat of arbitration; and the conduct of the parties. Designation of "place of arbitration" in arbitration clause, plus significant indica determine seat of arbitration, *Mankastu Impex (P) Ltd.* v. *Airvisual Ltd.*, (2020) 5 SCC 399.

If the "subject-matter of the suit" is situated within the arbitral jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. Seat of arbitration once determined, amounts to exclusive jurisdiction clause, *Brahmani River Pellets Ltd.* v. *Kamachi Industries Ltd.*, (2020) 5 SCC 462.

► **Termination of works contract**.—In view of Section 2(d) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983, the State Act will cover a dispute even after termination of the works contract, *M.P. Rural Road Development Authority* v. *L.G. Chaudhary Engineers and Contractors*, (2018) 10 SCC 826; *VA Tech Escher Wyass Flovel Ltd.*, (2011) 13 SCC 261 overruled]

3. Receipt of written communications.—(1) Unless otherwise agreed by the parties,—

(*a*) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(*b*) if none of the places referred to in clause (*a*) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

4. Waiver of right to object.—A party who knows that—

(*a*) any provision of this Part from which the parties may derogate, or

(*b*) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

► **Meaning and implication of "Judicial authority"**.—Use of term "judicial

authority" by legislature in all three sections, is a clear recognition that judicial control of commercial disputes is no longer in the exclusive jurisdiction of courts. There are many statutory bodies and tribunals which would have adjudicatory jurisdiction in commercial matters, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Recall of order**.—Review by High Court for recalling its order appointing an arbitrator, permissible. Section 5 of the A&C Act i.e. interdiction of judicial *i*ntervention is not applicable in the absence of an arbitration agreement itself, *Municipal Corporation of Greater Mumbai* v. *Pratibha Industries Ltd.*, (2019) 3 SCC 203.

► **Allegations of Fraud — When non-arbitrable**.—Adopting two-fold test laid down in *Rashid Raza*, (2019) 8 SCC 710, held, allegations of fraud will be non-arbitrable only if either of the following two tests laid down are satisfied, and not otherwise, namely:— (1) does this plea of fraud permeate the entire contract and above all, the agreement of arbitration, rendering it void, or, (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain, *Avitel Post Studioz Ltd.* v. *HSBC PI Holdings (Mauritius) Ltd.*, (2021) 4 SCC 713.

6. Administrative assistance.—In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Chapter II

ARBITRATION AGREEMENT

7. Arbitration agreement.—(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 [10][including communication through electronic means] 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.

► **Validity of arbitration agreement**.—Signing of arbitration agreement is not mandatory, when such agreement satisfies the test of being in writing, *Caravel Shipping Services (P) Ltd.* v. *Premier Sea Foods Exim (P) Ltd.*, (2019) 11 SCC 461.

► **Essential requirements of arbitration agreement**.—When there is discernible intention of parties in the agreement to refer disputes to arbitration, application under Section 11 is maintainable. Section 7 does not mandate any particular form of arbitration clause. Deficiency of words in agreement which otherwise fortifies intention of parties to arbitrate their disputes, cannot legitimise annulment of arbitration clause, *Babanrao Rajaram Pund* v. *Samarth Builders&Developers*, (2022) 9 SCC 691.

► **Arbitration agreement — Existence of**.—Clause providing for reference of dispute to Chairman and Managing Director of one of the parties for settlement cannot be considered as arbitration agreement, *Food Corpn. of India* v. *National Collateral Management Services Ltd.*, (2020) 19 SCC 464.

► **Arbitration clause**.—Mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration, *Jagdish Chander* v. *Ramesh Chander*, (2007) 5 SCC 719.

Arbitration clause contained in MoU, is an independent arbitration agreement and, even if MoU is terminated, arbitration agreement continues to remain and parties are entitled to invoke said clause and exercise option for appointment of arbitrator, *Ashapura Mine-Chem Ltd.* v. *Gujarat Mineral Development Corpn.*, (2015) 8 SCC 193.

If arbitration clause and procedure for appointment of arbitrator in original agreement is novated, and parties acted accordingly, clause in original agreement for appointment of arbitrator cannot be invoked, *Larsen & Toubro Ltd.* v. *Mohan Lal Harbans Lal Bhayana*, (2015) 2 SCC 461.

Agreement between the parties giving an option to the parties to choose dispute resolution by "arbitration" or "court", can be considered as a valid arbitration agreement, *Zhejiang Bonly Elevator Guide Rail Manufacture Co. Ltd.* v. *Jade Elevator Components*, (2018) 9 SCC 774.

Agreement/clause providing for departmental appeal is not an agreement for resolution of disputes through arbitration. Reference of dispute expressly or by necessary implication to an arbitrator in the agreement, is necessary, *South Delhi Municipal Corpn.* v. *SMS AAMW Tollways (P) Ltd.*, (2019) 11 SCC 776.

► **Institutional arbitration**.—Where the agreement postulated resolution of disputes through institutional arbitration, then notwithstanding the non-mention of the name of a specific institution therein, the same would be a valid arbitration clause, *Nandan Biomatrix Ltd.* v. *D 1 Oils Ltd.*, (2009) 4 SCC 495.

► **Arbitration agreement, when is binding on a non-signatory to such agreement — Group of Companies doctrine — Meaning**.—Where a

corporation has signed an arbitration agreement, it can be used to bind such a corporation's non-signatory affiliates if the "mutual intention" of the parties was to bind both the signatories and such non-signatories, *Chloro Controls India (P) Ltd.* v. *Severn Trent Water Purification Inc.*, (2013) 1 SCC 641.

► **Applicability of Group of Companies Doctrine in India**.—Majority view of N.V. Ramana, CJ. and A.S. Bopanna, J. was in disagreement of the applicability of the group of companies doctrine in India. Surya Kant, J. was in support of the group of companies doctrine in India. Matter referred to a larger Bench for the purposes of clarity on the application of the same, *Cox & Kings Ltd.* v. *SAP India (P) Ltd.*, (2022) 8 SCC 1, See also *Cheran Properties Ltd.* v. *Kasturi and Sons Ltd.*, (2018) 16 SCC 413. *Reckitt Benckiser (India) (P) Ltd.* v. *Reynders Label Printing India (P) Ltd.*, (2019) 7 SCC 62.

► **Third Party Funding**.—A party funded by a third party was a relevant fact in considering whether an order for securing the other party needs to be made. However, permitting enforcement of an arbitral award against a non-party which had not accepted any such risk, was neither desirable nor permissible, *Tomorrow Sales Agency (P) Ltd.* v. *SBS Holdings, Inc.*, 2023 SCC OnLine Del 3191.

► **Interpretation of arbitration clause**.—The parties are bound by the clauses enumerated in the policy and the court does not transplant any equity to the same by rewriting a clause. Further, an arbitration clause is required to be strictly construed and if a clause stipulates that under certain circumstances there can be no arbitration, and the circumstances are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest, *Oriental Insurance Co. Ltd.* v. *Narbheram Power & Steel (P) Ltd.*, (2018) 6 SCC 534.

► **Incorporation of arbitration clause**.—Though a general reference to an earlier contract (Two-contract case) is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form contract (Single-contract case) would be enough for incorporation of the arbitration clause. *M.R. Engineers & Contractors (P) Ltd.*, (2009) 7 SCC 696, inter alia, lays down that where the contract provides that the standard form of terms and conditions of an independent trade association or professional institution will bind the parties or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference, *Inox Wind Ltd.* v. *Thermocables Ltd.*, (2018) 2 SCC 519.

► **Incorporation of arbitration clause by reference**.—Arbitration agreement need not necessarily be in the form of a clause in substantive contract itself and it could be an independent agreement; or it could be incorporated by reference either from a parent agreement, or by reference to a standard form contract, *Giriraj Garg* v. *Coal India Ltd.*, (2019) 5 SCC 192.

Where agreement providing for settlement of disputes or differences by referring the same to "adjudication" or to "adjudicator", notwithstanding the use of

the word adjudication, the wordings of the relevant clauses indicated that the parties intended to have their disputes resolved by arbitration, *Indtel Technical Services (P) Ltd.* v. *W.S. Atkins Rail Ltd.*, (2008) 10 SCC 308.

► **Striking down of arbitration clause**.—A claim which is frivolous can be dismissed with exemplary costs. Striking down of arbitration clause, inter alia providing for a 10% deposit-at-call, as a pre-condition for invoking arbitration, with the claimed objective of avoiding frivolous claims, to the extent the same is arbitrary, *ICOMM Tele Ltd.* v. *Punjab State Water Supply and Sewerage Board*, (2019) 4 SCC 401.

► **Group of Companies Doctrine**.—Commercial relationship between signatory and non-signatory parties is not sufficient to infer legal relationship because any related company can be impleaded even if it has no rights or obligations under the contract. This doctrine cannot be applied to abrogate party consent and autonomy, *Cox & Kings Ltd.* v. *SAP India (P) Ltd.*, (2024) 4 SCC 1.

► **Arbitration agreement with State or State entity**.—Pre-deposit as a condition for invocation of arbitration clause, held invalid, *Lombardi Engg. Ltd.* v. *Uttarakhand Jal Vidyut Nigam Ltd.*, (2024) 4 SCC 341.

8. Power to refer parties to arbitration where there is an arbitration agreement.—[11][(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 to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

[12][Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(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.

STATE AMENDMENTS

Union Territory of Jammu and Kashmir.—In its application to the

Union Territory of Jammu and Kashmir, after Section 8, *insert* the following sections, namely:—

SECTIONS 8-A and 8-B

"8-A. *Power of the court, seized of petitions under Sections 9 or 11 of the Act, to refer the dispute to Mediation or Conciliation*.—(1) If during the pendency of petitions under Sections 9 or 11 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to,—

(*a*) mediation; or

(*b*) conciliation.

(2) The procedure for reference of a dispute to mediation is as under—

(*a*) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under that Act shall apply;

(*b*) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;

(*c*) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

(*d*) the court shall record a statement on oath of the parties, or their authorised representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement;

(*e*) if satisfied, the court shall pass an order in terms of the settlement;

(*f*) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;

(*g*) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (*iii*), (*iv*) and (*v*);

(*h*) such a mediated settlement, shall have the same status and effect as an arbitral award and may be enforced in the manner specified under Section 36 of the Act.

(3) With respect to reference of a dispute to conciliation, the provisions of Part II of this Act shall apply as if the conciliation proceedings were initiated by the parties under the relevant

provision of this Act.

8-B. *Power of the court, seized of matters under Sections 34 or 37 of the Act, to refer the dispute to Mediation or Conciliation*.—(1) If during the pendency of a petition under Section 34 or an appeal under Section 37 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to:—

(*a*) mediation; or

(*b*) conciliation.

(2) The procedure for reference of a dispute to mediation is as under:—

(*a*) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under the Act shall apply;

(*b*) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;

(*c*) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

(*d*) the court shall record a statement on oath of the parties, or their authorized representatives, affirming the mediated settlement, a clear undertaking of the parties to abide by the terms of the settlement as well as statement to the above effect;

(*e*) if satisfied, the court shall pass an order in terms of the settlement;

(*f*) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;

(*g*) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (*iii*), (*iv*) and (*v*);

(*h*) such a mediated settlement, shall have the status of a modified arbitral award and may be enforced in the manner specified under Section 36 of the Act.

(3) With respect to reference of a dispute to conciliation, the provisions of Part III of the Act, shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act." [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh, after Section 8, *insert*,—

"8-A. *Power of Court, seized of petition under Section 9 or Section 11 to refer dispute to mediation or conciliation*.—(1) If during the pendency of petition under Section 9 or 11, it appears to the Court, that there exists elements of a settlement which may be acceptable to the parties, the Court may, with the consent of parties, refer the parties, for resolution of their disputes, to,—

(*a*) mediation; or

(*b*) conciliation.

(2) The procedure for reference of a dispute to mediation shall be as under:—

(*a*) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under this Act shall apply;

(*b*) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;

(*c*) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

(*d*) the Court shall record a statement on oath of the parties, or their authorised representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement;

(*e*) if satisfied, the Court shall pass an order in terms of the settlement;

(*f*) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral Court in terms thereof;

(*g*) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral Court, which shall pass orders in accordance with clauses (*c*), (*d*) and (*e*); and

(*h*) such a mediated settlement, shall have the same status and effect as an arbitral award and may be enforced in the manner specified under Section 36.

