

As introduced in Rajya Sabha on 22nd December 2003

THE ARBITRATION AND CONCILIATION (AMENDMENT)
BILL, 2003

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to amend the Arbitration and Conciliation Act, 1996.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In the long title to the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), after the words "domestic arbitration", the words "international arbitration," shall be inserted.

3. In section 1 of the principal Act, in sub-section (2), in the proviso, before the words "international commercial arbitration", the words "international arbitration," shall be inserted.

4. In section 2 of the principal Act,—

(a) in sub-section (1),—

(i) after clause (b), the following clause shall be inserted, namely:—

'(ba) "Arbitration Division" means an Arbitration Division of a High Court constituted under sub-section (1) of section 37A;';

(ii) for clauses (e) and (f), the following clauses shall be substituted, namely:—

'(e) "Court", in relation to—

(i) sections other than sections specified in sub-clause (ii), means—

(a) the principal Civil Court of original jurisdiction in a district; or

(b) the Court of principal judge of the City Civil Court of original jurisdiction in a city; or

(c) any Court of coordinate jurisdiction to which the Court referred to in sub-clause (a) or sub-clause (b) transfers a matter brought before it,

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 Court of principal judge of the City Civil Court, or any Court of Small Causes; and

(ii) sections 34, 34A and 36, means the Arbitration Division;

(ea) "domestic arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, where none 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) 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,

where the place of arbitration is in India and shall be deemed to include international arbitration and international commercial arbitration where the place of arbitration is in India;

(eb) "international arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, 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) 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;

(f) "international commercial arbitration" means an international arbitration considered as commercial under the law in force in India;

(fa) "judicial authority" includes any quasi-judicial statutory authority;';

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) (a) Save as otherwise provided in clause (b), this Part shall apply where the place of arbitration is in India.

(b) Sections 8, 9 and 27 of this Part shall apply to international arbitration (whether commercial or not) where the place of arbitration is outside India or where such place is not specified in the arbitration agreement."

5. After section 2 of the principal Act, the following section shall be inserted, namely:—

"2A. The principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court of original jurisdiction in a city, as the case may be, may, from time to time, transfer any matter relating to any proceedings under this Act which is pending before it, to any Court of coordinate jurisdiction in the district or the city, as the case may be, for decision."

6. In section 5 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

Explanation.— For the removal of doubts, it is hereby declared that the expression "any other law for the time being in force" shall be deemed to include—

(a) the Code of Civil Procedure, 1908;

(b) any law which provides for internal appeals within the High Court;

(c) any enactment which provides for intervention by a judicial authority in respect of orders passed by any other judicial authority.'

7. In section 6 of the principal Act, the words, ", or the arbitral tribunal with the consent of the parties," shall be omitted.

8. In section 7 of the principal Act, in sub-section (4), in clause (b), for the words "an exchange of letters", the words "any written communication by one party to another and accepted expressly or by implication by the other party, exchange of letters" shall be substituted.

9. In section 8 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Subject to the provisions of sub-sections (4) and (5), 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 unless such judicial authority has to decide any question referred to in sub-section (4) as a preliminary issue, refer the parties to arbitration.

(1A) The judicial authority before which an action is brought shall stay the action before it for the purpose of deciding any question raised before it under sub-section (4) and such stay shall be subject to the outcome of the order that may be made under sub-section (4) or sub-section (5).";

(b) in sub-section (3), the following proviso shall be inserted at the end, namely:—

"Provided that the arbitration proceeding so commenced shall stand terminated if the judicial authority, after hearing all the parties, makes an order under sub-section (4) to the effect that—

(i) a reference to arbitration cannot be made by virtue of its finding on any question referred to in clauses (a) to (d) of that sub-section; or

(ii) though a reference to arbitration has to be made, the proceedings are required to be conducted by a different arbitral tribunal.";

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) Where an application is made to the judicial authority by a party raising any question that—

(a) there is no dispute in existence; or

(b) the arbitration agreement or any clause thereof is null and void or inoperative; or

(c) the arbitration agreement is incapable of being performed; or

(d) the arbitration agreement is not in existence,

the judicial authority may, subject to the provisions of sub-section (5), decide the same and pass appropriate orders thereon.

(5) Where the judicial authority finds that any question specified in sub-section (4) cannot be decided for the reason that—

(a) the relevant facts or documents and the question are in dispute; or

(b) there is a need for adducing oral evidence from the question; or

(c) the inquiry into any such question is likely to delay reference to arbitration; or

(d) the request for deciding the question was unduly delayed; or

(e) the decision on the question is not likely to produce substantial savings in the costs of arbitration; or

(f) there is no good reason for deciding the question at that stage,

it shall refuse to decide the question and refer the same to the arbitral tribunal for decision.

(6) If the judicial authority holds that though the arbitration agreement is in existence but it is null and void or inoperative or incapable of being performed and refuses to stay the legal proceedings, any provision in the arbitration agreement which provides that the award is a condition precedent for the initiation of legal proceedings in respect of any matter, shall be of no effect in relation to the proceedings.”.

10. After section 8 of the principal Act, the following section shall be inserted, namely:—

‘8A. Without prejudice to the provisions of section 89 of the Code of Civil Procedure, 1908, where, at any stage of a legal proceeding in the Supreme Court or the High Court or the principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court of original jurisdiction in a city or any Court of coordinate jurisdiction or inferior in grade to the aforesaid Courts, as the case may be, all the parties to such proceeding enter into an arbitration agreement to resolve their disputes, then the Court in which the said legal proceeding is pending shall, on an application made by any party to the arbitration agreement, refer the dispute in relation to the subject-matter of the legal proceeding, to arbitration.

Explanation.— For the purposes of this section, “legal proceeding” means any proceeding involving civil rights of parties pending in any of the aforesaid Courts whether at the stage of institution or appeal or revision and includes proceeding involving civil rights instituted in a High Court under article 226 or article 227 of the Constitution or on further appeal to the Supreme Court.’.

11. For section 9 of the principal Act, the following section shall be substituted, namely:—

“9. (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before application is filed for its enforcement in accordance with section 36, apply to a Court for interim measures.

(2) The Court shall have the same power for making orders under sub-section (1) as it has for the purpose of, and in relation to, any proceedings before it.

(3) In particular and without prejudice to sub-section (1), a party may apply to a Court—

(a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(b) for an interim measure of protection in respect of any of the following matters, namely:—

(i) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(ii) securing the amount in dispute in the arbitration;

(iii) the detention, preservation or inspection of any property or thing which is the subject-matter or 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;

(iv) interim injunction or the appointment of a receiver; or

(v) such other interim measure of protection as may appear to the Court to be just and convenient.

(4) Where a party makes an application under sub-section (1) for the grant of interim measures before the commencement of arbitration, the Court shall direct the party in whose favour the interim measure is granted, to take effective steps for the appointment of the arbitral tribunal in accordance with the procedure specified in section 11, within a period of thirty days from the date of such direction.

(5) The Court may direct that if the steps referred to in sub-section (1) are not taken within the period specified in sub-section (4), the interim measure granted under sub-section (2), shall stand vacated on the expiry of the said period:

Provided that the Court may, on sufficient cause being shown for the delay in taking such steps, extend the said period.

(6) Where an interim measure granted stands vacated under sub-section (5), the Court may pass such further direction as to restitution as it may deem fit against the party in whose favour the interim measure was granted under this section."

