

# **ARBITRATION AND CONCILIATION ACT, 1996**

## **Preamble 1 - THE ARBITRATION AND CONCILIATION ACT, 1996**

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### **THE ARBITRATION AND CONCILIATION ACT, 1996**

**[Act No. 26 of 1996]**

**[16th August, 1996]**

#### **PREAMBLE**

*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 of India as follows:-

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#### **Section 1 - Short title, extent and commencement**

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(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<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint.

## STATE AMENDMENTS

### JAMMU AND KASHMIR

<sup>3</sup>[Section 1-In sub-section (1), omit the proviso and Explanation.]

### UNION TERRITORY OF LADAKH

<sup>4</sup>[Section 1.--In sub-section (1), omit the proviso and Explanation.]

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1 . Inserted vide [G.S.R. 375\(E\) dated 22nd August, 1996](#) w.e.f. 22nd August 1996.

2. Omitted by [Jammu And Kashmir Reorganisation Act, 2019](#), w.e.f. 31.10.2019 the previous text was:-

"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. Vide Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, vide Order [No. SO1123\(E\), dated 18.03.2020](#).

4. Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Order [No. SO3774\(E\), dated 23.10.2020](#).

(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;

<sup>4</sup>[(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;

<sup>1</sup>[(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) [\*\*\*]<sup>2</sup> 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.

<sup>4</sup>[(i) "prescribed" means prescribed by rules made under this Act;

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

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

<sup>3</sup>[Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and <sup>5</sup>[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 provision 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) 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 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 counter-claim, and where it refers to a defence, it shall also apply to a defence to that counter-claim.

## **STATE AMENDMENTS**

### **Uttar Pradesh**

6[In Section 2 of the Arbitration and Conciliation Act, 1996, 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 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.".]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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;"

2. Omitted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, the previous text was:-"a company or"

3. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

4. Inserted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#).

5. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-"clause

(a)"

6. Substituted by Civil Laws (Uttar Pradesh Amendment) Act, 2019.

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### **Section 3 - Receipt of written communications.**

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(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.

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### **Section 4 - Waiver of right to object**

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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.

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### **Section 5 - Extent of judicial intervention**

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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.

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### **Section 6 - Administrative assistance**

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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.

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### **Section 7 - Arbitration agreement**

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(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 <sup>1</sup>[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.

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## **Section 8 - Power to refer parties to arbitration where there is an arbitration agreement**

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<sup>1</sup>[(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.

<sup>2</sup>[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**

### **Jammu and Kashmir**

<sup>3</sup>[Insertion of section 8A and section 8B.--After section 8, insert the following sections, namely:-

**"8A. 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.

**8B. 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.]

## **UNION TERRITORY OF LADAKH**

<sup>4</sup>[Insertion of new sections-After section 8, insert.-

### **“8A. 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.

**“8B. 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.]

1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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."

2. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

3. Vide Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, vide Order [No. SO1123\(E\), dated 18.03.2020](#).

4. Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Order [No. SO3774\(E\), dated 23.10.2020](#).

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## **Section 9 - Interim measures etc. by Court**

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<sup>1</sup>[(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 person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure or 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.

<sup>2</sup>[(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.]

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1. Re-numbered by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

2. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## **Section 10 - Number of arbitrators**

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(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.

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## **Section 11 - Appointment of arbitrators**

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(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.

<sup>2</sup>[(3A) 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.]

(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,

[10](#)[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 [11](#)[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,

a [12](#)[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.

[13](#)[\*\*\*]

(6B) 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.]

[14](#)[\*\*\*]

[4](#)[(8) [15](#)[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, [16](#)[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.

[17](#)[\*\*\*]

[18](#)[(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.

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.]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"the Chief Justice or any person or institution designated by him"

2. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

3. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"the Chief Justice or the person or institution designated by him is final"

4. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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."

5. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"the Chief Justice of India or the person or institution designated by him"

6. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him."

7. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made"

8. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the "Chief Justice of India".

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-section shall be construed as a reference to, the Chief Justice of 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 the Chief Justice of that High Court."

9. Inserted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#).

10. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-

"the appointment shall be made, upon request of a party, by 1[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court]."

11. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-

"the appointment shall be made, upon request of a party, by 1[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court]."

12. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-



"party may request <sup>1</sup>[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court]"

13. Omitted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), the previous text was:-

<sup>2</sup>[(6A) 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."

14. Omitted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), the previous text was:-

"(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to <sup>3</sup>[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]."

15. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-

"The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court"

16. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-

<sup>5</sup>[the Supreme Court or the person or institution designated by that Court]"

17. Omitted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), the previous text was:-

<sup>6</sup>[(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.]"

18. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), for the following:-

"(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to <sup>7</sup>[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.

<sup>8</sup>[(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.]

<sup>2</sup>[(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.]"