(3) With respect to reference of a dispute to conciliation, the provisions of Part II of this Act shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.

8-B. *Power of Court, seized of matters under Section 34 or Section 37, to refer dispute to mediation or conciliation*.—(1) If during the pendency of a petition under Section 34 or an appeal under section 37, it appears to the Court, that there exist elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to—

(*a*) mediation; or

(*b*) conciliation.

(2) The procedure for reference of a dispute to mediation shall be as under:—

(*a*) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under this Act shall apply;

(*b*) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral Court;

(*c*) on receipt of the mediated settlement, the referral Court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

(*d*) the Court shall record a statement on oath of the parties, or their authorised representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement;

(*e*) if satisfied, the Court shall pass an order in terms of the settlement;

(*f*) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral Court in terms thereof;

(*g*) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral Court, which shall pass orders in accordance with clauses (*c*), (*d*) and (*e*);

(*h*) such a mediated settlement, shall have the status of a modified arbitral award and may be enforced in the manner specified under Section 36.

(3) With respect to reference of a dispute to conciliation, the provisions of Part III of this Act, shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act." [*Vide* S.O. 3774(E), dated 23-10-2020 (w.e.f. 23-10-2020)].

► **Allegations of fraud**.—Mere allegations of fraud are not sufficient for not

referring dispute for arbitration, *Ameet Lalchand Shah* v. *Rishabh Enterprises*, (2018) 15 SCC 678.

► **Applicability of Arbitration clause**.—An application under Section 8 can be made only if subject-matter of the suit is also the same as subject-matter of arbitration i.e. only those disputes which are specifically agreed to be resolved through arbitration can be subject-matter of arbitration, *Zenith Drugs&Allied Agencies (P) Ltd.* v. *Nicholas Piramal (India) Ltd.*, (2020) 17 SCC 419.

► **Non-arbitrability of subject-matter**.—Propounding a fourfold test, held, that the subject-matter of a dispute in an arbitration agreement is not arbitrable when : (1) the cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem; (2) the cause of action and subject-matter of the dispute affects third-party rights; (3) the cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; (4) the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s), *Vidya Drolia* v. *Durga Trading Corpn.*, (2021) 2 SCC 1.

► **Subject-matters which are arbitrable**.—Applying the fourfold test to determine non-arbitrability, held, landlord-tenant disputes under Transfer of Property Act, 1882 are arbitrable and TPA does not forbid nor foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations arising under the rent control legislation in question, *Vidya Drolia* v. *Durga Trading Corpn.*, (2021) 2 SCC 1.

Adjudication of cancellation of written instrument/agreement under Section 31 of the Specific Relief Act, 1963 is arbitrable and relief of cancellation of written instrument is grantable by Arbitral Tribunal, *Deccan Paper Mills Co. Ltd.* v. *Regency Mahavir Properties*, (2021) 4 SCC 786.

► **Subject-matters which are non-arbitrable**.—Applying the fourfold test to determine non-arbitrability, held, insolvency, intra-company disputes, grant and issue of patents and registration of trade marks, criminal cases, matrimonial disputes, probate and testamentary matters, are non-arbitrable. Disputes within the purview of the Recovery of Debts and Bankruptcy Act, 1993 and Sarfaesi Act, 2002, are non-arbitrable, *Vidya Drolia* v. *Durga Trading Corpn.*, (2021) 2 SCC 1.

► **Non-payment or deficient payment of stamp duty**.—Agreements including any arbitration clause contained therein, or a standalone arbitration agreement, which is unstamped or insufficiently stamped is not enforceable, *N.N. Global Mercantile (P) Ltd.* v. *Indo Unique Flame Ltd.*, (2023) 7 SCC 1.

► **Reference to arbitration**.—Application seeking reference to arbitration in pending civil suit is not acceptable when : (i) suit concerns/affects non-signatories to arbitration agreement; and (ii) suit is in respect of matter which falls partly outside the arbitration agreement i.e. substantive relief claimed in suit falls outside

the arbitration clause. Arbitration agreement/clause is not binding on non-signatories. Partial bifurcation of suit, so as to refer a part of suit to arbitration is not permissible, *Gujarat Composite Ltd.* v. *A Infrastructure Ltd.*, (2023) 7 SCC 193.

► **Arbitrability of Consumer disputes**.— Consumer disputes are non-arbitrable, *M. Hemalatha Devi* v. *B. Udayasri*, (2024) 4 SCC 255.

9. Interim measures, etc. by Court.—[13][(1)] 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 a 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 party, 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.

[14][(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.]

► **Continuation of interim relief**.—An interim arrangement, can be made under Section 9, not only before and during the pendency of the arbitral

proceedings, but also after the arbitral award has been pronounced. Further, the continuation of relief, would depend on the nature of the prayer made by the appellant, when such application was filed, *Ultratech Cement Ltd.* v. *Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2018) 15 SCC 210.

► **Application for interim relief, post constitution of Arbitral Tribunal**.—There is no reason why the Court should continue to take up applications for interim relief, once the Arbitral Tribunal is constituted and is in seisin of the dispute between the parties, unless there is some impediment in approaching the Arbitral Tribunal, or the interim relief sought cannot expeditiously be obtained from the Arbitral Tribunal, *Arcelormittal Nippon Steel (India) Ltd.* v. *Essar Bulk Terminal Ltd.*, (2022) 1 SCC 712.

► **Jurisdiction to grant interim measures**.—The seat of arbitration alone and not the place of cause of action determines the jurisdiction of courts over the arbitration, when such seat is found to be designated or determined, *BGS SGS SOMA JV* v. *NHPC Ltd.*, (2020) 4 SCC 234.

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.

► **Validity**.—Arbitration agreement specifying even number of arbitrators cannot be a ground to render arbitration agreement invalid, *M.M.T.C. Ltd.* v. *Sterlite Industries (India) Ltd.*, (1996) 6 SCC 716.

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.

[15][(3-A) 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-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are 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 and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party

shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.]

[*Ed.*: It may be noted that Section 11 of the 2019 Amendment Act has been notified w.e.f. 30-8-2019. Section 11 of the 2019 Amendment Act pertains to an amendment made to Section 45 of the Principal Act of 1996. However, upon detailed research on enforcement notification(s) of Section 3 of the 2019 Amendment Act (pertaining to amendments made to Section 11 of the Principal Act of 1996), the said notification(s) have not been found. However, Section 10 of the 2019 Amendment Act, which introduces Part I-A of the Principal Act of 1996, has been enforced w.e.f. 12-10-2023.

The 2019 Amendment Act contains sixteen sections. Out of these, as per our research, only Section 1, Sections 4 to 13 and Section 15 of the 2019 Amendment Act, have been enforced vide Notifications dated 30-8-2019 and 12-10-2023 respectively. However, Section 2 (pertaining to Section 2 of the Principal Act of 1996); Section 3 (pertaining to Section 11 of the Principal Act of 1996); Section 14 (pertaining to introduction of a new Schedule Eight in the Principal Act of 1996) and Section 16 of 2019 Amendment Act {pertaining to a reference to Section 11(14), in the Fourth Schedule to the Principal Act of 1996} do not appear to have been notified.]

(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,

[16][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.]

(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 [17][the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).]

(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 to him or it under that procedure,

[18][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] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6-A) [19][* * *]

[20][(6-B) 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.]

(7) [21][* * *]

[22][(8) [23][The arbitral institution referred to in sub-sections (4), (5) and (6)], before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of Section 12, and have due regard to—

(*a*) any qualifications required for the arbitrator by the agreement of the parties; and

(*b*) the contents of the disclosure and 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, [24][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.

(10) [25][* * *]

[26][(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) 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.

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(14) 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.

[*Ed.*: It may be noted that Section 11 of the 2019 Amendment Act has been notified w.e.f. 30-8-2019. Section 11 of the 2019 Amendment Act pertains to an amendment made to Section 45 of the Principal Act of 1996. However, upon detailed research on enforcement notification(s) of Section 3 of the 2019 Amendment Act (pertaining to amendments made to Section 11 of the Principal Act of 1996), the said notification(s) have not been found. However, Section 10 of the 2019 Amendment Act, which introduces Part I-A of the Principal Act of 1996, has been enforced w.e.f. 12-10-2023.

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Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.].

► **Appointment of an arbitrator**.—Before exercising power under Section 11(6) to make appointment of an arbitrator, Court has to determine existence of arbitrable dispute/enforceable claim between parties to the contract as per terms of the contract. Such determination is limited only for purpose of decision on question of arbitrability and nothing beyond, *Kss Kssiipl Consortium* v. *Gail (India) Ltd.*, (2015) 4 SCC 210.

Appointment of arbitrator contrary to procedure agreed upon in arbitration agreement, not permissible, *Walter Bau Ag* v. *Municipal Corpn. of Greater Mumbai*, (2015) 3 SCC 800.

Appointment of arbitrator in exercise of power under Section 11(6), not permissible when an arbitrator is already appointed by one of the parties to the agreement in terms of arbitration agreement, *S.P. Singla Constructions (P) Ltd.* v.

State of H.P., (2019) 2 SCC 488, See also *Rajasthan Small Industries Corpn. Ltd.* v. *Ganesh Containers Movers Syndicate*, (2019) 3 SCC 282. Appointment of arbitrator is not permissible in the absence of an arbitral dispute, *United India Insurance Co. Ltd.* v. *Antique Art Exports (P) Ltd.*, (2019) 5 SCC 362.

Where allegations of fraud are levelled against party seeking appointment are "simple allegations" not falling within the realm of public domain, test for distinguishing a "simple allegation" from a "serious allegation" are namely : (1) does the plea of fraud permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain, *Rashid Raza* v. *Sadaf Akhtar*, (2019) 8 SCC 710.

Appointment of arbitrator by parties and arbitration proceedings pursuant thereto, when valid, even after filing of an application under Section 11(6), explained. Relevance of non-pursuing of such application, and filing of statement of claim by applicant before Arbitral Tribunal constituted during pendency of Section 11(6) application, determined. When settled principle of law i.e. that after an application has been filed for appointment of an arbitrator under Section 11(6), the party concerned forfeits its right to appoint an arbitrator, can be deviated from, expounded, *Durga Welding Works* v. *Railway Electrification*, (2022) 3 SCC 98.

Appointment of an arbitrator by a party/officia1/authority having interest in dispute or outcome is not permissible. Independence and impartiality of the arbitrator is necessary, *Perkins Eastman Architects DPC* v. *HSCC (India) Ltd.*, (2020) 20 SCC 760.

Appointment of an arbitrator under Section 11(6) is not permissible where arbitrator have already been appointed by mutual consent of parties i.e. even in a case where mandate of such appointed arbitrator stands terminated. Procedure required to be followed where mandate of the sole arbitrator stands terminated as per Section 14(1)(a), explained, *Swadesh Kumar Agarwal* v. *Dinesh Kumar Agarwal*, (2022) 10 SCC 235.

Where the arbitration clause provides that each party shall nominate one arbitrator and the two arbitrators shall then appoint an umpire before proceeding with the reference, the arbitration agreement is valid, as it satisfies requirements of Ss. 7 and 10(1) and is also in consonance with the implied condition contained in para 2 of First Sch. to the Arbitration Act, 1940. Hence the third arbitrator or the umpire has to be appointed in accordance with S. 11(3), *M.M.T.C. Ltd.* v. *Sterlite Industries (India) Ltd.*, (1996) 6 SCC 716.

► **Limitation for filing application**.—Commencement of Limitation period for filing application for appointment of arbitrator is from date on which agreement procedure for appointment of arbitrator can be said to have "failed" in terms of Sections 11(6)(a), (b) or (c). Mere exchange of letters or mere settlement discussions is not sufficient for extending the period of limitation, *Secunderabad Cantonment Board* v. *B. Ramachandraiah & Sons*, (2021) 5 SCC 705, See also *BSNL* v. *Nortel Networks (India) (P) Ltd.*, (2021) 5 SCC 738.

► **Appointment of arbitrator by court**.—When agreement specifically provides for appointment of named arbitrators, appointment should be in terms of agreement, unless there are exceptional reasons for departing from agreement procedure for appointment of arbitrator, as per settled principles, *Union of India* v. *Pradeep Vinod Construction Co.*, (2020) 2 SCC 464, See also *Union of India* v. *Parmar Construction Co.*, (2019) 15 SCC 682.

