AN OVERVIEW OF THE LAW ON ARBITRATION

By Pawan Kr Agarwal

Indian legal system is known for its delays and disparities. It is a known fact that our courts are over-burdened with the pending cases. Since justice delayed is justice denied, with a vast number of pending cases, it is almost impossible to provide quick and efficient relief to the aggrieved parties. Therefore, to meet the situation, nowadays, the alternative Dispute Resolution (ADR) mechanism is used all over the world which is more effective, faster and less expensive.

Under ADR mechanism, there are four methods :-

a) Negotiation
b) Mediation
c) Conciliation
d) Arbitration

While the first two methods are not recognised by law, the methods of conciliation and arbitration are quasi-judicial methods to resolve a dispute with minimum of outside help. The same is now recognised by the Arbitration and Conciliation Act, 1996 (ACT 26 of 1996). The courts have always assisted in proper conduct of the arbitration proceedings and enforcement of arbitration awards.

There is a move to amend the Civil Procedure Code (CPC) and empower the courts to direct the parties to sit for mediation and conciliation. This is a step in the right direction and will further give boost to ADR mechanism.

The judicial settlement of a dispute is a public sector mechanism and the ADR mechanism is a private sector alternative to the same. In fact, the system of settlement of disputes without the intervention of the court exists in India since time immemorial. There were Panchayats in every community and every village and all disputes were settled by those panchayats. It was the easiest, cheapest and quickest system of settlement of disputes. With the advent of the British Rule, attempts were made to regulate the judicial system in the country. The Regulation and Acts were passed to formulate a system of arbitration in India since the 18th century. The Indian Contract Act, 1872 and the specific Relief Act, 1878 recognised the settlement of disputes by arbitration. In the year 1899, Indian Arbitration Act was passed. It was replaced by Indian Arbitration Act 1940, which in turn was replaced by the Arbitration and Conciliation Act, 1996.

DEFINITION

ARBITRATION can be defined as a method by which parties to a dispute get the same settled through the intervention of a third person. Parties can also settle their disputes through a permanent arbitral Institutions like, Indian Council of Arbitration, Chamber of Commerces, etc.

ADVANTAGES OF ARBITRATION OVER LITIGATION

1. Arbitration promises by PRIVACY. In a civil court, the proceedings are held in public which embarrasses the parties sometimes.

2. Arbitration provides liberty to choose an arbitrator, who can be a specialist in the subject matter of the dispute. The arbitrators may be experts and can resolve the dispute fairly and expeditiously as they are well versed with the usages and practices prevailing in the trade or industry.

3. The venue of arbitration can be a place convenient to both the parties. It need not be a formal platform. A simple office cabin is enough. Likewise, the parties can choose a language of their choice.

4. Even the rules governing arbitration proceedings can be defined mutually by both the parties. For example, the parties may decide that there should not be any oral hearing.

5. A court case is a costly affair. The claimant has to pay for the advocates, court fees, process fees and other incidental expenses. In arbitration, the expenses are lesser and many times the parties themselves argue their cases. The arbitration involves few procedural steps and no court fees.

6. Arbitration is faster and can be expedited. The court has to follow its own system and takes abnormally longer time to dispense off the cases. It is a known fact that millions of unresolved cases are pending before the courts.

7. A judicial settlement is a complicated procedure. A court has to follow the procedure laid down in the Code of Civil Procedure, 1908 and the Rules of the Indian Evidence Act. In arbitration, the procedure is simple and informal. An arbitrator has to follow the principles of natural justice.

8. Section 34 of the Act provides very limited grounds upon which a court may set aside an award. The Act has also given the status of a decree for the award by arbitrators. The award of the arbitrators is final and generally no appeal lies from the award. While in a regular civil suit there may an appeal and appeal against appeal.

9. In arbitration, the dispute can be resolved without inflicting stress and emotional burdens on the parties which is a common feature in court proceedings.

10. In a large number of cases, 'Arbitration' facilitates the maintenance of continued relationship between the parties even after the settlement.