12. In section 11 of the principal Act,—

(a) in sub-section (4),—

(i) in clauses (a) and (b), for the words "thirty days", the words "sixty days" shall be substituted;

(ii) for the words "the appointment shall be made, upon request of a party by the Chief Justice or any person or institution designated by him", the words "the right to make such appointment shall be deemed to have been waived, and the appointment shall be made, upon request of a party by the High Court or any person or institution designated by it" shall be substituted;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

"(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 sixty days from receipt of a request by one party from the other party to so agree, then the right to make such appointment shall be deemed to have been waived if such appointment is not made within the said period and, the appointment shall be made by the High Court or any person or institution designated by it.";

(c) in sub-section (6), for the words " a party may request the Chief Justice or any person or institution designated by him", the words "and where no measures are taken for appointment of an arbitrator in accordance with the appointment procedure agreed upon by the parties, the right to take such measures shall be deemed to have been waived and a party may request the High Court or any person or institution designated by it" shall be substituted;

(d) in sub-section (7), for the words "the Chief Justice or the person or institution designated by him", the words "the High Court or any person or institution designated by it" shall be substituted;

(e) in sub-section (8), for the words "The Chief Justice or the person or institution designated by him", the words "The High Court or any person or institution designated by it" shall be substituted;

(f) in sub-section (9), for the words "international commercial arbitration, the Chief Justice of India or the person or institution designated by him", the words and brackets "international arbitration (whether commercial or not), the Supreme Court or any person or institution designated by it" shall be substituted;

(g) in sub-section (10), for the words "The Chief Justice may make such scheme as he may deem appropriate ", the words "The High Court may make such scheme as it may deem appropriate" shall be substituted;

(h) in sub-section (11), for the words "the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be", the words "different High Courts or their designates, the High Court or its designate to which the request has been first made under the relevant sub-section shall alone be" shall be substituted;

(i) for sub-section (12), the following sub-sections shall be substituted, namely:—

'(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international arbitration (whether commercial or not) the reference to "High Court" in those sub-sections shall be construed as a reference to the "Supreme Court".

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court or the Court of principal judge of the City Civil Court, as the case may be, referred in sub-clause (i) of clause (e) of sub-section (1) of section 2, is situate and, where the High Court itself is the Court referred to in that sub-clause, to that High Court.

(13) Where an application under this section is made to the Supreme Court or the High Court by a party raising any question specified to in sub-section (4) of section 8, the Supreme Court or the High Court, as the case may be, may, subject to the provisions of sub-section (14), decide the same.

(14) If the Supreme Court or the High Court, as the case may be, considers that the questions referred to in sub-section (13) cannot be decided having regard to the reasons specified in sub-section (5) of section 8, it shall refuse to decide the said question and refer the same to the arbitral tribunal.

(15) The Central Government may, after consultation with the Chief Justice of India, prescribe by rules made under this Act the manner in which fee of members of an arbitral tribunal be fixed and the procedure to be followed in relation to fixation of such fee.'

13. In section 12 of the principal Act, in sub-section (1), for the words "any circumstances likely", the words "the existence of any past or present relationship, either direct or indirect, with any of the parties or any of their counsel, whether financial, business, professional, social or other kind or in relation to the subject-matter in dispute, which is likely" shall be substituted.

14. In section 14 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Where the mandate of the arbitrator is terminated, the Court may decide the quantum of fee payable to such arbitrator."

15. In section 15 of the principal Act,—

(a) in sub-section (2), for the words "a substitute arbitrator shall be appointed", the words "a substitute arbitrator shall be appointed within a period of thirty days" shall be substituted;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Where the mandate of an arbitrator is terminated, the Court may decide the quantum of fee payable to such arbitrator."

16. For section 17 of the principal Act, the following section shall be substituted, namely:—

"17. The arbitral tribunal may, pending arbitral proceedings,—

(a) direct the other party, at the request of a party, to take steps for the protection of the subject-matter of the dispute in the manner considered necessary by it; or

(b) direct a party to provide appropriate security in connection with the directions issued under clause (a); or

(c) direct a party, making any claim, to furnish security for the costs of the arbitration; or

(d) give directions in relation to any property which is the subject-matter of the arbitral proceedings and which is owned by or is in possession of a party to the proceedings —

(i) for the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, by an expert or by a party; or

(ii) for samples to be taken from, or any observation to be made of, or experiment conducted upon, the property; or

(e) direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation; or

(f) give directions to a party for the preservation of any evidence in his custody or control for the purposes of the proceedings.”.

17. For section 20 of the principal Act, the following section shall be substituted, namely:—

“20. Where the arbitration is one under this Part, the place of arbitration shall be within India and in other cases the parties are free to agree on the place of arbitration:

Provided that where the parties fail to agree, 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:

Provided further that 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.”.

18. In section 23 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Within the period of time that may be 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 and the claimant may file his rejoinder, if any, and the parties shall abide by the time schedule so determined by the arbitral tribunal, unless the tribunal extends such time schedule.

(1A) The arbitral tribunal shall endeavour to expedite the arbitral process subject to such rules as may be made by the High Court in this behalf.”.

19. In section 24 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Subject to such rules as may be made by the High Court in this behalf, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials, or to receive affidavit in lieu of oral evidence subject to the witness being examined orally:

Provided that the arbitral tribunal may, at an appropriate stage of the proceedings, hold oral hearings for the purpose of calling for such oral evidence as it may deem necessary.

(1A) Subject to the provisions of sub-section (1), the arbitral tribunal shall pass orders regarding following the procedure before it.

(1B) Without prejudice to the provisions of sub-section (1A), the power of the arbitral tribunal to pass orders shall include—

(a) the fixing of the time schedule for the parties to adduce oral evidence, if any;

(b) the fixing of the time schedule for oral arguments;

(c) the manner in which oral evidence is to be adduced;

(d) the decision as to whether the proceedings shall be conducted only on the basis of documents and other materials, or in any other manner.

(1C) The procedure determined by the arbitral tribunal under sub-section (1A) and the time schedule fixed under sub-section (1B) shall be binding on the parties.”.

20. After section 24 of the principal Act, the following sections shall be inserted, namely:—

“24A. (1) If a party fails, without showing sufficient cause, to comply with a directions made under section 17, or time schedule determined under section 23 or orders passed under section 24, as the case may be, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance as it considers appropriate.

(2) If a claimant fails to comply with a peremptory order made under sub-section (1) in relation to a direction specified in clause (c) of section 17, the arbitral tribunal may dismiss his claim and make an award accordingly.

(3) If a party fails to comply with any peremptory order made under sub-section (1), other than the peremptory order in relation to a direction specified in clause (c) of section 17, then the arbitral tribunal may—

(a) make such order as it thinks fit as to payment of costs of the arbitral proceedings incurred in consequence of the non-compliance;

(b) direct that the party in default shall not be entitled to rely upon any allegations in his pleadings or upon any material which was the subject-matter of the order;

(c) draw such adverse inference from the act of non-compliance as the circumstances may justify;

(d) proceed to make an award on the basis of such materials as have been provided to it, without prejudice to any action that may be taken under section 25.

24 B. (1) Without prejudice to the power of the Court under section 9, the Court may, on an application made to it by a party, make an order requiring the party to whom the order of the arbitral tribunal was directed, to comply with the peremptory orders of the arbitral tribunal made under sub-section (1) of section 24A.

(2) An application under sub-section (1) may be made by—

(a) the arbitral tribunal, after giving notice to the parties; or

(b) a party to the arbitral proceedings with the permission of the arbitral tribunal, after giving notice to the other parties.

(3) No order shall be made by the Court under sub-section (1), unless it is satisfied that the party to whom the order of the arbitral tribunal was directed, has failed to comply with it within the time fixed in the order of the arbitral tribunal or, if no time was fixed, within a reasonable time.

