Judicial interpretation of 2015 Amendments to Indian Arbitration & Conciliation Act

Ravi Singhania
Managing Partner
E: ravi@singhania.in

Shambhu Sharan
Partner
E: shmbhu@singhania.in

2015 amendment to Arbitration & Conciliation Act ("Act") brought about serious overhaul to the justice delivery system through arbitration. Indian Courts have interpreted the amendments in the same spirit and have brought about clarity to the objective of the amendments. This Article focuses on the recent developments and the judicial interpretation thereof.

A very interesting recent development is that while referring the disputes to arbitration the Courts in India are now required, only to make a prima facie assessment as to the existence of the arbitration clause. This change has been brought by the recent Amendment to the Act . This new development reduces the time required by Court to apply its judicial mind before the disputes can travel to arbitration and gives primacy to the principle of kompetenz kompetenz recognized globally. An example of how readily courts are now referring disputes to arbitration is a recent judgment of the Supreme Court of India, where even a non-party to arbitration, in the peculiar circumstances of the case, could be referred to arbitration, owing to the presence of an umbrella contract containing the arbitration clause .

To ensure impartiality and transparency in the arbitration proceedings, another important development is the manner of appointment of arbitrators. It is now mandatory for every arbitrator to disclose all such information, which establishes existence of any relationship or interest of any kind which is likely to affect his neutrality or ability to complete the proceedings within the specified time. There are descriptive schedules to the Act, which specify such relationships which would automatically create a bar or likelihood of bias such as present or past employment, advisory services etc.

Another important development is increasing the enforceability and efficaciousness of an interim order passed by the tribunal. Under the amended Act, the lacunae of making the order of the arbitral tribunal being un-

enforceable has been removed and now arbitral tribunal has the same powers that are available to a court under Section 9 and that the interim order passed by an arbitral tribunal would be enforceable as if it is an order of a court. The new amendment also adds that if an arbitral tribunal is constituted, the Courts should not entertain applications for injunction under Section 9 unless it thinks that the remedy by arbitral tribunal is not efficacious. Hence, after 2015, the arbitral tribunal has more autonomy with respect to the cases filed before it than before.

Another fear of parties coming to India for dispute resolution is the time taken to resolve disputes. In order to make the arbitration process quicker the 2015 Amendment Act has added Section 29A and Section 29B. Section 29A makes it mandatory to complete the proceedings within 12 months (additional 6 months, in some circumstances) from the date arbitral tribunal enters upon the reference. Section 29B, on the other hand allows parties to agree on a fast track procedure to dispose off the proceedings within 6 months.

Another extremely relevant development is the availability of an interim measure, even where the seat of arbitration is outside India . This resolves the dilemma which various foreign parties face, that if the seat of arbitration is outside India, then how can one secure assets of a party located in India, in case there is a fear of disposal. It is of course, open to parties to agree to exclude the provisions of interim relief in India .

To expedite enforcement of awards and to discourage parties from prospective litigations, the automatic stay on execution of awards, on mere filing of an objection petition has also been discontinued . Indian Courts post 2015 amendment require the award debtor to first satisfy that a stay on enforcement is warrantied and which is now usually granted on deposit of the award amount or a substantial portion of it. This has greatly reduced unnecessary challenge to awards and given even more authority to the award of an arbitrator. However, this provision has been held to be prospective in nature .

Party autonomy has also gained lot of importance for selection of seat of arbitration, wherein earlier, there were a string of judgments that in case of two Indian parties, they were not permitted to have a foreign seat. Indian courts have now held that even where there were two Indian parties, they could have a foreign seat of arbitration for their dispute resolution.

All of these developments point to the fact that India has embraced arbitration as the primary mode for settlement of commercial disputes. Foreign investment is being boosted greatly by projecting India as an investor friendly country having a sound legal framework and ease of doing business. Although foreign law firms are still not permitted to practice in India , it definitely points to great cooperation between Indian firms and foreign firms, especially in arbitrations seated in India, or at least those, where the substantive law of contract is India.