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## **Section 11A - Power of Central Government to amend Fourth Schedule**

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<sup>1</sup>[(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.]

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## **Section 12 - Grounds for challenge**

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<sup>1</sup>[(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.

<sup>2</sup>[(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.]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

(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."

2. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## Section 13 - Challenge procedure

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(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 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.

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## Section 14 - Failure or impossibility to act

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(1) <sup>1</sup>[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.

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"The mandate of an arbitrator shall terminate if"

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## **Section 15 - Termination of mandate and substitution of arbitrator**

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(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.

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## **Section 16 - Competence of arbitral tribunal to rule on its jurisdiction**

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(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.

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## Section 17 - Interim measures ordered by arbitral tribunal

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<sup>1</sup>[(1) A party may, during the arbitral proceedings <sup>2</sup>[\*\*\*], 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.]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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)"

2. Omitted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), w.e.f. 30.08.2019 the previous text was:-

"or at any time after the making of the arbitral award but before it is enforced in accordance with section 36"

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## **Section 18 - Equal treatment of parties**

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The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

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## **Section 19 - Determination of rules of procedure**

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(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.

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## **Section 20 - Place of arbitration**

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(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.

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## **Section 21 - Commencement of arbitral proceedings**

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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.

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## **Section 22 - Language**

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(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 languages agreed upon by the parties or determined by the arbitral tribunal.

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## Section 23 - Statements of claim and defence

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(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.

<sup>1</sup>[(2A) 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.

<sup>2</sup>[(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.]

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

2. Inserted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), w.e.f. 30.08.2019.

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## Section 24 - Hearings and written proceedings

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(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 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.

<sup>1</sup>[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.

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## **Section 25 - Default of a party**

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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 <sup>1</sup>[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.

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## **Section 26 - Expert appointed by arbitral tribunal**

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(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 on 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.

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## **Section 27 - Court assistance in taking evidence**

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(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 an 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 or ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making or 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 fault, 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.

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## **Section 28 - Rules applicable to substance of dispute**

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(1) Where the place of arbitration is situate 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 compositor* only if the parties have expressly authorised it to do so.

<sup>1</sup>[(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.]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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."

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## **Section 29 - Decision making by panel of arbitrators**

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(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.

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## **Section 29A - Time limit for arbitral award**

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### **<sup>1</sup>[29A. Time limit for arbitral award**

<sup>2</sup>[(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.

<sup>3</sup>[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**

### **JAMMU AND KASHMIR**

<sup>4</sup>[Amendment of sections 29A.--

(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.]

### **UNION TERRITORY OF LADAKH**

<sup>5</sup>[Sections 29A.--

(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.]

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

2. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), w.e.f. 30.08.2019 for the following:-

"(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."

3. Inserted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), w.e.f. 30.08.2019.

4. Vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, Order [No. SO1123\(E\), dated 18.03.2020](#).

5. Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Order [No. SO3774\(E\), dated 23.10.2020](#).

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## Section 29B - Fast track procedure

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### <sup>1</sup>[29B. 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 29A 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.]

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## Section 30 - Settlement

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(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.

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### **Section 31 - Form and contents of arbitral award**

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(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.

1[(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).]

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

1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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."

2. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"(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."

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## Section 31A - Regime for costs

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### 1[31A. 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 shall 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.]

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1. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

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## **Section 32 - Termination of proceedings**

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(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.

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### **Section 33 - Correction and interpretation of award; additional award**

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(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 electrical 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 an 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 so 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.

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### **Section 34 - Application for setting aside arbitral award**

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(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 <sup>3</sup>[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 matter 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.

<sup>1</sup>[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.]

<sup>2</sup>[(2A) 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 re-appreciation 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.

<sup>2</sup>[(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**

### **JAMMU AND KASHMIR**

<sup>4</sup>[Amendment of section 34.--

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

"(2A) 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".]

### **UNION TERRITORY OF LADAKH**

<sup>5</sup>[Section 34.--

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

"(2A) 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".]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

"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."

2. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015.

3. Substituted by [Arbitration And Conciliation \(Amendment\) Act, 2019](#), w.e.f. 30.08.2019 for the following:-

"furnishes proof that"

4. Vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, Order [No. SO1123\(E\), dated 18-03-2020](#).

5. Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Order No. SO3774(E), dated 23-10-2020.

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## Section 35 - Finality of arbitral awards

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Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

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## Section 36 - Enforcement

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<sup>1</sup>[(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).]

<sup>2</sup>[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 (3 of 2016).]

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1. Substituted by the [Arbitration and Conciliation \(Amendment\) Act, 2015](#), w.e.f. 23.10.2015, for the following:

Where the time for making an application to set aside the arbitral award under 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.

2. Inserted by the [Arbitration and Conciliation \(Amendment\) Act, 2021](#), w.e.f. 23.10.2015.

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