Furnishing of discharge voucher is not an absolute bar to invocation of arbitration agreement, when the same is alleged to have been given under economic duress, *Oriental Insurance Co. Ltd.* v. *Dicitex Furnishing Ltd.*, (2020) 4 SCC 621.

► **Appointment of third arbitrator — Discretion of Chief Justice/ Nominee**.—Concern of the Court is to ensure neutrality, impartiality and independence of the third arbitrator. It is entirely up to the Chief Justice of India, whether to accept any of the preferences or to appoint the third arbitrator not mentioned by any of the parties. In making such a choice, the CJI will be guided by the relevant provisions contained in the Arbitration Act, the UNCITRAL Model Laws and the UNCITRAL Rules, where the parties have included the applicability of the UNCITRAL Model Laws/UNCITRAL Rules by choice, *Reliance Industries Ltd.* v. *Union of India*, (2014) 11 SCC 576.

► **Confining of jurisdiction of Courts**.—The jurisdiction of Court under Sections 11(4)/11(6) confined only to "existence of an arbitration agreement" vide introduction of Section 11(6-A), leaving all other preliminary issues to be decided by arbitrator. There is legislative overruling of *SBP & Co.*, (2005) 8 SCC 618 and *Boghara Polyfab (P) Ltd.*, (2009) 1 SCC 267, thereby on this point, *Garware Wall Ropes Ltd.* v. *Coastal Marine Constructions And Engineering Ltd.*, (2019) 9 SCC 209.

► **Appointment of arbitrator and jurisdiction of arbitrator**.—Law summarised regarding exercise of power under Section 11 before 2015 Amendment and after Amendment. Doctrine of kompetenz-kompetenz and its limitations, explained. Consideration of preliminary objections such as limitation, etc. by Court at pre-reference stage, after insertion of Section 11(6-A) is not permissible. After the insertion of Section 11(6-A), issue of limitation, which is a jurisdictional issue, held, is to be decided by arbitrator, *Uttarakhand Purv Sainik Kalyan Nigam Ltd.* v. *Northern Coal Field Ltd.*, (2020) 2 SCC 455.

► **Reference of dispute for arbitration**.—If the party which executes discharge agreement/discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practised by the other party but is not able to establish such a claim or appears to be lacking in credibility, then it is not open to the courts to refer the dispute to arbitration at all, *ONGC Mangalore Petrochemicals Ltd.* v. *ANS Constructions Ltd.*, (2018) 3 SCC 373.

When there was no arbitration agreement between the parties, reference of dispute for arbitration in the absence of a written memo/joint application is not

permissible, even when the counsel of the parties consent to the same. For reference of the parties to arbitration, oral consent given by the counsel without a written memo of instructions does not fulfil the requirement under Section 89 CPC, *Kerala SEB* v. *Kurien E. Kalathil*, (2018) 4 SCC 793.

► **Applicability of unamended 1996 Act (as it stood prior to Amendment Act, 2015)**.—Conjoint reading of Section 21 of principal Act (i.e. as it stood prior to Amendment Act, 2015) and Section 26 of Amendment Act leaves no manner of doubt that the provisions of the 2015 Amendment Act shall not apply to such of the arbitral proceedings which have commenced in terms of the provisions of Section 21 of the principal Act unless the parties otherwise agree, *Union of India* v. *Parmar Construction Co.*, (2019) 15 SCC 682.

► **Section 11(6-A) [as inserted by 2015 Amendment Act w.e.f 23-10-2015] and Section 11 [as would come into force upon effectuation of Section 3 of 2019 Amendment Act]**.—Effect of 2015 Amendment Act as fortified, broadened and deepened by 2019 Amendment Act, held, is to legislatively overrule the position of law as prevailing prior to 2015 Amendment Act, that Court in addition to examination of existence of arbitration agreement, could also go into preliminary questions such as stale claims, accord and satisfaction having been reached, etc., *Mayavati Trading (P) Ltd.* v. *Pradyuat Deb Burman*, (2019) 8 SCC 714.

► **Jurisdiction under Section 11(6)**.—Unless the appointment of the arbitrator is ex facie valid and such appointment satisfies the Court exercising jurisdiction under Section 11(6), acceptance of such appointment as a fait accompli to debar the jurisdiction under Section 11(6) cannot be countenanced in law, *Perkins Eastman Architects DPC* v. *HSCC (India) Ltd.*, (2020) 20 SCC 760.

► **Validity of arbitration agreement**.—Arbitration clause in document/agreement/conveyance compulsorily required to be stamped, but which is not duly stamped, is not enforceable, even post introduction of Section 11(6-A). Law laid down in *SMS Tea Estates*, (2011) 14 SCC 66, held, is in no way affected by introduction of Section 11(6-A), as said decision does not fall in expression "notwithstanding any judgment, decree or order of any Court" contained in Section 11(6-A), *Garware Wall Ropes Ltd.* v. *Coastal Marine Constructions And Engineering Ltd.*, (2019) 9 SCC 209.

► **Arbitrability of disputes/Claims**.—While dealing with petition under Section 11, the Court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable and in such case, the issue of non-arbitrability is left open to be decided by the Arbitral Tribunal, *Mohd. Masroor Shaikh* v. *Bharat Bhushan Gupta*, (2022) 4 SCC 156.

► **Excluded/excepted matters**.—Excluded/excepted matters i.e. matters excluded from the purview of arbitration agreement and referable to a named person/authority for adjudication, by consent of parties are non-arbitrable, *Mitra Guha Builders (India) Co.* v. *ONGC*, (2020) 3 SCC 222.

► **Arbitrability — Accord and Satisfaction**.—Though the aspect with regard to "accord and satisfaction" of the claims may/can be considered by the Court at

the stage of deciding Section 11 application, it is always advisable and appropriate that in cases of debatable and disputable facts, good reasonably arguable case, the same should be left to the Arbitral Tribunal, *Indian Oil Corpn. Ltd.* v. *NCC Ltd.*, (2023) 2 SCC 539.

► **Arbitration agreement contained in document compulsorily required to be stamped**.—When an instrument compulsorily required to be stamped, is relied upon as containing the arbitration agreement, the Court is required to consider at the outset, whether the document is properly stamped or not and the Court cannot act upon an arbitration clause in a document if the document is not properly stamped. However, if the deficit stamp duty and penalty is paid the document can be acted upon, *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram* v. *Bhaskar Raju & Bros.*, (2020) 4 SCC 612.

► **Two different arbitration clauses**.—In case of two different arbitration clauses in two related agreements between the same parties, the determination of appropriate clause that will operate in the factual matrix would depend on the nature of the dispute raised between the parties. To determine the same it would be necessary to examine the agreements and other documents on record which reveal the true nature of the dispute raised, *Balasore Alloys Ltd.* v. *Medima LLC*, (2020) 9 SCC 136.

► **Scope of International commercial arbitration**.—Disputes between parties, where one of the parties is a sole proprietorship with the proprietor resident outside India would fall within the realm of international commercial arbitration, even when the address of the sole proprietorship is in India, *Amway (India) Enterprises (P) Ltd.* v. *Ravindranath Rao Sindhia*, (2021) 8 SCC 465.

► **Interference by Court at referral stage**.—Interference by Court at referral stage is restricted to cases where it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. Prima facie review by Court at referral stage is not warranted, when the same would be inconclusive or inadequate, requiring detailed examination, *Sanjiv Prakash* v. *Seema Kukreja*, (2021) 9 SCC 732.

► **Determination of Arbitrators' fees**.—Party autonomy is paramount in arbitrations. Unilateral fixation of fee by arbitrator/Arbitral Tribunal i.e. issuance of a binding order fixing fee by arbitrator is impermissible., *ONGC Ltd.* v. *Afcons Gunanusa JV*, (2024) 4 SCC 481.

► **Limitation**.—While considering the issue of limitation under Section 11(6), Courts should satisfy themselves employing a two-pronged test - First, whether the petition under Section 11(6) is barred by limitation - Secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings - Held, if either of these issues are answered against the party seeking referral of disputes to arbitration, the Court may refuse to appoint an Arbitral Tribunal, *Arif Azim Co. Ltd.* v. *Aptech Ltd.*, (2024) 5 SCC 313.

► **Time-barred claims**.—Period of limitation for issuing notice of arbitration

would not get extended by mere exchange of letters, or mere settlement discussions post accrual of cause of action, *B&T AG* v. *Union of India*, (2024) 5 SCC 358.

► **Validity of unstamped arbitration agreement**.—Referral Court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the Arbitral Tribunal. *Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re*, (2024) 6 SCC 1.

[27][11-A. Power of Central Government to amend Fourth Schedule.—(1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.]

12. Grounds for challenge.—[28][(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(*a*) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(*b*) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

(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 reasons of which he becomes aware after the appointment has been made.

[29][(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.]

► **Eligibility/Ineligibility of arbitrator(s)**.—De jure ineligibility of arbitrator appointed by person who is himself de jure ineligible to be arbitrator vide Section 12(5) r/w Schedule 7, reiterated. Appointment of such arbitrator is void ab initio and arbitration proceedings conducted by such arbitrator/awards passed by such arbitrator, held, are also void, *Bharat Broadband Network Ltd.* v. *United Telecoms Ltd.*, (2019) 5 SCC 755.

Merely because the panel of the arbitrators are the retired employees who have worked in the Railways, it does not make them ineligible to act as the arbitrators, *Central Organisation for Railway Electrification* v. *ECI-SPIC-SMO-MCML (JV)*, (2020) 14 SCC 712.

► **Waiver of ineligibility prescribed in Section 12(5)**.—The expression "express agreement in writing" in the proviso to Section 12(5), refers to an agreement made in words as opposed to an agreement which is to be inferred by conduct. Further, this agreement must be an agreement by which both parties, with full knowledge of the fact that the arbitrator concerned is ineligible to be appointed as an arbitrator, still go ahead and say that they have full faith and confidence in him to continue as such, *Bharat Broadband Network Ltd.* v. *United Telecoms Ltd.*, (2019) 5 SCC 755.

► **Neutrality of arbitrators**.—Arbitral Tribunal comprising of the officers of one of the parties are not eligible to continue as such even when such Arbitral Tribunal stood constituted prior to the Amendment Act, 2015 coming into force. Further, the earlier Arbitral Tribunal having lost its mandate cannot be permitted to continue and therefore a fresh arbitrator has to be appointed, *Ellora Paper Mills Ltd.* v. *State of M.P.*, (2022) 3 SCC 1.

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 sub-section (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.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. Failure or impossibility to act.—(1) [30][The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, 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 13, 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.

► **Waiver**.—Participation in the arbitration proceedings by the objecting party does not amount to waiver when the same is not voluntary, *Jayesh H. Pandya* v. *Subhtex (India) Ltd.*, (2020) 17 SCC 383.

► **Termination of mandate of sole arbitrator**.—In a case where there is a dispute/controversy on the mandate of the arbitrator being terminated on the ground mentioned in Section 14(1)(a), such a dispute has to be raised before the "Court", defined under Section 2(1)(e) and such a dispute cannot be decided on an application filed under Section 11(6), *Swadesh Kumar Agarwal* v. *Dinesh*

Kumar Agarwal, (2022) 10 SCC 235.

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.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

► **Appointment of substitute arbitrator**.—Appointment of a substitute arbitrator in contravention of the arbitration agreement, not permissible, *State of Haryana* v. *G.F. Toll Road (P) Ltd.*, (2019) 3 SCC 505.

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.

NOTES ► *Ipso jure* means 'by the law itself; by the mere operation of law' (*Black's Law Dictionary*).

► **Jurisdiction of the court/arbitrator**.—Decision on limitation is not a ruling by the Arbitral Tribunal on its own jurisdiction. Not all "errors of law" are "errors of jurisdiction". An erroneous decision on a question of limitation or res judicata would not oust the jurisdiction of the court/arbitrator in the primitive sense of the term and render the decision or a decree embodying the decision, a nullity liable to collateral attack, *IFFCO Ltd.* v. *Bhadra Products*, (2018) 2 SCC 534.