(4) Any order made by the Court under sub-section (1) shall be subject to such orders, if any, as may be made by the Court on appeal under clause (b) of sub-section (2) of section 37.”.

21. In section 28 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) In an arbitration other than international arbitration (whether commercial or not), the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India.

(1A) In an international arbitration (whether commercial or not), where the place of arbitration is situate in India,—

(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 (i) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.”.

22. In section 29 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any decision of the arbitral tribunal in arbitral proceedings with more than one arbitrator shall be made by a majority of all its members:

Provided that where there is no majority, the award shall be made by the Presiding arbitrator of the arbitral tribunal.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The minority decision shall, if made available within thirty days of the receipt of the decision of the majority, be appended to the award.”.

23. After section 29 of the principal Act, the following section shall be inserted, namely:—

“ 29A. (1) The arbitral tribunal shall make its award within a period of one year from the commencement of arbitral proceedings, or within such extended period specified in sub-sections (2) to (4).

(2) The parties may, by consent extend the period, specified in sub-section (1) for making award, for a further period not exceeding one year.

(3) If the award is not made, within the period specified in sub-section (1) or the extended period under sub-section (2), the arbitral proceedings shall, subject to the provisions of sub-sections (4) to (6), stand suspended until an application for extension or further extension of the period is made to the Court by any party to the arbitration, or where none of the parties makes an application as aforesaid, until such an application is made by the arbitral tribunal.

(4) Upon filing of the application for extension or further extension of the period under sub-section (3), the suspension of the arbitral proceedings shall stand revoked and pending consideration of the application by the Court under sub-section (5), the

arbitral proceedings shall continue before the arbitral tribunal and the Court shall not grant any stay of the arbitral proceedings.

(5) The Court shall, upon application for extension of the period being made under sub-section (3), whether the time for making the award as aforesaid has expired or not and whether the award has been made or not, extend the period for making the award beyond the period referred to in sub-section (1) or sub-section (2).

(6) The Court shall, while extending the time under sub-section (5), after taking into account,—

(a) the extent of work already completed;

(b) the reasons for delay;

(c) the conduct of the parties or of any person representing the parties;

(d) the manner in which proceedings were conducted by the arbitral tribunal;

(e) the further work involved;

(f) the amount of money already spent by the parties towards fee and expenses of arbitration;

(g) any other relevant circumstances which the Court may consider necessary,

make such order as to costs and as to the future procedure to be followed by the arbitral tribunal with a view to speed up the arbitral process till the award is made:

Provided that any order made by the Court as to the future arbitral proceedings shall be subject to such rules as may be made by the High Court for expediting the arbitral proceedings.

(7) The parties shall not by consent extend the period for making award beyond the period specified in sub-section (2) and save as otherwise provided in that sub-section, any provision in an arbitration agreement whereby the arbitral tribunal may further extend the time for making the award, shall be void and be of no effect.

(8) The first of the orders of extension under sub-section (5) together with directions if any, under sub-section (6), shall be made by the Court, within a period of thirty days from the date of service of notice on the opposite party.”.

24. In section 31 of the principal Act, in sub-section (7), for clause (b), the following clause shall be substituted, namely:—

“(b) A sum directed to be paid by an arbitral award shall carry interest at such rate as the arbitral tribunal deems reasonable from the date of award to the date of payment.”.

25. After section 33 of the principal Act, the following section shall be inserted, namely:—

‘33A. (1) A photocopy of the arbitral award duly signed on each page by the members of the arbitral tribunal together with the original arbitral records shall be filed by the arbitral tribunal in the Court within sixty days of the making of the award along with a list of the papers comprising the arbitral record:

Provided that where the High Court is the Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, then the award shall be filed in the principal Civil Court of original jurisdiction in a district or in the Court of principal judge of the City Civil Court of original jurisdiction in a city within whose local jurisdiction the subject-matter of arbitration is situate (hereafter in this section referred to as the said Court).

Explanation 1.— For the removal of doubts, it is hereby declared that for the purposes of this section, “arbitral award” means the arbitral award whether passed

pursuant to a reference made by a judicial authority under section 8, or by any of the Courts referred to in section 8A, or by the parties or by the High Court or by the Supreme Court under section 11, or by the parties to a Fast Track Arbitration under section 43C.

Explanation 2.— For the purposes of this section, “arbitral records” shall include the pleadings in the claim filed by the parties, documentary evidence, oral evidence if recorded, pleadings in interlocutory applications, pleadings and orders on interlocutory applications, proceedings of the arbitral tribunal and all other papers relating to the arbitral proceedings.

(2) Where the arbitral tribunal fails to file photocopy of the arbitral award and the arbitral records under sub-section (1), any of the parties may give notice to the arbitral tribunal to do so within a period of sixty days from the date of receipt of the award failing which, the party may request the said Court to direct the arbitral tribunal to file photocopy of the arbitral award and the arbitral records in the said Court.

(3) Upon filing of photocopy of the arbitral award and the arbitral records under sub-section (1) or sub-section (2), the presiding officer of the said Court or a ministerial officer of the said Court designated by such presiding officer, shall affix his signature with date and seal of the said Court on each page of the photocopy of the arbitral award and shall acknowledge receipt of the arbitral award and the arbitral records, after verification with the list referred to in sub-section (1).

(4) The said Court shall maintain a register containing –

(a) the names and addresses of the parties to the award;

(b) the date of the award;

(c) the names and addresses of the arbitrators;

(d) the relief granted;

(e) the date of filing of the award into the said Court; and

(f) such other particulars as may be prescribed by rules made by the Central Government in this behalf.

(5) If any party makes an application for a copy, the Court may grant a certified copy of photocopy of the arbitral award or of the arbitral records or of the arbitral proceedings, as the case may be, in accordance with the rules of the Court.

(6) The Court may transmit the arbitral records for use in any proceedings for setting aside the arbitral award or for enforcement thereof.

(7) The procedure for return of original documents or for preservation of the arbitral records so filed shall be subject to such rules as may be applicable to the said Court from time to time.

(8) The filing of photocopy of the award under this section shall be only for the purposes of record.’.

26. In section 34 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award –

(a) in accordance with sub-sections (2) and (3); and

(b) in the case of an award made in an arbitration other than an international arbitration (whether commercial or not) in accordance with sub-sections (2) and (3), and section 34A.

(1A) An application for setting aside an award under sub-section (1) shall be accompanied by the original award:

Provided that where the parties have not been given the original award, they may file a photocopy of the award signed by the arbitrators.”;

(b) in sub-section (2),—

(i) in clause (b), after sub-clause (ii), the following sub-clause shall be inserted, namely:—

“(iii) the arbitral award is such which does not state the reasons as required under sub-section (3) of section 31.”;

(ii) The *Explanation* shall be renumbered as *Explanation 1* and after *Explanation 1* as so renumbered, the following *Explanation* shall be inserted, namely:—

Explanation 2.— For the removal of doubts, it is hereby declared that while seeking to set aside an arbitral award under sub-section (1), the applicant may include the pleas questioning the decision of the arbitral tribunal rejecting—

(i) a challenge made under sub-section (2) of section 13;

(ii) a plea made under sub-section (2) or sub-section (3) of section 16.”;

(c) after sub-section (4), the following sub-sections shall be inserted, namely:—

(5) Where the Court adjourns the proceedings under sub-section (4) granting the arbitral tribunal an opportunity to resume its proceedings or take such other action and eliminate the grounds referred to in this section or in section 34A for setting aside the award, the arbitral tribunal shall pass appropriate orders within sixty days from the receipt of the request made under sub-section (4) by the Court and send the same to the Court for its consideration.