ARBITRATION AGREEMENT

Section 7(1) of the Act mentions that Arbitration Agreement means an agreement by the parties to submit to arbitration all or certain disputes which have been arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement should be in writing and signed by both the parties. It need not be in a particular form. However, the intention to refer to arbitration must be established. An arbitration can be agreed by way of exchange of letter, telex, telegram fax, etc.

Disputes excluded from arbitration

Generally speaking all disputes of a civil nature can be referred to Arbitration e.g. breach of a contract, question of marriage right to hold premises etc. However, certain disputes cannot be referred to arbitration e.g..

- Testamentary matters involving questions about validity of a mill.
- Disputes relating to appointment of a guardian.
- Industrial disputes
- Pertaining to criminal proceedings
- Relating to Charitable Trusts
- Winding up of a company

- Matters of divorce
- Lunacy proceedings
- Disputes arising from an illegal contract

This is an exhaustive list.

APPOINTMENT OF ARBITRATORS

Though any person can be appointed as an arbitrator, generally impartial and independent persons in whom parties repose confidence are to be selected and appointed as arbitrators. Generally, Chartered Accountants, engineers, retired judges and other professionals are preferred. Parties are free to determine the number of arbitrators, provided that such number shall not be an even number. If the Arbitration Agreement is silent in this respect, the arbitral tribunal shall consist of a sole arbitrator. In cases, where three arbitrators are to be appointed, each party will appoint one arbitrator and the two appointed arbitrators will jointly appoint a third arbitrator, who will be the presiding arbitrator. In certain cases of failure to appoint the arbitrators, the Chief Justice of the High Court or his designate has been given power to appoint the arbitrator.

Statement of Claims and Defences

Within the agreed period or the period determined by the 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 those particulars. The parties should submit the documents they rely in support of their claim or defence.

Conduct of arbitral proceedings

The arbitral tribunal has to decide whether to hold oral hearings for the presentation of evidence or whether the proceedings shall be conducted on the basis of the documents and other materials. At the request of a party, the tribunal shall hold oral hearings. The parties shall be given advance notice of any hearing and any meeting of tribunal for inspection of documents, goods and other property. The Civil Procedure Code and the Indian Evidence Act are not in terms applicable to the arbitration proceedings. Therefore, the arbitrators are free to reach the conclusions in their way on the material before them. The only restriction on them is that they should not violate the rules of natural justice.

ARBITRAL AWARD

The award shall be in writing and the reasons on the basis of which award was passed, shall be recorded unless the parties agree otherwise. the award shall be drawn on a proper stamp paper. It shall be dated and signed by the arbitrators. The sum awarded may include the interest which the claimant is entitled. It shall also provide for the costs and it shall mention the party liable to pay the costs. A signed copy of the award shall be delivered to each party.

Application for setting aside award

The party dissatisfied with the award may within three months of receiving a copy of the award, apply to the Court for setting aside the order on the grounds mentioned in Section 34 of the Act. The Court cannot sit in appeal against the award and cannot interfere with the award on merits by re-appreciating the evidence. Appeal lies against the order passed by the court under Section 34 of the Act. The grounds for setting aside the awards can be summed up as follows :

a) When the party was under some incapacity.
b) When the arbitration agreement is not valid.
c) When the party was unable to present the case and was not given proper notice.
d) When the award is beyond the terms of reference.
e) When the award is in conflict with the public policy.

Enforcement of Award

The arbitral award unless it is set aside by the Court is final and binding on the parties and it can be enforced under the Civil Procedure Code in the same manner, as if it is decree of the Court. It is not necessary to file the award in the Court and obtain a decree as it was necessary under the old Act i.e. Arbitration Act, 1940.

CONCLUSION

The Arbitration and Conciliation Act, 1996 seeks to achieve expeditious and effective solution for redressal of disputes. The new law is expected to motivate the parties to settle their disputes without intervention of the court. It will also instil confidence in the international mercantile community. The legal fraternity can look forward to a considerably heightened level of arbitration and conciliation activity in the country.

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