► **Scope of reference**.—Dismissal of counterclaims by arbitrator, at threshold on the ground of being beyond the scope and jurisdiction of arbitrator without any enquiry is not proper. Decision by arbitrator only on disputes raised by claimant/applicant under Section 11 and not counterclaims of the other party, not permissible, *Bharat Petroleum Corpn. Ltd.* v. *Go Airlines (India) Ltd.*, (2019) 10 SCC 250.

► **Objection to jurisdiction**.—Objection to jurisdiction before arbitrator, after filing of statement of defence is permissible when SLP challenging jurisdiction already stands filed prior to statement of defence. Objection to the jurisdiction of arbitrators when the award has already been rendered and after the stipulated time, is not permissible, *M.P. Rural Road Development Authority* v. *L.G. Chaudhary Engineers And Contractors*, (2018) 10 SCC 826.

[31][17. Interim measures ordered by arbitral tribunal.—(1) A party may, during the arbitral proceedings [32][* * *], 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 and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any

party, 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 arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.]

NOTES ► While Section 9 provides for the taking of interim measures by the Court in certain matters, Section 17 provides for the taking of interim measures in respect of the subject-matter of the dispute by the arbitral tribunal. The opening words of Section 17(1) indicate that the parties may by agreement exclude the exercise of such a power by the arbitral tribunal.

The Arbitration Act, 1940, did not confer any specific powers on arbitrators to take interim measures. It was, however, open to the parties to confer such powers on the arbitrator.

Sub-section (2) empowers the tribunal to order the furnishing of adequate surely by a party for carrying out the interim measure ordered under sub-section (1).

► **Award/Non-award of contract**.—Right of First Refusal(ROFR)/right to match the lowest bid, granted to claimant/contractor by Arbitral Tribunal qua tender for completion of the balance unfinished works originally awarded to the claimant, is inconsequential, when such original awardee/contractor does not participate in the subsequent tender, *NHAI* v. *Gwalior-Jhansi Expressway Ltd.*, (2018) 8 SCC 243.

► **Power of Arbitral Tribunal to grant interim relief**.—Section 17 of the 1996 Act is not inconsistent with the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992, and thus as per Section 2(4) of the A&C Act, the same is applicable for granting interim relief under Gujarat Act. Furthermore, by application of Section 9(3) of the A&C Act, proper forum for grant of interim relief would be Arbitral Tribunal once it is constituted, and not Court, *State of Gujarat* v. *Amber Builders*, (2020) 2 SCC 540.

► **Validity of emergency arbitration proceedings with juridical seat in India, under governing institutional rules**.—Award/order by Emergency Arbitrator granting interim reliefs is permissible, when institutional rules under

which arbitration takes place permit it, *Amazon.Com NV Investment Holdings LLC* v. *Future Retail Ltd.*, (2022) 1 SCC 209.

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.

NOTES ► This section casts a twofold duty on the arbitral tribunal:

(*i*) it must be independent and impartial and must mete out equal treatment to each party. [*See* Section 12 Note (1)]

(*ii*) it must give each party a full opportunity to present its case. Sections 23 and 24 provide for the giving of such opportunity.

There was no specific provision in the Arbitration Act, 1940, corresponding to Section 18, but such provisions were applicable as principles of natural justice.

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.

► **Grounds for setting aside award**.—Non-granting of opportunity to cross-examine the witnesses is not a ground to set aside the award, when parties had agreed to such procedure. There is estoppel against challenging agreed upon procedure and raising contention of misconduct on part of arbitrator for having following agreed upon procedure, *Jagjeet Singh Lyallpuri* v. *Unitop Apartments & Builders Ltd.*, (2020) 2 SCC 279.

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.

► **Juridical or legal seat of arbitration**.—Court has to undertake a detailed examination to discern from arbitration agreement and surrounding circumstances, intention of parties as to whether particular place mentioned refers merely to a venue or does it refer to juridical seat of arbitration, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Jurisdictional seat of arbitration**.—Once the jurisdictional "seat" of arbitration is fixed in terms of Section 20(2), then, without the express mutual consent of the parties to the arbitration, "the seat" cannot be changed. Such consent must be express and clearly understood and agreed by the parties, *BBR (India) (P) Ltd.* v. *S.P. Singla Constructions (P) Ltd.*, (2023) 1 SCC 693.

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.

22. Language.—(1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

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.

[33][(2-A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(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.

[34][(4) 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.]

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.

[35][Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]

(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 allegations by the claimant [36][and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited];

(*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.

► **Termination of arbitration proceedings**.—Termination of arbitration proceedings owing to default of claimant/failure of claimant in communicating his statement of claim is not permissible in absence of notice by arbitrator indicating that no adjournments would be given, *S.P. Singla Constructions (P) Ltd.* v. *State of H.P.*, (2019) 2 SCC 488.

26. Expert appointed by arbitral tribunal.—(1) Unless otherwise agreed by the parties, the arbitral tribunal may—

(*a*) appoint one or more experts 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.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

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—

(*a*) the names and addresses of the parties and the arbitrators;

(*b*) the general nature of the claim and the relief sought;

(*c*) the evidence to be obtained, in particular,—

(*i*) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(*ii*) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(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.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of

any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

Chapter VI

MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

28. Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated 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.

[37][(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.]

NOTES ► *Ex aequo et bono* means in justice and fairness; according to what is first and good; according to equity and conscience (*Black's Law Dictionary*, 5th Edn., p. 500).

Amiable compositeur or amicable compounders, that is, arbitrators authorised to abate something of the strictness of the law in favour of natural equity (*Black's Law Dictionary*, 5th Edn., p. 75).

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.

[38][29-A. Time limit for arbitral award.—[39][(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.]

(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.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay:

[40][Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) 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.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour 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.]

STATE AMENDMENTS

Union Territory of Jammu and Kashmir.—In its application to the Union Territory of Jammu and Kashmir,—

(*a*) for sub-section (1), the following sub-section shall be *substituted*, namely:—

"(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purposes of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.";

(*b*) in sub-section (4), *omit* second and third provisos. [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh,

(*a*) for sub-section (1), *substitute*—

"(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purposes of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment".

(*b*) in sub-section (4), *omit* second and third provisos. [*Vide* S.O. 3774(E), dated 23-10-2020 (w.e.f. 23-10-2020)].

[41][29-B. Fast track procedure.—(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for

resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):

(*a*) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;

(*b*) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

(*c*) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;

(*d*) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of Section 29-A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.]

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.

(7)(*a*) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[42][(*b*) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (*b*) of Section 2 of the Interest Act, 1978 (14 of 1978).]

[43][(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31-A.]

► **Arbitral Award — Scope of**.—The law on the award as governed by the new Act, 1996, is other way about of the pre-existing law; it mandates that he award should state the reasons upon which it is based. In other words, 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 of the new Act, the award should state the reasons in support of determination of the liability/non-liability, *T.N. Electricity Board* v. *Bridge Tunnel Construction*, (1997) 4 SCC 121.

Signing of award by all arbitrators, including by any dissenting arbitrator is mandatory, *Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657.

► **Interpretation of award**.—The words, "unless otherwise agreed by the parties" occur at the beginning of Section 31(7)(a) qualifying the entire provision.

However, in Section 31(7)(b), the words, "unless the award otherwise directs" occur after the words "a sum directed to be paid by an arbitral award shall" and before the words "carry interest at the rate of eighteen per cent". Thereby, those words in Section 31(7)(b) only qualify the rate of post-award interest *Morgan Securities & Credits (P) Ltd.* v. *Videocon Industries Ltd.*, (2023) 1 SCC 602.

► **Date of receipt of award**.—When award is delivered or deposited or left in office of a party on a non-working day, date of such physical delivery is not date of "receipt" of award. Next working day, held, shall be taken as date of receipt, *State of H.P.* v. *Himachal Techno Engineers*, (2010) 12 SCC 210.

► **Delivery of arbitral award**.—The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation, *Union of India* v. *Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239.

► **Interim Arbitral Award**.—Under Section 31(6) the jurisdiction to make an interim arbitral award is left to the good sense of the Arbitral Tribunal, and that it extends to "any matter" with respect to which it may make a final arbitral award. . Therefore, any point of dispute between the parties which has to be answered by the Arbitral Tribunal can be the subject-matter of an interim arbitral award, *IFFCO Ltd.* v. *Bhadra Products*, (2018) 2 SCC 534.

► **Award of Interest (pre-award/pendente lite and post award)**.—Discretion available to arbitrator under the provisions of Section 31(7) when there is no agreement between the parties on the issue of award of interest, However, when parties have agreed to the contrary on any of the aspects mentioned in Section 31(7)(a), the Arbitral Tribunal will cease to have any discretion and would be bound by such agreement between the parties, *Delhi Airport Metro Express (P) Ltd.* v. *DMRC*, (2022) 9 SCC 286.

► **Waiver of award of interest for pre-reference period, pendente lite and post reference period**.—If a plea is available, whether on facts or law, it has to be raised by the party at appropriate stage in accordance with law and if not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver, *Union of India* v. *Susaka (P) Ltd.*, (2018) 2 SCC 182.

► **Rate of interest awarded by the arbitrator**.—Para 7-A of First Schedule to Arbitration Act, 1940 inserted by Section 24 of U.P. Civil Laws (Reforms and Amendment) Act, 1976 is not applicable to proceedings/award under 1996 Act even if arbitration agreement is earlier to date of coming into force of Act of 1996, *Shahi and Associates* v. *State Of U.P.*, (2019) 8 SCC 329.

► **Post-award interest**.—Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest and the arbitrator

has the discretion to award post-award interest on a part only of the "sum", *Morgan Securities & Credits (P) Ltd.* v. *Videocon Industries Ltd.*, (2023) 1 SCC 602.

► **Necessity of reasons for passing an award**.—The passing of a reasoned award is not an empty formulation under the Arbitration Act. Further, the requirements of a reasoned order are that the reasoning should be : proper, intelligible and adequate. Court while exercising jurisdiction under Section 34 has to adjudicate the validity of an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration, *Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1.

► **Arbitrator's fee**.—Fee prescribed under Schedule IV is not applicable when arbitrator's fees has been fixed by agreement between the parties. Updation of fee would depend on amendments made to fee schedule from time to time, *NHAI* v. *Gayatri Jhansi Roadways Ltd.*, (2020) 17 SCC 626.

► **Party autonomy**.—The phrase "unless otherwise agreed by the parties" used in various sections, namely, 17, 21, 23(3), 24(1), 25, 26, 29, 31, 85(2)(a), etc. of the 1996 Act indicates that it is open to the parties to agree otherwise than what the statutory provision in question provides for. So if there is such an agreement between the parties on any aspect so permitted by the 1996 Act, the arbitrator shall be bound by the same, *Delhi Airport Metro Express (P) Ltd.* v. *DMRC*, (2022) 9 SCC 286.

► **Dissenting opinion — Nature and status**.—A dissenting opinion cannot be treated as an award if the majority award is set aside, *Hindustan Construction Co. Ltd.* v. *National Highways Authority of India*, (2024) 2 SCC 613.

► **Validity of award passed by majority arbitrators**.— An award signed by two co-arbitrators should be construed as a valid and enforceable award of the Arbitral Tribunal. An award rendered by majority arbitrators is a valid award and cannot be invalidated, *Medeor Hospital Ltd.* v. *Ernst and Young LLP*, (2023) 5 HCC (Del) 406.

[44][31-A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

(*a*) whether costs are payable by one party to another;

(*b*) the amount of such costs; and

(*c*) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, "costs" means reasonable costs relating to—

(*i*) the fees and expenses of the arbitrators, Courts 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 or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

(*a*) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; or

(*b*) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

(*a*) the conduct of all the parties;

(*b*) whether a party has succeeded partly in the case;

(*c*) whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and

(*d*) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—

(*a*) a proportion of another party's costs;

(*b*) a stated amount in respect of another party's costs;

(*c*) costs from or until a certain date only;

(*d*) costs incurred before proceedings have begun;

(*e*) costs relating to particular steps taken in the proceedings;

(*f*) costs relating only to a distinct part of the proceedings; and

(*g*) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.]

► **Arbitrators' fees**.—Arbitral Tribunal while deciding the allocation of costs under Section 31(8) read with Section 31-A cannot issue binding or enforceable orders regarding their own remuneration. This would violate the principle of party autonomy and the doctrine of prohibition of in rem suam decisions, *ONGC Ltd.* v. *Afcons Gunanusa JV*, (2024) 4 SCC 481.

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.