(6) Any party aggrieved by the orders of the arbitral tribunal under sub-section (5), shall be entitled to file its objections thereto within thirty days from the receipt of the said order from the arbitral tribunal and the application made under sub-section (1) to set aside the award shall, subject to the provisions of sub-sections (2) and (3) of section 37C, be disposed of by the Court, after taking into account the orders of the arbitral tribunal made under sub-section (5) and the objections filed under that sub-section.

Explanation 1.— Subject to clause (i) of sub-section (4) of section 42, for the purposes of this section and sections 34A and 36, the word “Court” means the Arbitration Division.

Explanation 2.— For the purposes of this section, clause (b) of sub-section (2) of section 48 and clause (e) of sub-section (1) of section 57, “public policy of India” or “Contrary to public policy of India” means contrary to (i) fundamental policy of India, or (ii) interests of India, or (iii) justice or morality.’.

27. After section 34 of the principal Act, the following section shall be inserted, namely:—

“34A. (1) In the case of an arbitral award made in an arbitration other than an international arbitration (whether commercial or not), recourse to a court against an arbitral award on the additional ground that there is an error which is apparent on the face of the arbitral award giving rise to a substantial question of law can be had in an application for setting aside an award referred to in sub-section (1) of section 34.

(2) Where the ground referred to in sub-section (1) is invoked in an application filed under sub-section (1) of section 34, the applicant shall file a separate application seeking leave of the Court to raise the said ground:

Provided that the Court shall not grant leave unless it is *prima facie* of the opinion that all the following conditions are satisfied, namely:—

(a) that the determination of the question will substantially affect the rights of one or more parties;

(b) that the substantial question of law was one which the arbitral tribunal was asked to decide or has decided on its own; and

(c) that the application made for leave identifies the substantial question of law to be decided and states relevant grounds on which leave is sought.

(3) Where a specific question of law has been referred to the arbitral tribunal, an award shall not be set aside on the ground referred to in sub-section (1)."

28. For section 36 of the principal Act, the following section shall be substituted, namely :—

"36. (1) Where the time for making an application to set aside the arbitral award under sub-section (1) of section 34 has expired, then, subject to the provisions of sub-sections (2) to (4), the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.

(2) Where an application is filed in the Court under sub-section (1) of section 34 to set aside an arbitral award, the filing of such an application shall not by itself operate as a stay of the award unless, upon a separate application made for that purpose, the Court grants stay of the operation of the award in accordance with the provisions of sub-section (3).

(3) Upon filing of the separate application under sub-section (2) for stay of the operation of the award, the Court may, without prejudice to any action it may take under sub-section (1) of section 37C and subject to such conditions as it may deem fit to impose, grant stay of the operation of the arbitral award for reasons in brief to be recorded in writing:

Provided that the Court shall, while considering the grant of stay, keep the grounds for setting aside the award in mind.

(4) The power to impose conditions referred to in sub-section (3) includes the power to grant interim measures not only against the parties to the award or in respect of the property which is the subject-matter of the award but also to issue *ad interim* measures against third parties or in respect of property which is not the subject-matter of the award, in so far as it is necessary to protect the interests of the party in whose favour the award is passed.

(5) The *ad interim* measures granted under sub-section (4) may be confirmed, modified or vacated, as the case may be, by the Court subject to such conditions, if any, as it may, after hearing the affected parties, deem fit."

29. In section 37 of the principal Act,—

(i) in sub-section (1), clause (b) shall be omitted;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The procedure specified in sections 37C, 37D, 37E and 37F shall, in so far as may be, apply to appeals under sub-section (1) or sub-section (2)."

30. After Chapter IX of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER IX A

ARBITRATION DIVISION, JURISDICTION AND SPECIAL PROCEDURE

37A. (1) Every High Court shall, as soon as may be after the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, constitute an Arbitration Division within the High Court.

(2) The Judges of the Arbitration Division shall be such of the Judges of the High Court as the Chief Justice of that High Court may, from time to time, nominate.

Explanation.— For the purposes of this sub-section, “Judges” shall include Judges appointed under article 224A of the Constitution.

(3) Without prejudice to the provisions of section 37F, the Arbitration Division shall consist of one or more Division Benches of the High Court, as may be constituted by the Chief Justice of the High Court and such Bench or Benches shall dispose of every application, appeal or proceeding allocated to it.

(4) Every application under sections 34, 34A and 36 shall, on and from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, irrespective of the value of the subject-matter, be filed in the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of Courts subordinate to such High Court and the said applications shall thereafter be allocated to the Arbitration Division of that High Court for disposal.

(5) Any appeal under clause (i), or clause (ii), or clause (iii) or clause (vi) of sub-section (1) of section 39 of the Arbitration Act, 1940 and any proceeding for execution of a decree based on an arbitral award under that Act shall, notwithstanding anything contained in that Act, irrespective of the value of the subject-matter, be filed, on and from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 in the High Court referred to in sub-section (4) and shall thereafter be allocated to the Arbitration Division of that High Court, for disposal in accordance with the provisions of the Arbitration Act, 1940.

37B. (1) Any application under section 34 or section 36 filed and pending in any Court subordinate to the High Court immediately before the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 shall, on such commencement, stand transferred to the High Court having jurisdiction over such subordinate Courts and shall thereafter be allocated to the Arbitration Division of that High Court for disposal.

(2) Any application under section 34 or section 36 or appeal under clause (b) of sub-section (1) of section 37 filed immediately before the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 and pending in the High Court shall, on and from such commencement, be allocated to the Arbitration Division of that High Court for disposal.

(3) Any appeal or proceeding referred to in sub-section (5) of section 37A pending in any Court subordinate to the High Court shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, stand transferred to the High Court having jurisdiction over such subordinate Court and shall thereafter be allocated to the Arbitration Division of that High Court for disposal in accordance with the provisions of the Arbitration Act, 1940.

(4) Any appeal or proceeding referred to in sub-section (5) of section 37A, pending in the High Court shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, be allocated to the Arbitration Division of that High Court for disposal in accordance with the provisions of the Arbitration Act, 1940.

37C. (1) The Arbitration Division, while dealing with an application under sub-section (1) of section 34, or any appeal referred to in sub-section (5) of section 37A, filed on and from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, may, if it thinks fit so to do, and after fixing a date for hearing the applicant or his counsel and hearing him accordingly if he appears on that day, dismiss the application or appeal, as the case may be, without giving notice to the respondent, for reasons in brief to be recorded in writing, if there are no merits in the application or appeal.

(2) No award passed by the arbitral tribunal shall be set aside, on an application under sub-section (1) of section 34 or an appeal filed under sub-section (5) of section 37A unless substantial prejudice is shown.

(3) The provisions of sub-sections (1) and (2) shall also apply to applications under sub-section (1) of section 34, any appeal under section 37 or any appeal referred to in sub-section (5) of section 37A, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, if no notice has been issued by the Court before such commencement.

37D. (1) Every application referred to in sub-section (1) of section 34 or section 36 shall be disposed of by the Arbitration Division within one year from the date of service of notice on the opposite party:

Provided that in case the Arbitration Division adjourns the proceedings under sub-section (5) of section 34, the period of one year shall be reckoned from the date of receipt of the order from the arbitral tribunal under that sub-section.

(2) Every appeal or proceeding for execution of decrees referred to in sub-section (5) of section 37A shall be disposed of within one year from the date of service of notice on the opposite party.

(3) Every application, appeal or proceeding referred to in sub-sections (1) to (4) of section 37B, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, shall be disposed of within a period of six months from the date of service of notice on the opposite party or from such commencement, whichever is later.

