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**Arbitration and Conciliation (Amendment) Act, 2015
and its impact on International Commercial
Arbitration**

*Emerging Trends in International Commercial
Arbitration*

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Introduction and Context

- Why examine the Indian domestic statute in a discussion on international commercial arbitration?
- A look at the recent amendments to the Arbitration and Conciliation Act, 1996.
- What provisions are relevant? And how?

"...The handling of an arbitral disputes should resemble a relay race. In the initial stages the baton is in the grasp of the Court...when the arbitrators take charge, they take over the baton..once the award is made, the baton is handed back to the Court.."

Amendments affecting international commercial arbitrations

- Section 2(1)(e) defines “Court” specifically in the context of international commercial arbitration to be the High Court, exercising its original civil jurisdiction and appellate jurisdiction.
- In states where the High Court does not exercise original jurisdiction, prior to the amendment, petitions and applications for interim relief and challenge to an award had to be filed before the Civil Courts.
- Effectively every High Court in India now has the jurisdiction to entertain the following petitions³

- For international commercial arbitrations where the seat is outside India, proviso to Section 2(2) makes the following provisions applicable:
 - Section 9 (interim relief by a Court);
 - Section 27 (assistance of a Court in taking evidence);
 - Section 37(1)(a) (appeal against order passed under Section 9); and
 - Section 37(3) (prevention of second appeal from orders passed under Sections 8, 9 and 34)
- Parties are free to oust the applicability of Part I

Interim Relief

- As per Section 2 (1)(e) the High Court is empowered to grant interim relief in international commercial arbitration.
- Interim relief provided under Section 9 of the Act is now applicable to international commercial arbitration and can be granted by High Court.
- Arbitration proceedings to commence within 90 days from date of passing of an order for interim protection.
- Negates judgment of Supreme Court in *Bharat Aluminium Company vs. Kaiser Aluminium Technical Service* ((2012) 9 SCC 552) which held that arbitration was seat centric and seat of arbitration decided the substantive law applicable.
- Amendment is in line with ratio in *Bhatia International v Bulk Trading SA* ((2002) 4 SCC

Reference to arbitration and appointment of Tribunal

- In application under Section 8, for reference of a dispute to arbitration, the Court shall refer the parties to arbitration, unless prima facie no valid arbitration agreement exists.
- While appointing an arbitrator, examination of petitions to be confined to the existence of an arbitration agreement.
- Designation of any person or institution for the purposes of Section 11, not to be regarded as delegation of judicial power.
- Decision on appointment is final. No appeal including Letters Patent Appeal shall lie against such decision.
- Endeavour to dispose of Section 11 applications within 60 days of service of notice on the opposite party.

Imposition of Costs and Interest

- Sum directed to be paid under an award carries an interest which is 2% higher than the prevailing rate of interest.
- Interest is applicable from the date of the award till the date of payment.
- Costs imposed on the discretion of the Court or the tribunal:
 - whether costs are payable by one party to the other;
 - amount of such costs;
 - when the costs are to be paid;
- General rule is for the unsuccessful party to pay costs to the successful party.

Appeals

- The Supreme Court, in *Oil And Natural Gas Limited v. Saw Pipes*, widened the scope of 'public policy' and its interpretation under Section 34.
- Scope of 'public-policy' in Sections 34, 48 and 57 narrowed by insertion of an explanation. An award will be in conflict with public policy of India only if:
 - the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
 - it is in contravention with the fundamental policy of India law; or
 - it is in conflict with the most basic notions of morality or justice.
- The test as to whether an award is in

- An award cannot be set aside merely on the ground of erroneous application of law or by re-appreciating evidence and can only be filed by providing the opposing side with prior notice – Section 34.
- Applications under Section 34 to be disposed within 1 year from the date on which the applicant serves notice on the other side of his intention of filing an appeal.
- Mere institution of an appeal under Section 34 of the Act will not act as an automatic stay on the award. Only a specific order by a Court will act as a stay on the award – Section 36.

Applicability

- Section 26 of the Amendment Act states that the Amendment Act is not applicable to arbitration proceedings that have already commenced prior to 23rd October 2015.
- The Amendment Act is applicable to all arbitration proceedings commenced on and after 23rd October 2015.
- This has caused confusion as parties where the seat of arbitration is outside India and agreements were executed prior to October 23, 2015, claim that the intention of the parties was to oust applicability of Part I of the Act and therefore amended provisions will not apply. This line of reasoning is backed by case laws, including judgments of the Hon'ble Supreme Court, though

QUESTIONS?

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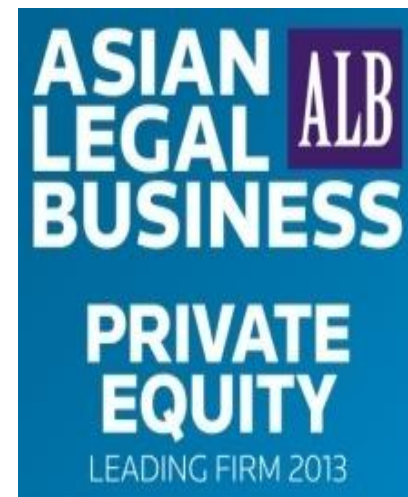
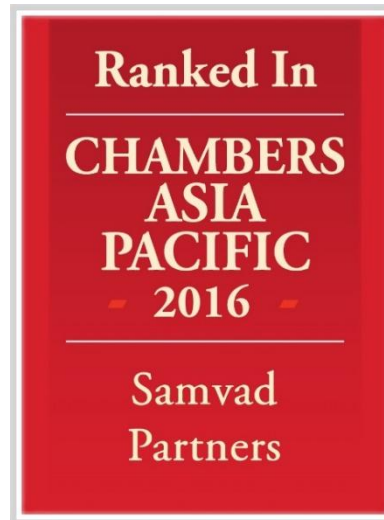
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