► **Supply of opinion of dissenting arbitrator**.—Dissenting opinion of the arbitrator, differing from the award rendered by majority arbitrators, mandatorily must be supplied to the parties, with the majority award, within period prescribed by Section 29-A, *Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657.

33. Correction and interpretation of award; additional award.—(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(*a*) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(*b*) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (*a*) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the

arbitral award or to an additional arbitral award made under this section.

► **Scope of power of modification of award under**.—Award can be modified only to the extent of correcting arithmetical and/or clerical error without any material changes, *Gyan Prakash Arya* v. *Titan Industries Ltd.*, (2023) 1 SCC 153.

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 sub-section (3).

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

(*a*) the party making the application [45][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, 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.

[46][*Explanation 1*.—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 was in violation of Section 75 or Section 81; 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.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[47][(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(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.

[48][(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

STATE AMENDMENTS

Union Territory of Jammu and Kashmir.—In its application to the Union Territory of Jammu and Kashmir,—

(*i*) after sub-section (2), *insert* the following sub-section, namely:—

"(2-A) An arbitral award may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.";

(*ii*) in sub-section (3),—

(*i*) for "three months" *substitute*, "six months";

(*ii*) in proviso thereto, for, "three months" and "thirty days" *substitute* respectively "six months" and "sixty days". [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh,

(*i*) after sub-section (2), *insert*—

"(2-A) An arbitral award may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence."

(*ii*) in sub-section (3),—

(*a*) for "three months" *substitute* "six months";

(*b*) in the proviso, for "three months" and "thirty days" *substitute* respectively "six months" and "sixty days". [*Vide* S.O. 3774(E), dated 23-10-2020 (w.e.f. 23-10-2020)].

► **Applicability of Section 34 (as amended w.e.f. 23-10-2015 vide 2015 Amendment Act**.—Said amended Section 34, as a whole, will apply only to Section 34 applications that have been made to court on or after 23-10-2015, irrespective of the fact that the arbitration proceedings may have commenced prior to that date, *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131, See also *Ratnam Sudesh Iyer* v. *Jackie Kakubhai Shroff*, (2022) 4 SCC 206.

► **Jurisdiction of court to entertain Section 34 application**.—Once the seat of arbitration is designated, the same operates as an exclusive jurisdiction clause as a result of which only the courts where the seat is located would have jurisdiction to the exclusion of all other courts, even court(s) where part of the cause of action may have arisen, *Hindustan Construction Co. Ltd.* v. *NHPC Ltd.*, (2020) 4 SCC 310.

► **Nature of Proceedings under Section 34**.—Proceedings under Section 34 are summary in nature and limited in scope. Effect of insertion of Sections 34

(5) and (6), following *Emkay Global*, (2018) 9 SCC 49, held, is that permission to file affidavit by way of evidence and cross-examination of witnesses, is grantable only when absolutely necessary, in exceptional cases, and not as a matter of course, *Canara Nidhi Ltd.* v. *M. Shashikala*, (2019) 9 SCC 462.

► **Matters "beyond the scope of submission to arbitration"**.—Where matters, though not strictly in issue, are connected with matters in issue, held, they would not readily be held to be matters that could be considered to be outside or beyond the scope of submission to arbitration, *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131.

► **Calculation of Month**.—A "month" does not refer to a period of thirty days, but refers to actual period of a calendar month, *State of H.P.* v. *Himachal Techno Engineers*, (2010) 12 SCC 210.

► **Scope of jurisdiction of Court**.—Power of Court under Section 34 to "set aside" award, held, does not include power to modify such an award, *NHAI* v. *M. Hakeem*, (2021) 9 SCC 1.

► **"Domestic award", "International award" and "foreign award" — Difference**.—"Domestic award" can either be an : (*i*) award made in India in a domestic arbitration, or (*ii*) award in an international arbitration whose juridical seat is in India. Both types of awards [(*i*) and (*ii*), above] are liable to be challenged under Section 34 and are enforceable under Section 36. "Foreign award" is an award in any arbitration whose juridical seat is outside India, which would be enforceable in India, if at all, under Part II and only to the extent provided therein. Part I is completely inapplicable to foreign awards, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Domestic arbitral award — Ground of patent illegality**.—The ground of patent illegality is a ground available under the statute for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same; or, the construction of the contract is such that no fair or reasonable person would take ;or, that the view of the arbitrator is not even a possible view, *Patel Engg. Ltd.* v. *North Eastern Electric Power Corpn. Ltd. (NEEPCO)*, (2020) 7 SCC 167.

► **Limitation**.—Section 14 of Limitation Act is applicable to application submitted under Section 34 of 1996 Act, seeking exclusion of certain period, if application under Section 34 of 1996 Act is at the first instance filed within limitation period provided under Section 34(3). However, Section 5 of Limitation Act is not applicable to condone delay beyond the statutory period under Section 34(3) of 1996 Act, *Oriental Insurance Co. Ltd.* v. *Tejparas Associates & Exports (P) Ltd.*, (2019) 9 SCC 435, See also *Union of India* v. *Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239 and *State of Maharashtra* v. *ARK Builders (P) Ltd.*, (2011) 4 SCC 616 : (2011) 2 SCC (Civ) 413.

► **Discretion of Court to condone delay**.—If a petition is filed under Section 34 beyond the prescribed period of three months, the Court has the discretion to

condone the delay only to an extent of thirty days, provided sufficient cause is shown, *Mahindra & Mahindra Financial Services Ltd.* v. *Maheshbhai Tinabhai Rathod*, (2022) 4 SCC 162.

► **Extension of limitation**.—Extension of limitation period/Condonation of delay beyond the period prescribed is not permissible even when applicant is the State and delay is owing to administrative difficulties, *Simplex Infrastructure Ltd.* v. *Union of India*, (2019) 2 SCC 455, See also *State of Maharashtra* v. *Ramdas Construction Co.*, (2021) 4 SCC 629.

► **Limitation for appeal to Appellate Tribunal**.—The language of the proviso to Section 421(3) which contains mandatory or peremptory negative language and speaks of a second period not exceeding 45 days, would have the same effect as the expression "but not thereafter" used in Section 34(3) proviso of the Arbitration Act, 1996, *Bengal Chemists & Druggists Assn.* v. *Kalyan Chowdhury*, (2018) 3 SCC 41.

► **Interference with Award**.—When it comes to setting aside of an award under the public policy ground, it would mean that the award should shock the conscience of the Court, and would not include what the Court thinks is unjust on the facts of the case seeking to substitute its view for that of the arbitrator to do what it considers to be "justice", *Sutlej Construction Ltd.* v. *Union Territory of Chandigarh*, (2018) 1 SCC 718.

► **Practice and procedure qua applications for setting aside an award**.—An application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties. Further, cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, *Emkay Global Financial Services Ltd.* v. *Girdhar Sondhi*, (2018) 9 SCC 49.

The Arbitration Act is a self-contained code, which does not distinguish between governmental and private entities. The decision of the Court cannot be influenced by the position of the party before it, *International Seaport Dredging (P) Ltd.* v. *Kamarajar Port Ltd.*, 2024 SCC OnLine SC 3112.

► **Issue of notice**.—Requirement of issuance of prior notice to the other party and filing of an affidavit endorsing compliance with the said requirement under Section 34(5), is directory and not mandatory, *State of Bihar* v. *Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472.

► **Delivery of award to parties**.—Delivery of an arbitral award under Section 31(5) not a matter of mere formality but a matter of substance, *Anilkumar Jinabhai Patel* v. *Pravinchandra Jinabhai Patel*, (2018) 15 SCC 178.

► **Setting aside of arbitral award by court**.—Section 34 indicates highly constricted power of court to interfere with an arbitral award. When parties have chosen to avail an alternative mechanism for dispute resolution, they must be left

to the wisdom of decision of arbitrator and the role of Court should be restricted to bare minimum as per the grounds enumerated in Section 34, *K. Sugumar* v. *Hindustan Petroleum Corpn. Ltd.*, (2020) 12 SCC 539.

► **Setting aside of award on ground of it being against "most basic notions of justice"**.—Meaning — Substantively or procedurally, some fundamental principle of justice which has been breached, and which shocks the conscience of the Court *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131.

► **Contravention of "public policy of India", as ground for challenging arbitral award**.—*Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131, See also *Lion Engg. Consultants* v. *State of M.P.*, (2018) 16 SCC 758.

► **Setting aside of award on ground of "party being unable to present his case"**.—Consideration of material taken behind the back of the parties, not permissible, *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131.

► **Setting aside of award on ground of patent illegality**.—When arbitrator fails to decide matter in accordance with terms of contract governing parties, it will attract "patent illegality ground" as it amounts to gross contravention of Section 28 (3), *State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275.

► **Restrictions on grounds for challenging arbitral award before Court**.—While deciding applications filed under Section 34, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law, *Delhi Airport Metro Express (P) Ltd.* v. *DMRC*, (2022) 1 SCC 131.

► **Remission**.—Remission of matter to arbitrator under Section 34(4) i.e. for elimination of grounds for setting aside the award cannot be permitted in absence of findings on the contentious issues, *I-Pay Clearing Services (P) Ltd.* v. *ICICI Bank Ltd.*, (2022) 3 SCC 121.

► **Juridical seat of arbitration**.—Determination of applicability of this section, when juridical seat of arbitration is itself not clear, explained. Determination of juridical seat of arbitration when arbitration agreement specifying "venue" for holding arbitration sittings by arbitrators but not specifying the "seat", also explained. Interrelationship between "place", "venue" and "seat" of arbitration, discussed, *Union of India* v. *Hardy Exploration & Production (India) Inc.*, (2019) 13 SCC 472.

► **Contravention of "public policy of India", as ground for challenging arbitral award**.—Law summarised and clarified regarding meaning of the expression "public policy of India", as elucidated by Courts prior to the Arbitration and Conciliation (Amendment) Act, 2015 and its curtailment. Permissibility of interference on specific sub-grounds of : (1) arbitrator not adopting "judicial approach"; (2) breach of principles of natural justice; (3) contravention of statute not linked to public policy or public interest, as being a patent illegality under Section 34(2-A); and (4) "most basic notions of justice", clarified, *Ssangyong*

Engg. & Construction Co. Ltd. v. *NHAI*, (2019) 15 SCC 131.

► **Plea of jurisdiction**.—Award passed where there is inherent lack of jurisdiction is a nullity and such plea can be taken at any stage and also in collateral proceedings. Even acquiescence to or participation in the (non est) arbitration will not bar such a plea as such award is a nullity, *Hindustan Zinc Ltd.* v. *Ajmer Vidyut Vitran Nigam Ltd.*, (2019) 17 SCC 82.

► **Challenge to a foreign award**.—Principles summarized, regarding when challenge to a foreign award under Section 34 in respect of arbitration agreements/awards to which ruling in *Balco*, (2012) 9 SCC 552, does not apply, and instead principle laid down in *Bhatia International*, (2002) 4 SCC 105, applies, is maintainable. Based on these principles, held, such challenge is not maintainable where the juridical seat of arbitration is outside India and arbitration is conducted in accordance with the Rules of ICC (i.e. a supranational body of rules), *Noy Vallesina Engg. SpA* v. *Jindal Drugs Ltd.*, (2021) 1 SCC 382.

► **Validity of award**.—Award on issues/matters beyond the scope of the arbitration clause which was invoked, as the issues/matters in question pertained to another distinct agreement, arbitration clause in which latter agreement was not invoked, is not valid, *Indian Oil Corpn. Ltd.* v. *Shree Ganesh Petroleum*, (2022) 4 SCC 463.

► **Scope of challenge to award under S. 34, and, scope of appeal under S. 37**.—The key principles being that : (i) in an application under S. 34, the Court is not expected to act as an appellate court and reappreciate the evidence; (ii) the scope of interference would be limited to grounds provided under S. 34; (iii) interference under S. 37 cannot travel beyond the restrictions laid down under S. 34 i.e. the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under S. 34 has not exceeded the scope of the provision, *Reliance Infrastructure Ltd.* v. *State of Goa*, (2024) 1 SCC 479.

► **Scope of interference by Court**.—Substitution of arbitrators' view, who were also technical experts in the field concerned, is not permissible, when such view is a plausible view, *Hindustan Construction Co. Ltd.* v. *National Highways Authority of India*, (2024) 2 SCC 613.