37E. (1) The applicants or appellants in matters referred to in sub-sections (1) and (2) of section 37D shall, within sixty days from the date of service of notice on the opposite party, file paper books containing relevant documents including copies of oral evidence recorded, if any, and the opposite party shall likewise file a paper book within sixty days from the date of service of notice on such party.

(2) The applicants or appellants, in matters referred to in sub-section (3) of section 37D, and the opposite parties shall file paper books within sixty days from the date of service of notice on such parties or from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, whichever is later.

(3) Within thirty days from the date of filing of the paper books, all parties to the proceedings shall file brief written submissions after exchanging copies of the same.

(4) Where any party fails to comply with the time limits referred to in sub-sections (1) to (3), the Arbitration Division may, if reasonable cause is shown, extend the time for a further period not exceeding thirty days, subject, however, to such order as to costs as it may deem fit.

(5) In all matters coming up before the Arbitration Division, time limit for arguments shall be fixed by the Arbitration Division in advance at the case management conference referred to in sub-section (2) of section 37F.

37F. (1) Save, where conditional orders are passed which may lead to disposal of the matter for default or *ex parte*, a single Judge sitting in the

Arbitration Division shall deal with the fixation of time schedules and dates for the purposes of section 37E.

(2) For the purposes of sub-section (1), case management conferences may be held by the Judge referred to in that sub-section.”.

31. For section 42 of the principal Act, the following sections shall be substituted, namely :—

42. (1) Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part is made in any of the Courts referred to in sub-sections (2) to (7) or in the Court referred to in section 43E, then all subsequent applications [other than the applications referred to in sub-section (2) of section 33A] arising out of that agreement and the arbitral proceedings (hereafter in this section referred to as the subsequent application) shall be made in the same Court in which the application was made and in no other Court.

(2) Where an application is made in a Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, the subsequent applications shall be made in that Court and in no other Court.

(3) Where, in an action under section 8 pending before a judicial authority, an application is made seeking reference to arbitration with respect to an agreement, then the subsequent applications shall be made in the following manner, namely:—

(i) if the judicial authority is a Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2, the subsequent application shall be made in the Court in which the application is made and in no other Court;

(ii) if the judicial authority is a Court which is inferior in grade to the principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court exercising original jurisdiction in a city (hereinafter referred to as the principal Courts), as the case may be, the subsequent application shall be made in the said principal Court to which the Court where the application is made is subordinate and in no other Court;

(iii) if the judicial authority is a quasi-judicial statutory authority, the subsequent application shall be made in the principal Court within whose local limits the judicial authority is situate and in no other Court.

(4) Where, in a legal proceeding under section 8A before any of the Courts referred to in that section, an application is made seeking reference to arbitration with respect to an agreement, then the subsequent application shall be made in the following manner, namely:—

(i) if the application is made in the Supreme Court or in the High Court or in the principal Courts referred to in clause (ii) of sub-section (3), as the case may be, the subsequent application shall be made in the Court which made the reference and in no other Court;

(ii) if the application is made in a Court of coordinate jurisdiction or inferior in grade to the principal Courts referred to in clause (ii) of sub-section (3), as the case may be, the subsequent application shall be made in the principal Court from where the legal proceeding was transferred to such Court of coordinate jurisdiction or to which the said Court is subordinate, as the case may be, and in no other Court.

Explanation 1.—In this sub-section, the expression “legal proceeding” shall have the same meaning as assigned to it in the *Explanation* to section 8A.

Explanation 2.—For the removal of doubts, it is hereby declared that in the case of arbitral proceedings which have commenced pursuant to a reference made by the Supreme Court or the High Court under section 8A and award passed pursuant thereto, the reference to “Court” in this Part shall, except in sections 27 and 33A, be construed as reference to the Supreme Court or the High Court, as the case may be.

(5) Where an application, seeking a reference to arbitration with respect to an agreement, is made under section 11 in the Supreme Court or in the High Court, as the case may be, the subsequent application shall be made in the Court within the meaning of sub-clause (i) of clause (e) of sub-section (1) of section 2 and in no other Court.

(6) Where an application is made to the High Court in accordance with section 34, section 34A, section 36 or sub-section (4) of section 37A or where an appeal is preferred in the High Court in accordance with sub-section (5) of section 37A, the subsequent application shall be made in that High Court and in no other Court.

(7) Where application or appeal transferred to the High Court pursuant to section 37B, all subsequent applications shall be made in that High Court and in no other Court.

42A. The Chief Justice of India may prepare a scheme, for constituting a panel of arbitrators to enable either the parties, or the Supreme Court or the High Court under section 11, or the judicial authority under section 8, or the Courts referred to in section 8A, or the parties under section 43A, as the case may be, to appoint arbitrators from such panel and subject to such conditions as may be specified by the Chief Justice of India in that scheme.

42B. Notwithstanding anything contained in any other law for the time being in force, it shall be permissible to initiate any proceedings under this Act, for the purpose of enforcement of any right under sub-section (3) of section 69 of the Indian Partnership Act, 1932 to seek—

- (a) the dissolution of a firm;
- (b) the settlement of the accounts of a dissolved firm; or
- (c) the realisation of the property of a dissolved firm.’.

32. In section 43 of the principal Act,—

- (a) sub-section (3) shall be omitted;
- (b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) In computing the time specified in the Limitation Act, 1963 for the commencement of proceedings in relation to any dispute, the period between the commencement of the arbitration and the date of the orders mentioned below, shall be excluded, namely:—

- (a) an order of the arbitral tribunal accepting a plea referred to in sub-section (2) or sub-section (3) of section 16;
- (b) an order under clause (a) of sub-section (2) of section 37 by the Court affirming an order under clause (a) or an order of the Supreme Court on further appeal, if any, affirming the last mentioned order;
- (c) an order declaring an arbitration agreement as null and void or inoperative or incapable of being performed or as not in existence, passed by

—
(i) the High Court under sub-section (13) of section 11 in the case of an arbitration, other than an international arbitration (whether commercial or not) or by the Supreme Court on further appeal;

(ii) the Supreme Court under sub-section (13) of section 11 in the case of international arbitration (whether commercial or not).”.

33. After section 43 of the principal Act, the following sections shall be inserted, namely:—

43A. (1) The arbitral proceedings pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 before an arbitral tribunal —

(a) if such proceedings are pending for more than three years from the date of commencement of such proceedings, shall be completed within a further period of six months from the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 or within such extended period specified in sub-sections (2) and (3);

(b) if such proceedings have not been pending for three years from the date of commencement of the proceedings, the proceedings shall be completed within a further period of one year reckoned from the date of expiry of three years of the commencement of the arbitral proceedings or within such extended period specified in sub-sections (2) and (3).

(2) If the award is not made within the further period of six months or one year, as the case may be, specified in sub-section (1), the arbitral proceedings shall, subject to the provisions of sub-section (3), stand suspended until an application for extension of time is made to the Court by any party to the arbitration or where none of the parties has made an application as aforesaid until such application is made by the arbitral tribunal.

(3) The provisions of sub-sections (4) to (8) of section 29A shall, so far as may be, apply for the disposal of application referred to in sub-section (2), with a view to speed up the arbitral proceedings, till the award is passed.

43B. (1) The provisions of sections 6, 23 and 24 shall, so far as may be, apply to arbitral proceedings under the Arbitration Act, 1940, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 and shall override any provisions of the Arbitration Act, 1940 which are inconsistent with the said sections.

(2) In the case of non-compliance with any order passed by the sole arbitrator or arbitrators under the provisions of the Arbitration Act, 1940 or of orders passed under sub-section (1), the sole arbitrator or arbitrators, as the case may be, appointed under the Arbitration Act, 1940 may pass orders under section 24A.

