

Bill No. 16 of 2021

THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2021

A

BILL

further to amend the Arbitration and Conciliation Act, 1996.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows.—

1. (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2021.

Short title and commencement.

5 (2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 4th day of November, 2020.

26 of 1996.

2. In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 36, in sub-section (3), after the proviso, the following shall be inserted and shall be deemed to have been inserted with effect from the 23rd day of October, 2015, namely:—

Amendment of section 36.

10 “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.”

5
3 of 2016.

Substitution of new section for section 43J.

3. For section 43J of the principal Act, the following section shall be substituted, namely:—

Norms for accreditation of arbitrators.

“43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.”

10

Omission of Eighth Schedule.

4. The Eighth Schedule to the principal Act shall be omitted.

Repeal and savings.

5. (1) The Arbitration and Conciliation (Amendment) Ordinance, 2020 is hereby repealed.

Ord. 14 of 2020.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

15

STATEMENT OF OBJECTS AND REASONS

The Arbitration and Conciliation Act, 1996 (the Act) was enacted with a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and the law relating to conciliation.

2. The Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015 (2015 Act), *inter alia*, to make arbitration process user friendly, cost effective and ensure speedy disposal and neutrality of arbitrators.

3. Subsequently, to address the practical difficulties arising in implementing the amendments carried out through 2015 Act, and to promote institutional arbitration in the country, the Act was again amended by the Arbitration and Conciliation (Amendment) Act, 2019.

4. In order to address the issue of corrupt practices in securing contracts or arbitral awards, a need was felt to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award is induced by fraud or corruption. Also to promote India as a hub of international commercial arbitration by attracting eminent arbitrators to the country, it was also felt necessary to omit the Eighth Schedule of the Act.

5. In the light of above circumstances, it has become necessary further to amend the Arbitration and Conciliation Act, 1996. However, as Parliament was not in session and immediate steps were required to make further amendments in the Act, the Arbitration and Conciliation (Amendment) Ordinance, 2020 (Ord. 14 of 2020) was promulgated by the President on 4th November, 2020 under clause (1) of article 123 of the Constitution.

6. The Arbitration and Conciliation (Amendment) Bill, 2021 which seeks to replace the aforesaid Ordinance, *inter alia*, provides for the following, namely:—

(i) to grant unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement, contracts or arbitral award is induced by fraud or corruption;

(ii) to omit Eighth Schedule of the Act which laid down the qualifications, experience and norms for accreditation of arbitrators; and

(iii) to specify by regulations the qualifications, experience and norms for accreditation of arbitrators and the said amendment is consequential in nature.

7. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 29th January, 2021.

RAVI SHANKAR PRASAD.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill proposes to substitute section 43J in the Arbitration and Conciliation Act, 1996.

2. The proposed section 43J provides that the Arbitration Council of India may by regulations specify the qualifications, experience and norms for accreditation of arbitrators.

3. The matters in respect of which the regulations may be made are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE ARBITRATION AND CONCILIATION ACT, 1996

(26 OF 1996)

* * * * *

CHAPTER VIII

FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS

35.* * * * *

Finality of
arbitral awards.
Enforcement.

5 of 1908.

36. (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, 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:

5 of 1908.

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.

* * * * *

43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:

Norms for
accreditation.

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.

* * * * *

THE EIGHTH SCHEDULE

Qualifications and Experience of Arbitrator

A person shall not be qualified to be an arbitrator unless he—

25 of 1961.

(i) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate; or

38 of 1949.

(ii) is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of practice experience as a chartered accountant; or

(iii) is a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of practice experience as a cost accountant; or 23 of 1959.

(iv) is a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary; or 56 of 1980.

(v) has been an officer of the Indian Legal Service; or

(vi) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or

(vii) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed; or

(viii) has been an officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute; or

(ix) is a person, in any other case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, information technology, Intellectual Property Rights or other specialised areas in the Government, Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector, as the case may be.

General norms applicable to Arbitrator

(i) The arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;

(ii) the arbitrator must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties;

(iii) the arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;

(iv) the arbitrator should not have been convicted of an offence involving moral turpitude or economic offence;

(v) the arbitrator shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labour laws, law of torts, making and enforcing the arbitral awards;

(vi) the arbitrator should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto;

(vii) the arbitrator should be able to understand key elements of contractual obligations in civil and commercial disputes and be able to apply legal principles to a situation under dispute and also to apply judicial decisions on a given matter relating to arbitration; and

(viii) the arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.

LOK SABHA

A

BILL

further to amend the Arbitration and Conciliation Act, 1996.

(Shri Ravi Shankar Prasad, Minister of Law and Justice)