► **Interference with Award by Court**.—An award is liable to be interdicted only if deficiencies pointed out in challenge go to the root of matter. Interference should not be done merely because an alternative view on facts and interpretation of contract exists, *Dheeraj Rastogi* v. *Dnata International Pvt. Ltd.*, (2024) 1 HCC (Del) 51.

► **Jurisdiction of arbitrator to adjudicate under 1996 Act**.—Challenge to jurisdiction of arbitrator to adjudicate under the 1996 Act, under Section 34 on account of the 1983 Adhiniyam, post rendering of award is not permissible, when such objection not raised in terms of Section 16(2) of the 1996 Act, *Sweta Construction* v. *Chhattisgarh State Power Generation Co. Ltd.*, (2024) 4 SCC 722.

► **"Patent Illegality"**.—The ground of "patent illegality" is applied when there is a contravention of the substantive law of India, the Arbitration Act, 1996, or the Rules applicable to the substance of the dispute, *Five Star Construction (P) Ltd.* v. *Orchid Infrastructure Developers (P) Ltd.*, (2024) 1 HCC (Del) 163.

► **Condonation of Delay**.—Even though the power to condone the delay is conferred upon the Courts, the condonation under this Section cannot be granted liberally as the same would defeat the very purpose of the enactment of the Act, that is the expeditious resolution of disputes, *Omaxe Limited* v. *Joginder Singh Nijjar*, (2023) 6 HCC (Del) 28.

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.

[49][36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908):]

[50][Provided further that where the Court is satisfied that a prima facie case is made out that,—

(*a*) the arbitration agreement or contract which is the basis of the award; or

(*b*) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.]

► **Execution/enforcement of arbitral award**.—Execution/enforcement of award can be done/filed anywhere in country where such decree can be executed and there is no requirement for obtaining a transfer of decree from court which has jurisdiction over arbitral proceedings/award/within whose jurisdiction award is passed, *Sundaram Finance Ltd.* v. *Abdul Samad*, (2018) 3 SCC 622.

► **Sections 36 and 34 (before and after amendment of Section 36 in 2015)**.—Section 36 as amended in 2015, applies to pending Section 34 applications even in arbitrations commenced prior to 23-10-2015 i.e. date of coming into force of Amendment Act, 2015, as Section 36 is a procedural provision, *BCCI* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287.

► **Purpose and Limits of statutory fiction**.—The said fiction is for the limited purpose of execution of either kind of award, and it is not intended to make an award a decree for all purposes, or under all statutes, whether State or Central. It is a legal fiction which must be limited to the purpose for which it was created. Based thereon Arbitral Tribunal cannot be considered to be a "court", and the arbitral proceedings are not civil proceedings, *Union of India* v. *Vedanta Ltd.*, (2020) 10 SCC 1.

► **Automatic stay**.—There is no automatic stay or suspension of execution of award, if the same is challenged, whether the case pertains to period before 2015 Amendment or to period subsequent thereto. Amendment to Section 36 (as made by the 2015 Amendment Act), is clarificatory, *Hindustan Construction Co. Ltd.* v. *Union of India*, (2020) 17 SCC 324.

► **Execution of award**.—Conversion of awarded sum to Indian Currency (INR) and adjudication of rate of conversion not required when agreement between the parties and the award did not contemplate payment in Indian Currency, *NPCC* v. *Royal Construction Co. (P) Ltd.*, (2024) 5 SCC 803.

Chapter IX
APPEALS

37. Appealable orders.—(1) [51][Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

[52][(*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.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(*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.

(3) 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.

► **Interference by Court when warranted**.—In absence of agreement to contrary between parties, Section 31(7)(a) confers jurisdiction upon Arbitral Tribunal to award interest unless otherwise agreed by parties at such rate as Arbitral Tribunal considers reasonable, on whole or any part of money, for whole or any part of period between date of cause of action and date of award, *Post Graduate Institute of Medical Education & Research* v. *Kalsi Construction Co.*, (2019) 8 SCC 726.

► **Condonation of delay**.—Delay beyond the period of 120 days in filing an appeal under Section 37 is non-condonable, *N.V. International* v. *State of Assam*, (2020) 2 SCC 109.

Appeal against an order refusing to condone delay in filing of application under Section 34, held, is maintainable under Section 37(1)(c), as such order amounts to order refusing to set aside award, *Chintels (India) Ltd.* v. *Bhayana Builders (P) Ltd.*, (2021) 4 SCC 602.

Section 5 of the Limitation Act is applicable for condonation of delay in filing appeals under Section 37 of the 1996 Act, where specified value is not less than three lakh rupees i.e. the limitation period is governed by Section 13(1-A) of the Commercial Courts Act. Scheme of Commercial Courts Act does not exclude applicability of Section 5 of the Limitation Act to such appeals under Section 37, *State of Maharashtra* v. *Borse Bros. Engineers' Contractors (P) Ltd.*, (2021) 6 SCC 460.

► **Limitation period for filing appeals**.—Articles 116 and 117 of the Limitation Act are not applicable for filing appeals under Section 37 of the 1996 Act in respect of cases falling under Commercial Courts Act i.e. where specified value is not less than three lakh rupees. Section 13(1-A) of the Commercial Courts Act lays down a period of limitation of 60 days uniformly for all appeals under Section 37 where specified value is not less than three lakh rupees, *State of Maharashtra* v. *Borse Bros. Engineers' Contractors (P) Ltd.*, (2021) 6 SCC 460.

Chapter X

MISCELLANEOUS

38. Deposits.—(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of Section 31, which it

expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

39. Lien on arbitral award and deposits as to costs.—(1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

40. Arbitration agreement not to be discharged by death of party thereto.—(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

41. Provisions in case of insolvency.—(1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section, the expression "receiver" includes an Official Assignee.

42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

► **Object and relevance**.—Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. The seat of arbitration alone and not the place where cause of action arises wholly or partly, determines the jurisdiction of courts over the arbitration, when such seat is found to be designated or determined, *BGS SGS SOMA JV* v. *NHPC Ltd.*, (2020) 4 SCC 234.

► **Foreign-seated ICA**.—Pt. I applies only to arbitrations (domestic as well as international) that have their juridical or legal seat within territory of India. If upon a construction thereof, the arbitration agreement is held to provide for seat of arbitration outside India, Part I would be inapplicable to the extent inconsistent with arbitration law of seat of arbitration, even if the arbitration agreement purports to provide that 1996 Act shall govern arbitration proceedings. Awards made in foreign-seated ICAs are subject to jurisdiction of Indian courts only when same are sought to be enforced in India in accordance with, and only to the extent

provided for by, provisions of Part II. Further, no application for interim relief and no suit for interim injunction simpliciter is maintainable in India in respect of foreign-seated ICAs, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

[53][42-A. Confidentiality of information.—Notwithstanding anything contained in any other law for the time being in force, 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.]

[54][42-B. Protection of action taken in good faith.—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.]

43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

STATE AMENDMENTS

Bihar.—In its application to the State of Bihar, sub-section (3) of Section 43 shall be *omitted*. [*Vide* Bihar Act 20 of 2002, S. 2 (w.e.f. 9-12-2002)].

► **Limitation period for invoking arbitration/appointment of arbitrator**.—Although a different scheme has been evolved under the 1996 Act, however the same principles continue to apply with respect to the applicability of the law of limitation to an application under Section 11(6) of the 1996 Act as laid down in the

decisions dealing with judicial appointment of an arbitrator under Sections 8 and 20 of the 1940 Act, *Geo Miller&Co. (P) Ltd.* v. *Rajasthan Vidyut Utpadan Nigam Ltd.*, (2020) 14 SCC 643.

[55][Part I-A

ARBITRATION COUNCIL OF INDIA

43-A. Definitions.—In this Part, unless the context otherwise requires,—

(*a*) "Chairperson" means the Chairperson of the Arbitration Council of India appointed under clause (a) of sub-section (1) of Section 43-C;

(*b*) "Council" means the Arbitration Council of India established under Section 43-B;

(*c*) "Member" means a Member of the Council and includes the Chairperson.

43-B. Establishment and incorporation of Arbitration Council of India.—(1) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act.

(2) 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.

(3) The head office of the Council shall be at Delhi.

(4) The Council may, with the prior approval of the Central Government, establish offices at other places in India.

43-C. Composition of Council.—(1) The Council shall consist of the following Members, namely:—

(*a*) a person, 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, to be appointed by the Central Government in consultation with the Chief Justice of India—Chairperson;

(*b*) an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government—Member;

(*c*) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government in

consultation with the Chairperson—Member;

(*d*) 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;

(*e*) 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;

(*f*) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government—Part-time Member; and

(*g*) Chief Executive Officer—Member-Secretary, ex officio.

(2) 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:

Provided that no Chairperson or Member, other than ex officio Member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

(3) The salaries, allowances and other terms and conditions of the Chairperson and Members referred to in clauses (*b*) and (*c*) of sub-section (1) shall be such as may be prescribed by the Central Government.

(4) The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed by the Central Government.

43-D. Duties and functions of Council.—(1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, [56][* * *] or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

(2) For the purposes of performing the duties and discharging the functions under this Act, 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 [57][* * *];

(*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 [58][* * *];

(*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 [59][* * *] 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.

43-E. Vacancies, etc., not to invalidate proceedings of Council.—No act or proceeding of the Council shall be invalid merely by reason of—

(*a*) any vacancy or any defect, in the constitution of the Council;

(*b*) any defect in the appointment of a person acting as a Member of the Council; or

(*c*) any irregularity in the procedure of the Council not affecting the merits of the case.

43-F. Resignation of Members.—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 that the Chairperson or the Full-time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office 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.

43-G. Removal of Member.—(1) The Central Government may, remove a Member from his office if he—

(*a*) is an undischarged insolvent; or

(*b*) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or

(*c*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(*f*) has become physically or mentally incapable of acting as a Member.

(2) Notwithstanding anything contained in sub-section (1), no Member shall be removed from his office on the grounds specified in clauses (*d*) and (*e*) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

43-H. Appointment of experts and constitution of Committees thereof.—The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.

43-I. General norms for grading of arbitral institutions.—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.

[60][43-J. Norms for accreditation of arbitrators.—The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.]

43-K. Depository of awards.—The Council shall maintain an electronic depository of arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations.

43-L. Power to make regulations by Council.—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 this Act.

43-M. Chief Executive Officer.—(1) There shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council.

(2) The qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be such as may be prescribed by the Central Government.

(3) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.

(4) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.

(5) The qualifications, appointment and other terms and conditions

of the service of the employees and other officers of the Council shall be such as may be prescribed by the Central Government.]

Part II

ENFORCEMENT OF CERTAIN FOREIGN AWARDS

► **Regulation of Arbitrations**.—Parts I and II are mutually exclusive of each other. Part I governs only arbitrations which have their juridical or legal seat within India (domestic arbitrations). Part II governs arbitrations which have their juridical or legal seat outside India (foreign arbitrations). Part I regulates domestic arbitrations at all four stages of an arbitration : (*i*) commencement of arbitration, (*ii*) conduct of arbitration, (*iii*) challenge to award, and (*iv*) recognition or enforcement of award. Part II however regulates foreign arbitrations only in respect of Stages (*i*) and (*iv*), and only to the extent provided therein. Thus, for foreign arbitrations covered by Part II, Stages (*ii*) and (*iii*) have to be regulated by arbitration law of country in which juridical seat of arbitration is located, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Foreign-seated international commercial arbitration**.—Foreign-seated international commercial arbitration between two Indians/Indian entities i.e. with seat of arbitration outside India, held, permissible. Pt. II of the Act would be applicable to such arbitration, as opposed to Pt. I, *Pasl Wind Solutions (P) Ltd.* v. *GE Power Conversion (India) (P) Ltd.*, (2021) 7 SCC 1.

Chapter I

NEW YORK CONVENTION AWARDS

44. Definition.—In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

(*a*) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(*b*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

► **Meaning/ingredients of a "foreign award"**.—There are six ingredients to an award being a foreign award under Section 44 : (i) it must be an arbitral award on differences between persons arising out of legal relationships; (ii) these differences may be in contract or outside of contract, for example, in tort; (iii) the legal relationship so spoken of ought to be considered "commercial" under the law in India; (iv) the award must be made on or after the 11th day of October, 1960; (v) the award must be a New York Convention award, in short it must be in pursuance of an agreement in writing to which the New York Convention applies

and be in one of such territories; and (vi) it must be made in one of such territories which the Central Government by notification declares to be territories to which the New York Convention applies, *Gemini Bay Transcription (P) Ltd.* v. *Integrated Sales Service Ltd.*, (2022) 1 SCC 753.