(3) In the case of non-compliance with any peremptory order passed by the sole arbitrator or arbitrators, as the case may be, under sub-section (2), the Court, within the meaning of clause (c) of section 2 or section 21 of the Arbitration Act, 1940, as the case may be, may pass orders under section 24B.

(4) Where arbitral proceedings are pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, before the sole arbitrator or arbitrators appointed under the Arbitration Act, 1940, the proceedings shall be completed within a further period of six months from such commencement or within such extended period specified in sub-sections (5) and (6):

Provided that where the arbitral proceedings are stayed by order of a Court, the period during which the proceedings are so stayed shall be excluded while computing the said period of one year.

(5) If the award is not made within the further period specified in sub-section (4), the arbitral proceedings shall, subject to the provisions of sub-section (6), stand suspended until an application for extension of time is made by any party to the arbitration to the Court referred to in sub-section (3), by any party to the arbitration, or

where none of the parties has made an application as aforesaid, until such an application is made by the sole arbitrator or arbitrators, as the case may be.

(6) The provisions of sub-sections (4) to (8) of section 29A shall, so far as may be, apply for the disposal of the application referred to in sub-section (5).

(7) The provisions of this section shall have effect notwithstanding anything inconsistent therewith contained in sub-section (2) of section 85.

CHAPTER XI

SINGLE MEMBERS FAST TRACK ARBITRAL TRIBUNAL AND FAST TRACK ARBITRATION

43C. (1) The parties to an action before a judicial authority referred to in section 8, or a legal proceeding before any of the Courts referred to in section 8A, or to an arbitration agreement or to an application before the Supreme Court or the High Court under section 11, as the case may be, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their disputes resolved by arbitration in accordance with the provisions of this Chapter and the procedure specified in the First Schedule (hereinafter referred to as the Fast Track Arbitration).

(2) If the parties referred to in sub-section (1) agree to have the disputes resolved through Fast Track Arbitration, then the arbitral tribunal agreed to between such parties shall be called the Fast Track Arbitral Tribunal.

(3) Notwithstanding anything contained in the arbitration agreement—

(i) the Fast Track Arbitral Tribunal shall consist of a sole arbitrator;

(ii) the sole arbitrator shall be chosen by parties unanimously;

(iii) the fee payable to the arbitrator and the manner of payment of the fee shall be such as may be agreed between the sole arbitrator and the parties;

(iv) the procedure set out in the First Schedule (hereinafter referred to as the Fast Track Procedure) shall apply.

43D. The other provisions of this Part, in so far as they are matters not provided in the First Schedule, shall apply to the Fast Track Arbitration as they apply to other arbitrations subject to the following modifications, namely:—

(a) the references to—

(i) "arbitral tribunal" shall, unless the context otherwise requires, be deemed to include the Fast Track Arbitral Tribunal; and

(ii) "Court" shall be deemed to be the High Court, except in sections 27 and 33A;

(b) in section 33, in sub-sections (1) to (4), for the words "thirty days", wherever they occur, the words "fifteen days" shall be substituted;

(c) in section 34,—

(i) in the proviso to sub-section (3), for the words "three months" and "thirty days", the words "thirty days" and "fifteen days" shall respectively be substituted;

(ii) in sub-section (5), for the words "sixty days", the words "thirty days" shall be substituted;

(iii) in sub-section (6), for the words "thirty days", the words "fifteen days" shall be substituted;

(d) in section 37, in sub-section (1), the provision for appeal shall not apply to orders referred to in clauses (a) and (b) of sub-section (1) of section 37;

(e) in sub-section (1) of section 37D, for the words "one year", the words "six months" shall be substituted.

43E. Notwithstanding anything contained in this Part or in any other law for the time being in force but subject to sub-clause (ii) of clause (a) of section 43D, where with respect to an arbitration agreement, any application is made or is required to be made before a "Court" in the manner mentioned in this Part, such an application shall be made to the "High Court" and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that High Court and in no other High Court and shall be allocated to the Arbitration Division:

Provided that where reference under section 8A has been made for resolution of disputes under this Chapter by the Supreme Court, the subsequent applications shall be filed in the Supreme Court.

43F. The references to High Court in sections 43D and 43E shall be construed as a reference to the High Court within whose local limits, the principal Civil Court or the Court of principal judge of the City Civil Court referred to in sub-clause (i) of clause (e) of sub-section (1) of section 2, as the case may be, is situated.'

34. In section 44 of the principal Act, in clause (a), for the words "First Schedule", the words "Second Schedule" shall be substituted.

35. In section 47 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'Explanation.— In this section and in all the following sections of this Chapter, "Court" means the Arbitration Division.'

36. In section 50 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) An appeal shall lie from the order refusing to refer the parties to arbitration under section 45 to the High Court referred to in sub-section (4) of section 37A, and the said appeal shall thereafter be allocated to the Arbitration Division for disposal."

37. In section 53 of the principal Act,—

(i) in clause (a), for the words "Second Schedule", the words "Third Schedule" shall be substituted;

(ii) in clause (b), for the words "Third Schedule", the words "Fourth Schedule" shall be substituted.

38. In section 56 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'Explanation.— In this section and the following sections of this Chapter, "Court" means the Arbitration Division.'

39. In section 59 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) An appeal shall lie from the order refusing to refer the parties to arbitration under section 54 to the High Court referred to in sub-section (4) of section 37A, and the said appeal shall thereafter be allocated to the Arbitration Division for disposal."

40. After section 60 of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IIA

JURISDICTION OF ARBITRATION DIVISION OF HIGH COURT AND SPECIAL PROCEDURE FOR ENFORCEMENT OF FOREIGN AWARDS

60A. (1) Every application for the enforcement of foreign awards under Chapters I and II of this Part shall, on the commencement of the Arbitration and Conciliation

(Amendment) Act, 2003, be filed in the High Court as referred to in sub-section (4) of section 37A and the said applications shall thereafter be allocated to the Arbitration Division for disposal.

(2) The applications for enforcement of foreign awards made under Chapters I and II of this Part and all appeals under sub-section (1) of section 50 or sub-section (1) of section 59 pending in any Court subordinate to the High Court shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, stand transferred to the High Court having jurisdiction over such subordinate Court and shall thereafter be allocated to the Arbitration Division for disposal.

(3) The applications for enforcement of foreign awards under Chapters I and II of this Part and appeals under sub-section (1) of section 50 and sub-section (1) of section 59 and applications arising there from, pending in a High Court, shall, on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, be allocated to the Arbitration Division for disposal.

60B. (1) Every application referred to in sub-section (1) of section 60A shall be disposed of by the Arbitration Division within a period of one year of service of notice on the opposite party.

(2) Every appeal filed on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, under sub-section (1) of section 50 and sub-section (1) of section 59, on and from such commencement shall be disposed of by the Arbitration Division within a period of sixty days from the date of notice on the opposite party.

(3) The applications for enforcement of foreign awards referred in sub-sections (2) and (3) of section 60A and all appeals against orders refusing to enforce a foreign award under sections 48 and 57, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, shall be disposed of by the Arbitration Division within a period of six months from the date of allocation to the Arbitration Division where notices have been served on the opposite parties on the date of such allocation, and within a period of six months from the date of service of notice on the opposite parties where notices have not been served on the opposite party on the date of such allocation.

(4) The appeals against orders refusing to refer the parties to arbitration under sections 45 and 54, pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, shall be disposed of by the Arbitration Division within a period of thirty days from the date of allocation to the Arbitration Division where notices have been served on the opposite parties on the date of such allocation and within a period of thirty days from the date of service of notices on the opposite parties where notices have not been served on the opposite party on the date of such allocation.

