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SALIENT FEATURES OF THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2019

The Arbitration and Conciliation (Amendment) Bill, 2019 ("**Bill**") was introduced in Rajya Sabha by the Minister for Law and Justice, Mr. Ravi Shankar Prasad, on July 15, 2019 and passed on July 18, 2019. It seeks to amend the Arbitration and Conciliation Act, 1996 (**"Act"**). This amendment is similar to the Arbitration and Conciliation (Amendment) Bill, 2018 which was passed by the Lok Sabha but remained pending in the Rajya Sabha and eventually lapsed with the dissolution of the 16th Lok Sabha.

The Bill has been introduced for the purpose of promoting institutional arbitration and for the application of recommendations of the High Level Committee to Review the Institutionalisation of Arbitration Mechanisms in India, led by the Hon'ble Mr. Justice B.N. Srikrishna (Retd.). Keeping these objects in mind, the 2019 Bill proposes the following changes:

- **Establishing the Arbitration Council of India**: The Bill proposes the establishment by the Central Government of a centralised arbitral Council being The Arbitration Council of India in exercise of its powers under Section 43(B)(1) of the Act. Part IA of the Bill deals with functioning, scope, powers, constitution and establishment of the Arbitral Council of India. It is proposed that the Council be established as the statutory authority to identify and grade qualifying arbitral institutions and shall be conferred powers of delegated legislation in this regard.

- **Designation of Arbitral Institutions:** The High Courts and Hon'ble Supreme Court have the power to designate Arbitral Institutions which the parties can approach seeking appointment of the arbitrators. The Bill proposes to amend Section 11(4) of the Act replacing the Court's power to appoint Arbitrator to Arbitral Institutions. In case of domestic arbitrations, any of the Arbitral Institutions designated by the High Courts can be approached for appointment of arbitrators once the Bill has been passed. For international commercial arbitrations, the Arbitral Institutions designated by the Hon'ble Supreme Court can be approached for appointment of arbitrators once the Bill has been passed.

- **Time frame for completion of arbitration proceedings:** The Bill proposes prescribing a time period of six months from the date the arbitrator or all arbitrators (as the case may be) received notice, in writing, of their appointment, within which parties will be required to file their respective Statement of Claim and Statement of Defence. The Bill also proposes to extend the time period for completion of the entire arbitration from one year to eighteen months extendable by a further period of six months with the consent of the parties for arbitrations other than international commercial arbitrations. In the case of internal commercial arbitrations, the requirement of completing the entire arbitration within eighteen months has been relaxed. The Bill provides as follows: "*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."

- **Doing away with interim reliefs post passing of the Award:** The Bill proposes to amend Section 17(1) of the Act and omit the following words being *"or at any time after the making of the arbitral award but before it is enforced in accordance with section 36"*. Section 17 of the Act as it reads currently, permits the parties to apply for interim relief before the Arbitral Tribunal anytime before the enforcement of the award. However, with the passing of the Bill parties will only be permitted to apply for interim measures during the arbitral proceedings i.e. until the passing of the Award.

- **Confidentiality of proceedings:** The Bill provides that all details of arbitration proceedings will be kept confidential except for the details of the arbitral award. Disclosure of the arbitral award will only be made where it is necessary for implementing or enforcing the award.

- **Applicability of the Arbitration and Conciliation (Amendment) Act, 2015 to be prospective:** The Bill issues a clarification through newly inserted Section 87 that the 2015 amendment shall not be applicable to arbitral proceedings commenced prior to the commencement of the 2015 amendment and/or court proceedings arising out of or in relation to such arbitral proceedings. This will effectively override the ruling of the Hon'ble Supreme Court as laid down in *Board of Cricket in India v. Kochi Cricket Pvt. Ltd. And Ors*. (SLP (C) Nos. 19545-19546 of 2016), wherein the Apex Court held that the 2015 Amendment was prospective in general, but in certain circumstances could be applied retrospectively as in the case of Section 36 of the Act. However, the Bill now clarifies that the 2015 amendment will be prospective.

- **Fees of the Arbitrators:** The Bill proposes a Fourth Schedule to be added to the Act, which sets out the fees payable to the Arbitrator, depending upon the value of claim.

ANALYSIS:

The Indian arbitration landscape has undergone several changes in the recent years. The Bill proposes to limit the roll of Courts to the appointment of Arbitral Institutions which are to be monitored by the Arbitration Council of India. The Council comprises experts who are equipped to handle the monitoring of such institutions. These institutions in turn, will be accorded powers which, inter alia, include the power to appoint Arbitrators. Therefore, setting up a parallel mechanism away from the Courts and in that sense truly ensuring an alternate dispute resolution mechanism available to the parties has been the focus of the Bill. This ensures that the Courts are less burdened, and the Council and Arbitral Institutions can effectively strengthen the alternate dispute resolution forum so that citizens are able to access justice in a time-bound and cost-effective manner.

However, there seem to be some grey areas which will call for judicial intervention and in the interim possible result in contrary interpretations by various courts. For example, although the Bill requires parties to complete pleadings within six months from the date the arbitrator or all arbitrators (as the case may be) receive notice, in writing, of their appointment, the Bill fails to provide for consequences in the event the parties fail to adhere to the aforesaid timelines. Thus, even if parties take eight months to complete pleadings, going by section 29A (1) they may continue the arbitration for twelve months post the completion of pleadings which resultantly defeats the purpose of a time-bound arbitration. This seems to be a grey area which will require clarification. It is also unclear what will happen to proceedings where courts have followed the judgment of the Supreme Court in *Board of Cricket in India v. Kochi Cricket Pvt. Ltd. And Ors*. and applied provisions of the Arbitration and Conciliation (Amendment) Act, 2015 retrospectively.

Evidently, the Bill proposes a paradigm shift in powers where appointment of arbitrators is concerned, and its success will largely depend how well the agencies involved seamlessly work towards achieving the purpose for which they have been established. Transparency, technological efficiency and technical expertise will be key areas that will have a material bearing on the efficacy of the Council and the Arbitral Institutions.

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