45. Power of judicial authority to refer parties to arbitration.—Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, [61][unless it prima facie finds] that the said agreement is null and void, inoperative or incapable of being performed.

46. When foreign award 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.

47. Evidence.—(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the Court—

(*a*) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(*b*) the original agreement for arbitration or a duly certified copy thereof; and

(*c*) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

[62][*Explanation*.—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.]

► **Fundamental policy of Indian law**.—Statutes like Foreign Exchange Regulation Act, 1973 and Stamp Act, 1899, the latter being a fiscal statute levying

stamp duty on instruments, dealing with the economy of the country, held, come within "fundamental policy of Indian law", *Shriram EPC Ltd.* v. *Rioglass Solar SA*, (2018) 18 SCC 313.

► **Enforcement of foreign award**.—Filing of arbitration agreement at the time of filing of the application seeking enforcement of award is not mandatory at the initial stage of filing of the application but not thereafter. The word "shall" must be read as "may", *PEC Ltd.* v. *Austbulk Shipping Sdn. Bhd.*, (2019) 11 SCC 620.

Section 47 & Expln. thereto and Section 44 and Section 10 of the Commercial Courts Act, 2015 are not in conflict. Place of enforcement of foreign award remains the High Court under Section 10(1) of the Commercial Courts Act, and not a District Court under Section 10(2) or Section 10(3), *Pasl Wind Solutions (P) Ltd.* v. *GE Power Conversion (India) (P) Ltd.*, (2021) 7 SCC 1.

► **Limitation period for filing application for enforcement of foreign award**.—Applicability of Article 136 of the Limitation Act, 1963 is restricted to decrees of a Civil Court in India. Deeming fiction under Section 49 i.e. for consideration of arbitration award as a deemed decree of the court is not applicable in determining the limitation period governing enforcement of foreign awards, *Union of India* v. *Vedanta Ltd.*, (2020) 10 SCC 1.

► **Foreign award — Whether binding on non-signatory to arbitration agreement**.—All the requirements of Section 47(1) are procedural in nature, the object being that the enforcing court must first be satisfied that it is indeed a foreign award, as defined, and that it is enforceable against persons who are bound by the award. Section 47(1)(c) does not require substantive evidence to "prove" that a non-signatory to an arbitration agreement can be bound by a foreign award, *Gemini Bay Transcription (P) Ltd.* v. *Integrated Sales Service Ltd.*, (2022) 1 SCC 753.

48. Conditions for enforcement of foreign awards.—(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—

(*a*) the parties to the agreement referred to in Section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(*b*) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(*c*) the award deals with a difference 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, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(*d*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(*e*) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(*a*) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(*b*) the enforcement of the award would be contrary to the public policy of India.

[63][*Explanation 1*.—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 was in violation of Section 75 or Section 81; 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.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (*e*) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

► **Scope**.—Objection to the enforcement of a foreign award on the premise that it is not binding on a non-signatory is not maintainable under Section 48(1)(c), *Gemini Bay Transcription (P) Ltd.* v. *Integrated Sales Service Ltd.*, (2022) 1 SCC 753.

► **Enforcement of foreign award**.—Issue of maintainability of execution case concerning foreign awards and issue of enforceability thereof cannot be segregated and considered piecemeal, Court is expected to consider both these aspects simultaneously at threshold, *LMJ International Ltd.* v. *Sleepwell*

Industries Co. Ltd., (2019) 5 SCC 302.

Non-payment of stamp duty on foreign award does not render it unenforceable in India. A foreign award not being includible in Schedule I of Stamp Act is not liable for stamp duty, *Shriram EPC Ltd.* v. *Rioglass Solar SA*, (2018) 18 SCC 313.

► **Extent of applicability of 1996 Act to foreign awards**.—Pt. I is completely inapplicable to foreign awards. Courts in India have no jurisdiction to consider validity of, or, to annul foreign awards. Foreign awards sought to be enforced in India cannot be challenged on merits in Indian courts. Indian courts can only refuse to enforce a foreign award on grounds specified in S. 48, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Objections to enforcement of foreign award**.—The Court may refuse to enforce the foreign award on satisfactory proof of any of the grounds mentioned in Section 48(1), by the party resisting the enforcement of the award. *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

For rejection of objections to enforcement of foreign award, granting of oral hearing by the arbitrators is not necessary, when the applicable arbitration rules permitted a document-only-arbitration and even otherwise no prejudice was caused, *Jagson International Ltd.* v. *OHT Hawk AS*, (2019) 16 SCC 650.

► **Annulment of foreign awards**.—Annulment of foreign awards in India on basis that Indian law governed substance of dispute is not permissible, *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.

► **Contractual clause**.—Perversity in interpreting a contractual clause, as ground for objecting against the foreign award is not permissible, *Vijay Karia* v. *Prysmian Cavi E Sistemi*, (2020) 11 SCC 1.

49. Enforcement of foreign awards.—Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

50. Appealable orders.—(1) [64][Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the order refusing to—

(*a*) refer the parties to arbitration under Section 45;

(*b*) enforce a foreign award under Section 48;

to the Court authorised by law to hear appeals from such order.

(2) 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.

► **Appeal against rejection of objections**.—Appeal against rejection of objections to enforcement of foreign award is not maintainable. However, an appeal against order refusing enforcement, held, is maintainable, *Noy Vallesina*

Engg. SpA v. *Jindal Drugs Ltd.*, (2021) 1 SCC 382.

51. Saving.—Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

52. Chapter II not to apply.—Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

Chapter II

GENEVA CONVENTION AWARDS

53. Interpretation.—In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

(*a*) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the powers aforesaid, and

(*c*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

54. Power of judicial authority to refer parties to arbitration.—Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom Section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

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.

56. Evidence.—(1) The party applying for the enforcement of a foreign award shall, at the time of application produce before the Court—

(*a*) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(*b*) evidence proving that the award has become final; and

(*c*) such evidence as may be necessary to prove that the conditions mentioned in clauses (*a*) and (*c*) of sub-section (1) of Section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

[65][*Explanation*.—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.]

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.

[66][*Explanation 1*.—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 was in violation of Section 75 or Section 81; 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.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(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.

58. Enforcement of foreign awards.—Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

59. Appealable orders.—(1) An appeal shall lie from the order refusing—

(*a*) to refer the parties to arbitration under Section 54; and

(*b*) to enforce a foreign award under Section 57,

to the court authorised by law to hear appeals from such order.

(2) 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.

60. Saving.—Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

Part III
CONCILIATION

[67][61. Reference of conciliation in enactments.—(1) Any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of this Act, shall be construed as reference to mediation as provided under the Mediation Act, 2023.

(2) Conciliation as provided under this Act and the Code of Civil Procedure, 1908 (5 of 1908), shall be construed as mediation referred to in clause (*h*) of Section 3 of the Mediation Act, 2023.

62. Saving.—Notwithstanding anything contained in Section 61, any conciliation proceeding initiated in pursuance of Sections 61 to 81 of this Act as in force before the commencement of the Mediation Act, 2023, shall be continued as such, as if the Mediation Act, 2023, had not been enacted.]

[68][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.]

[69][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 request 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.]

[70][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 and 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.]

[71][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).]

[72][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.]

[73][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.]

[74][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.]

[75][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.]

[76][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.]

[77][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.]

[78][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.]

[79][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.]

[80][75. Confidentiality.—Notwithstanding anything contained in any other law for the time being in force, the conciliator and the 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.]

[81][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.]

[82][77. Resort to arbitral or judicial proceedings.—The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.]

[83][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.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

(*a*) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(*b*) any expert advice requested by the conciliator with the

consent of the parties;

(*c*) any assistance provided pursuant to clause (*b*) of sub-section (2) of Section 64 and Section 68.

(*d*) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.]

[84][79. Deposits.—(1) 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.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.]

[85][80. Role of conciliator in other proceedings.—Unless otherwise agreed by the parties,—

(*a*) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(*b*) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.]

[86][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.]

Part IV

SUPPLEMENTARY PROVISIONS

82. Power of High Court to make rules.—The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act.

83. Removal of difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

84. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

85. Repeal and savings.—(1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (45 of 1961) are hereby repealed.

(2) Notwithstanding such repeal,—

(*a*) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(*b*) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

► **Validity of arbitration agreement**.—Arbitration agreement incorrectly stipulating arbitration under the 1940 Act i.e. even after the 1996 Act had come

into effect does not render the entire agreement invalid. Applicability of Arbitration Act of 1996, to such matters, explained, *Purushottam* v. *Anil*, (2018) 8 SCC 95.

86. Repeal of Ordinance 27 of 1996 and saving.—(1) The Arbitration and Conciliation (Third) Ordinance, 1996 (27 of 1996) is hereby repealed.

(2) Notwithstanding such repeal, any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act.

[87][87. Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.—Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) shall—

(*a*) not apply to—

(*i*) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016);

(*ii*) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016);

(*b*) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and to court proceedings arising out of or in relation to such arbitral proceedings.]

► **Constitutional Validity**.—Section 87 (as introduced by the 2019 Amendment Act) is invalid as it is ultra vires the object of the A&C Act, 1996 and Constitution, being manifestly arbitrary. Thus, deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the A&C Act, 1996 by the 2019 Amendment Act, is struck down as being manifestly arbitrary under Article 14 of the Constitution, *Hindustan Construction Co. Ltd.* v. *Union of India*, (2020) 17 SCC 324.

THE FIRST SCHEDULE

(*See* Section 44)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It

shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under Article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:—

(*a*) the duly authenticated original award or a duly certified copy thereof;

(*b*) the original agreement referred to in Article II or a duly certified

copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

(*a*) the parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(*b*) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(*c*) the award deals with a difference 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, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(*d*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(*e*) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

(*a*) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

(*b*) the recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V(1)(*e*), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

Article VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in Article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations

and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:—

(*a*) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(*b*) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(*c*) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the

notification by the Secretary-General.

2. Any State which has made a declaration or notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following:—

(*a*) signatures and ratifications in accordance with Article VIII;

(*b*) accessions in accordance with Article IX;

(*c*) declarations and notifications under Articles I, X and XI;

(*d*) the date upon which this Convention enters into force in accordance with Article XII;

(*e*) denunciations and notifications in accordance with Article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article XIII.

THE SECOND SCHEDULE

(*See* Section 53)

PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement, whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding Articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said Article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or

territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE THIRD SCHEDULE

(*See* Section 53)

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

(2) To obtain such recognition or enforcement, it shall, further, be necessary:—

(*a*) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(*b*) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(*c*) that 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*) that 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, appeal or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(*e*) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:—

(*a*) that the award has been annulled in the country in which it was made;

(*b*) that 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*) that 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.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 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 Article 1(*a*) and (*c*), and Article 2(*b*) and (*c*), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or 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.

Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular:—

(1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1(*d*), in the country in which it was made;

(3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph (1) and paragraph (2)(*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be

certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratification shall be deposited as soon as possible with the Secretary -General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present Convention.

Article 10.—The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses

opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the colonies, protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

[88][THE FOURTH SCHEDULE

[[89][*See* Section 11(3-A)]]

Sl. No.	Sum in dispute	Model fee
(1)	(2)	(3)
1.	Up to Rs 5,00,000	Rs 45,000
2.	Above Rs 5,00,000 and up to Rs 20,00,000	Rs 45,000 plus 3.5 per cent of the claim amount over and above Rs 5,00,000.
3.	Above Rs 20,00,000 and up to Rs 1,00,00,000	Rs 97,500 plus 3 per cent of the claim amount over and above Rs 20,00,000.
4.	Above Rs 1,00,00,000 and up to Rs 10,00,00,000	Rs 3,37,500 plus 1 per cent of the claim amount over and above Rs 1,00,00,000.
5.	Above Rs 10,00,00,000 and up to Rs 20,00,00,000	Rs 12,37,500 plus 0.75 per cent of the claim amount over and above Rs 10,00,00,000.
6.	Above Rs 20,00,00,000	Rs 19,87,500 plus 0.5 per cent of the claim amount over and above Rs 20,00,00,000 with a ceiling of Rs 30,00,000.