(5) The Arbitration Division while dealing with applications and appeals referred in sub-sections (1) and (3) shall, so far as may be, follow the same procedure as laid down in sections 37E and 37F."

41. Section 82 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

"(2) Without prejudice to the generality of the provisions of sub-section (1), rules may be made in respect of the following matters, namely:—

(a) the manner in which arbitral proceedings shall be conducted;

(b) the number of days for which the arbitral proceedings have to be conducted continuously on each occasion when an arbitral tribunal meets;

(c) the time schedule and the number of hours for which the arbitral proceedings have to be conducted on each day;

(d) the time schedule for the filing of the pleadings for purposes of sub-section (1A) of section 23;

(e) the time schedule in regard to the recording of evidence and submission of arguments for purposes of sub-section (1) of section 24;

(f) the time schedule as to the future procedure to be followed by the arbitral tribunal, referred to in sub-section (6) of section 29A.

(3) The Chief Justice of India may issue guidelines to the High Courts in relation to the matters referred in sub-section (2) and other procedure to be followed by the arbitral tribunal so that uniform rules may be made by all the High Courts.”.

42. In section 84 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Without prejudice to the generality of the provisions of sub-section (1), rules may be made in respect of the following, namely:—

(a) the manner in which fee of the members of an arbitral tribunal may, after consultation with the Chief Justice of India, be fixed and the procedure relating thereto under sub-section (15) of section 11;

(b) the other particulars required to be entered in the register under clause (f) of sub-section (4) of section 33A.”.

43. The First Schedule, Second Schedule and Third Schedule to the principal Act shall be renumbered as the Second Schedule, Third Schedule and Fourth Schedule and before the Second Schedule as so renumbered, the following Schedule shall be inserted, namely:—

“THE FIRST SCHEDULE
(See sections 43C and 43D)

FAST TRACK ARBITRATION

1. (1) For the purposes of Fast Track Arbitration under sub-section (1) of section 43 C, a Fast Track Arbitral Tribunal shall be deemed to be constituted on the date on which the parties, after obtaining the consent of the sole arbitrator to be appointed, agree in writing that the sole arbitrator shall be the Fast Track Arbitral Tribunal under sub-section (2) of section 43C.

(2) The parties shall communicate the said agreement to the sole arbitrator on the same day.

2. The procedure specified in this Schedule shall on and from the day of the constitution of a Fast Track Arbitral Tribunal, apply to the Fast Track Arbitration.

3. (1) Within fifteen days of the constitution of the Fast Track Arbitral Tribunal, the person who has raised the dispute (hereinafter referred to as the claimant) shall send simultaneously to the Tribunal and the opposite party (hereinafter referred to as the respondent)—

(a) a claim statement containing the facts, the points at issue and the relief claimed;

(b) documentary evidence, if any, in support of his case;

(c) a copy of the witness’s affidavit where reliance is placed on the testimony of any witness (including that of a party);

(d) a copy of the opinion, along with the particulars relating to the expert, his qualifications and experience where reliance is placed on the opinion of an expert;

(e) a list of interrogatories, if any;

(f) an application for discovery or production of documents, if any, mentioning their relevancy;

(g) full address, including e-mail or fax, telephone numbers, if any, of all claimants and of all the parties, for the purpose of expediting communication and correspondence;

(h) any other material considered relevant by the claimant.

(2) The respondent shall, within fifteen days from the receipt of the claim statement and the documents referred to in sub-paragraph (1), simultaneously send to the Fast Track Arbitral Tribunal as well as to the claimant, his defence statement, together with documentary evidence, witness's testimony by affidavit (including that of a party) and expert opinion, if any, in support thereof, together with counter claims, if any, supported by documents.

(3) The procedure specified in this Schedule shall apply to such counter claims as they apply to a claim.

(4) Within fifteen days from the receipt of the defence statement or the counter claims the claimant shall send to the Fast Track Arbitral Tribunal and to the respondent his rejoinder and statement of defence to the counter claim.

(5) Within fifteen days from the receipt of the defence statement or the counter claim, the respondent shall simultaneously send his rejoinder to the said statement or claim to the Fast Track Arbitral Tribunal as well as to the claimant.

(6) In case discovery or production of documents is allowed, the parties shall be permitted to submit their supplementary statements, if any, to the Fast Track Arbitral Tribunal within the specified period and to simultaneously send copies thereof to each other.

(7) The Fast Track Arbitral Tribunal shall decide the disputes on the basis of the pleadings and documents, affidavits of evidence, expert opinion, if any, and the written submission filed by the parties.

(8) The Fast Track Arbitral Tribunal may permit any witness to be orally examined and lay down the manner in which evidence shall be recorded or for receiving affidavits in lieu of oral evidence.

(9) The Fast Track Arbitral Tribunal may otherwise permit oral evidence to be adduced, if it considers that any request for oral evidence by any party is justified or where the Fast Track Arbitral Tribunal considers that such oral evidence is necessary.

(10) The Fast Track Arbitral Tribunal may, in addition, call for any further information or clarification from the parties in addition to the pleadings, documents and evidence placed before it.

4. The Fast Track Arbitral Tribunal shall permit the parties to appear and conduct the case personally or through their Counsel or by any person duly authorised by the parties to represent them.

5. After the conclusion of the evidence, the Fast Track Arbitral Tribunal may direct all the parties to file their written notes of argument or may, at its discretion, permit oral arguments and shall fix a time schedule therefor and may also restrict the length of oral arguments.

6. (1) The Fast Track Arbitral Tribunal shall conduct its proceedings in such manner that the arbitral proceedings are, as far as possible, taken up on day-to-day basis at least continuously for three days on each occasion.

(2) The Fast Track Arbitral Tribunal shall ordinarily fix the time schedule in such manner that the proceedings are conducted continuously from 10.30 A.M. to 1 P.M. and 2 P.M. to 4.30 P.M. every day.

7. The time schedule fixed under paragraphs 3 and 5 and the manner of conducting proceedings and fixing the time schedule under paragraph 6 by the Fast Track Arbitral Tribunal, shall be binding on the parties.

8. (1) At any time during the course of arbitration and before the passing of the award, the Fast Track Arbitral Tribunal may, at its discretion, if need be, consult any expert or technically qualified person or a qualified accountant for assistance in relation to the subject-matter in dispute, at the expense of the parties, and shall communicate the report of aforesaid person to the parties to enable them to file their response.

(2) If the Fast Track Arbitral Tribunal thereafter considers on its own or on the request of parties that any clarification or examination of a person referred to in sub-paragraph (1) or examination of any other person is necessary, it may call upon such person to clarify in writing or to call him or such other person as a witness for necessary examination.

9. (1) In case there is default on the part of any party to adhere to the time limits specified in this Schedule or as fixed by the Fast Track Arbitral Tribunal or there is violation of any interim orders or directions of the Fast Track Arbitral Tribunal issued under section 17 or under this Schedule, the Fast Track Arbitral Tribunal may pass peremptory orders against the defaulting party giving further time for compliance including peremptory orders to provide appropriate security in connection with an interim order or direction.

(2) In case the Fast Track Arbitral Tribunal is satisfied that a party to the arbitration is unduly or deliberately delaying the arbitral proceedings, or the implementation of the peremptory orders, the Fast Track Arbitral Tribunal may impose such costs as it may deem fit on the defaulting party or may pass an order striking out the pleadings of the party concerned or excluding material or draw adverse inference against the said party and in case security for costs of arbitration is not furnished as required under sub-paragraph (1), the claim may be dismissed.