Note: In the event the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent on the fee payable as per the above.]

[90][THE FIFTH SCHEDULE

[*See* Section 12(1)(*b*)]

The following grounds give rise to justifiable doubts as to the

independence or impartiality of arbitrators:

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Previous services for one of the parties or other involvement in the case

20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.

21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.

22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.

23. The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

Relationship between an arbitrator and another arbitrator or counsel

25. The arbitrator and another arbitrator are lawyers in the same law firm.

26. The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.

27. A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.

28. A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

29. The arbitrator has within the past three years received more than

three appointments by the same counsel or the same law firm.

Relationship between arbitrator and party and others involved in the arbitration

30. The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.

31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

Other circumstances

32. The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.

33. The arbitrator holds a position in an arbitration institution with appointing authority over the dispute.

34. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

Explanation 1.—The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.]

[91][THE SIXTH SCHEDULE

[*See* Section 12(1)(*b*)]

Name:

Contact Details:

Prior Experience (Including Experience with Arbitrations):

Number of ongoing arbitrations:

Circumstances disclosing any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to your independence or impartiality (list out):

Circumstances which are likely to affect your ability to devote sufficient time to the arbitration and in particular your ability to finish

the entire arbitration within twelve months (list out):]

[92][THE SEVENTH SCHEDULE

[*See* Section 12(5)]

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the

parties.

16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.—The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.]

THE EIGHTH SCHEDULE

[93][* * *]

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[1]. Received the assent of the President on August 16, 1996 and published in the Gaz. of India, Extra., Part II, Section 1, dated 19th August, 1996, No. 54, pp. 1-36.

[2]. *Omitted* by 34 of 2019, Ss. 95, 96 and Sch. V (w.e.f. 31-10-2019). Prior to omission it read as:

"Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

[3]. 22-8-1996 [*Vide* Noti. No. G.S.R. 375(E), dt. 22-8-1996].

[4]. *Ins.* by Act 33 of 2019, S. 2(*i*)(A) (w.e.f. the date to be notified).

[5]. *Subs.* by Act 3 of 2016, S. 2(I)(A) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

'(*e*) "Court" means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;'

[6]. The words "a company or" *omitted* by Act 3 of 2016, S. 2(I)(B) (w.r.e.f. 23-10-2015).

[7]. *Ins.* by Act 33 of 2019, S. 2(*i*)(B) (w.e.f. the date to be notified).

[8]. *Ins.* by Act 3 of 2016, S. 2(II) (w.r.e.f. 23-10-2015).

[9]. *Subs.* for "clause (*a*)" by Act 33 of 2019, S. 2(*ii*) (w.e.f. the date to be notified).

[10]. *Ins.* by Act 3 of 2016, S. 3 (w.r.e.f. 23-10-2015).

[11]. *Subs.* by Act 3 of 2016, S. 4(*i*) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"(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."

[12]. *Ins.* by Act 3 of 2016, S. 4(*ii*) (w.r.e.f. 23-10-2015).

[13]. Section 9 *renumbered* as sub-section (1) by Act 3 of 2016, S. 5 (w.r.e.f. 23-10-2015).

[14]. *Ins.* by Act 3 of 2016, S. 5 (w.r.e.f. 23-10-2015).

[15]. *Ins.* by Act 33 of 2019, S. 3(*i*) (w.e.f. the date to be notified).

[16]. *Subs.* by Act 33 of 2019, S. 3(*ii*) (w.e.f. the date to be notified). Prior to substitution it read as:

"the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court"

[17]. *Subs.* by Act 33 of 2019, S. 3(*iii*) (w.e.f. the date to be notified). Prior to substitution it read as:

"the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court"

[18]. *Subs.* by Act 33 of 2019, S. 3(*iv*) (w.e.f. the date to be notified). Prior to substitution it read as:

"a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court"

[19]. *Omitted* by Act 33 of 2019, S. 3(*v*) (w.e.f. the date to be notified). Prior to omission it read as:

"(6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement."

[20]. *Ins.* by Act 3 of 2016, S. 6(*ii*) (w.r.e.f. 23-10-2015).

[21.] *Omitted* by Act 33 of 2019, S. 3(*v*) (w.e.f. the date to be notified). Prior to omission it read as:

"(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such court is final and no appeal including Letters Patent Appeal shall lie against such decision."

[22.] *Subs.* by Act 3 of 2016, S. 6(*iv*) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"(8) The Chief Justice or the person or institution designated by him, in appointing an 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."

[23.] *Subs.* by Act 33 of 2019, S. 3(*vi*) (w.e.f. the date to be notified). Prior to substitution it read as:

"The Supreme Court or, as the case may be, the High Court or the person or institution designated by such court"

[24.] *Subs.* by Act 33 of 2019, S. 3(*vii*) (w.e.f. the date to be notified). Prior to substitution it read as:

"the Supreme Court or the person or institution designated by that Court"

[25.] *Omitted* by Act 33 of 2019, S. 3(*viii*) (w.e.f. the date to be notified). Prior to omission it read as:

"(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.

[26.] Sub-sections (11) to (14) *subs.* by Act 33 of 2019, S. 3(*ix*) (w.e.f. the date to be notified). Prior to substitution they read as:

"(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different High Courts or their designates, the High Court or its designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12)(*a*) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the "Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "Supreme Court"; and

(*b*) where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to "the Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court referred to in clause (*e*) of sub-section (1) of Section 2 is situate, and where the High Court itself is the court referred to in that clause, to that High Court.

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour 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.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution."

[27]. *Ins.* by Act 3 of 2016, S. 7 (w.r.e.f. 23-10-2015).

[28]. *Subs.* by Act 3 of 2016, S. 8(*i*) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"(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."

[29]. *Ins.* by Act 3 of 2016, S. 8(*ii*) (w.r.e.f. 23-10-2015).

[30]. *Subs.* for "The mandate of an arbitrator shall terminate if" by Act 3 of 2016, S. 9 (w.r.e.f. 23-10-2015).

[31]. *Subs.* by Act 3 of 2016, S. 10 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"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)."

[32]. *Omitted* by Act 33 of 2019, S. 4 (w.e.f. 30-8-2019). Prior to omission it read as:

"or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36"

[33]. *Ins.* by Act 3 of 2016, S. 11 (w.r.e.f. 23-10-2015).

[34]. *Ins.* by Act 33 of 2019, S. 5 (w.e.f. 30-8-2019).

[35]. *Ins.* by Act 3 of 2016, S. 12 (w.r.e.f. 23-10-2015).

[36]. *Ins.* by Act 3 of 2016, S. 13 (w.r.e.f. 23-10-2015).

[37]. *Subs.* by Act 3 of 2016, S. 14 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"(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."

[38.] *Ins.* by Act 3 of 2016, S. 15 (w.r.e.f. 23-10-2015).

[39.] *Subs.* by Act 33 of 2019, S. 6(*a*) (w.e.f. 30-8-2019). Prior to substitution it read as:

"(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment."

[40.] *Ins.* by Act 33 of 2019, S. 6(*b*) (w.e.f. 30-8-2019).

[41.] *Ins.* by Act 3 of 2016, S. 15 (w.r.e.f. 23-10-2015).

[42.] *Subs.* by Act 3 of 2016, S. 16(*i*) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"(*b*) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

[43.] *Subs.* by Act 3 of 2016, S. 16(*ii*) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"(8) Unless otherwise agreed by the parties,—

(*a*) the costs of an arbitration shall be fixed by the arbitral tribunal;

(*b*) the arbitral tribunal shall specify—

(*i*) the party entitled to costs,

(*ii*) the party who shall pay the costs,

(*iii*) the amount of costs or method of determining that amount, and

(*iv*) the manner in which the costs shall be paid.

Explanation.—For the purpose of clause (*a*), "costs" means reasonable 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."

[44.] *Ins.* by Act 3 of 2016, S. 17 (w.r.e.f. 23-10-2015).

[45.] *Subs.* for "furnishes proof that" by Act 33 of 2019, S. 7 (w.e.f. 30-8-2019).

[46.] *Subs.* by Act 3 of 2016, S. 18(I) (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"*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."

[47.] *Ins.* by Act 3 of 2016, S. 18(II) (w.r.e.f. 23-10-2015).

[48.] *Ins.* by Act 3 of 2016, S. 18(III) (w.r.e.f. 23-10-2015).

[49.] *Subs.* by Act 3 of 2016, S. 19 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"36. *Enforcement*.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the 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."

[50.] *Ins.* by Act 3 of 2021, S. 2 (w.r.e.f. 23-10-2015).

[51.] *Subs.* for "An appeal" by Act 33 of 2019, S. 8 (w.e.f. 30-8-2019).

[52.] *Subs.* for clauses (*a*) and (*b*) by Act 3 of 2016, S. 20 (w.r.e.f. 23-10-2015). Prior to substitution clauses (*a*) and (*b*) read as:

"(*a*) granting or refusing to grant any measure under Section 9;

(*b*) setting aside or refusing to set aside an arbitral award under Section 34."

[53.] *Ins.* by Act 33 of 2019, S. 9 (w.e.f. 30-8-2019).

[54.] *Ins.* by Act 33 of 2019, S. 9 (w.e.f. 30-8-2019).

[55.] *Ins.* by Act 33 of 2019, S. 10 (w.e.f. 12-10-2023).

[56.] The words "mediation, conciliation" *omitted* by Act 32 of 2023, S. 61 and Sch. VI(*a*)(*i*) (w.e.f. the date to be notified).

[57.] The words "and conciliation" *omitted* by Act 32 of 2023, S. 61 and Sch. VI(*a*)(*ii*) (w.e.f. the date to be notified).

[58.] The words "and conciliation" *omitted* by Act 32 of 2023, S. 61 and Sch. VI(*a*)(*ii*) (w.e.f. the date to be notified).

[59.] The words "and conciliation" *omitted* by Act 32 of 2023, S. 61 and Sch. VI(*a*)(*ii*) (w.e.f. the date to be notified).

[60.] *Subs.* by Act 3 of 2021, S. 3 (w.r.e.f. 4-11-2020). Prior to substitution it read as:

"43-J. *Norms for accreditation*.—The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:

Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly."

[61.] *Subs.* for "unless it finds" by Act 33 of 2019, S. 11 (w.e.f. 30-8-2019).

[62.] *Subs.* by Act 3 of 2016, S. 21 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"*Explanation*.—In this section and all the following sections of this Chapter, "Court" means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes."

[63.] *Subs.* by Act 3 of 2016, S. 22 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"*Explanation*.—Without prejudice to the generality of clause (*b*), 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."

[64.] *Subs.* for "An appeal" by Act 33 of 2019, S. 12 (w.e.f. 30-8-2019).

[65.] *Subs.* by Act 3 of 2016, S. 23 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"*Explanation*.—In this section and all the following sections of this Chapter, "court" means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes."

[66.] *Subs.* by Act 3 of 2016, S. 24 (w.r.e.f. 23-10-2015). Prior to substitution it read as:

"*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."

[67.] Sections 61 and 62 *subs.* for Sections 61 to 81 by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified). Prior to substitution it read as:

"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."

[68]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[69]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[70]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[71]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[72]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[73]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[74]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[75]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[76]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[77]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[78]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[79]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[80]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[81]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[82]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[83]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[84]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[85]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[86]. *Omitted* by Act 32 of 2023, S. 61 and Sch. VI(*b*) (w.e.f. the date to be notified).

[87]. *Ins.* by Act 33 of 2019, S. 13 (w.r.e.f. 23-10-2015). However by Notification No. S.O. 3154(E), dated August 30, 2019 the date of enforcement has been provided as 30th August, 2019.

[88]. *Subs.* by S.O. 5674(E), dt. 12-11-2018 (w.r.e.f. 23-10-2015).

[89]. *Subs.* for "[*See* Section 11(14)]" by Act 33 of 2019, S. 16 (w.e.f. the date to be notified).

[90.] *Ins.* by Act 3 of 2016, S. 25 (w.r.e.f. 23-10-2015).

[91.] *Ins.* by Act 3 of 2016, S. 25 (w.r.e.f. 23-10-2015).

[92.] *Ins.* by Act 3 of 2016, S. 25 (w.r.e.f. 23-10-2015).

[93.] *Omitted* by Act 3 of 2021, S. 4 (w.r.e.f. 4-11-2020).