(3) Without prejudice to the provisions of sub-paragraph (2), the Fast Track Arbitral Tribunal may dismiss the claim if the claimant does not effectively prosecute the arbitral proceedings or file the papers within the time granted or neglects or refuses to obey the peremptory orders of the Fast Track Arbitral Tribunal or to pay the dues or deposits as ordered by the Fast Track Arbitral Tribunal:

Provided that the failure to file a statement of defence to the claim statement or to the counter claim shall not by itself be treated as an admission of the allegations in the claim statement or in the counter claim, as the case may be.

(4) If the opposite party does not file its defence or does not effectively prosecute its defence or file the papers within the time granted or refuses to obey the peremptory orders of the Fast Track Arbitral Tribunal, such Tribunal may make an *ex parte* award.

10. (1) The Fast Track Arbitral Tribunal shall make an award within six months from the date of its constitution or within such extended period specified in sub-paragraphs (2) to (4).

(2) The parties may, by consent, extend the period specified under sub-paragraph (1), by a further period not exceeding three months.

(3) If the award is not made within the period specified under sub-paragraph (1) or the period agreed to by the parties under sub-paragraph (2), the arbitration proceeding shall, subject to the provisions of sub-paragraph (4), stand suspended until an application for extension of time is made to the High Court by any party to the Fast

Track Arbitration or where none of the parties makes an application as aforesaid, until such an application is made by the Fast Track Arbitral Tribunal.

(4) The provisions of sub-sections (4) to (8) of section 29A shall, so far as may be, apply for disposal of the application referred to in sub-paragraph (3), till the award is made.

11. The Fast Track Arbitral Tribunal shall make an award and give reasons therefor keeping in mind the time limit referred to in paragraph 10 unless it is agreed between the parties that no reasons need be given or the award is based on settlement of disputes.”.

44. (1) The provisions of the principal Act, as amended by this Act, shall, subject to the provisions of sub-sections (2) to (19), be prospective in operation and shall not, in particular, apply to—

(i) any application made under sub-section (1) of section 8 of the principal Act by a party to the arbitration agreement before a judicial authority, or any appointment made by the judicial authority under that section, before the commencement of this Act; or

(ii) any request made under section 11 of the principal Act to a party, or the Chief Justice of India or his designate, or the Chief Justice of a High Court or his designate, before the commencement of this Act; or

(iii) any appointment of arbitral tribunal made under section 11 of the principal Act by—

(a) the parties to the arbitration agreement;

(b) a party who is authorised under the arbitration agreement to make such appointment without the consent of the other party or parties to the arbitration agreement; or

(c) the Chief Justice of India or his designate or the Chief Justice of a High Court or his designate, before the commencement of this Act;

(iv) any award passed under the principal Act, before the commencement of this Act.

(2) The provisions of this Act shall, subject to the provisions of sub-sections (3) to (19), apply to the arbitration agreements entered into before the commencement of this Act, where no—

(i) request for appointment of arbitral tribunal; or

(ii) application for appointment of arbitral tribunal; or

(iii) appointment of arbitral tribunal,

has been made under the principal Act, before the commencement of this Act.

(3) The provisions of clause (b) of sub-section (2) of section 2, as inserted in the principal Act by clause (b) of section 4 of this Act, shall apply to the applications made under section 8 of the principal Act before a judicial authority in a legal proceeding, or under section 9 of the principal Act before a Court, which are pending on the commencement of this Act in connection with the arbitrations of the nature specified in sub-section (2) of section 2 of the principal Act.

(4) The provisions of section 2A, as inserted in the principal Act by section 5 of this Act, shall apply to arbitral proceedings under the principal Act, pending before the principal Courts referred to in that section, on the commencement of this Act.

(5) The provisions of section 6 of the principal Act, as amended by section 7 of this Act, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal, on the commencement of this Act.

(6) The provisions of sub-sections (4), (5) and (6) of section 9, as substituted by section 11 of this Act, shall apply to all applications under section 9, pending in the Court on the commencement of this Act.

(7) The provisions of section 17 of the principal Act, as substituted by section 16 of this Act, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal on the commencement of this Act.

(8) The provisions of sub-section (1) of section 20 of the principal Act, as substituted by section 17 of this Act, shall apply to arbitration agreements in relation to which requests for appointment of arbitral tribunal and applications for appointment of arbitral tribunal are pending decision on the commencement of this Act, if the arbitral tribunal has not been appointed on or before such commencement .

(9) The provisions of sub-section (1) of section 23 of the principal Act, as amended by section 18 of this Act, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal on the commencement of this Act, where the claim, defence or rejoinder statements have not been filed before the arbitral tribunal on or before such commencement.

(10) The provisions of sub-section (1) of section 24 of the principal Act, as amended by section 19 of this Act, and sub-section (1A) of section 24 of the principal Act, as inserted by that section, shall apply to arbitral proceedings under the principal Act, pending before an arbitral tribunal on the commencement of this Act, where oral evidence or oral arguments, as the case may be, have not been completed on or before such commencement.

(11) The provisions of section 24A, as inserted in the principal Act by section 20 of this Act, shall apply to the directions made under section 17, the time schedules determined under section 23 or the orders passed under section 24 by the arbitral tribunal, the principal Act before the commencement of this Act, where such directions, time schedules or orders have not been complied with on or before such commencement by the party to whom they were directed or ordered.

(12) The provisions of section 28 of the principal Act, as amended by section 21 of this Act, shall apply to arbitration agreements in relation to which requests for appointment of arbitral tribunal and applications for appointment of arbitral tribunal are pending decision on the commencement of this Act, if the arbitral tribunal has not been appointed on or before such commencement .

(13) The provisions of sub-section (3) of section 29, as inserted in the principal Act by section 22 of this Act, shall apply to arbitral proceedings under the principal Act pending before the arbitral tribunal on the commencement of this Act, if awards have not been passed on or before such commencement.

(14) The provisions of section 29A, as inserted in the principal Act by section 23 of this Act, shall, subject to –

(a) sub-section (3) of section 43A and sub-section (6) of section 43B, as inserted in the principal Act by section 33; and

(b) sub-paragraph (4) of paragraph 10 of the First Schedule, as inserted in the principal Act by section 43,

of this Act, apply to arbitration proceedings commenced on and from the commencement of this Act.

(15) The provisions of –

(i) section 34 of the principal Act, as amended by section 26; and

(ii) section 34A, as inserted in the principal Act by section 27,

of this Act, shall apply to arbitration awards passed before the commencement of this Act which have not become final, and applications seeking leave under sub-section (2)

of section 34A may be filed within a period of three months from the date of such commencement in the Arbitration Division in respect of pending applications under sub-section (1) of section 34 of the principal Act or in pending appeals in the Supreme Court

(16) The provisions of section 36 of the principal Act, as substituted by section 28 of this Act, shall apply to all awards made under the principal Act pending enforcement on the commencement of this Act.

(17) The provisions of sub-sections (1) and (2) of section 37C, as inserted in the principal Act by section 30 of this Act, shall apply to applications under sub-section (1) of section 34 of the principal Act and appeals under section 37 of the principal Act pending on the commencement of this Act, if no notice has been issued by the Court under sub-section (1) of section 34 or under section 37 of the principal Act before such commencement:

Provided that where the Court in such application or appeal has issued notice, the provisions of sub-section (1) of section 37C of the principal Act shall not apply.

(18) The provisions of section 42 of the principal Act, as substituted by section 31 of this Act, shall apply to subsequent applications which may be filed after the commencement of this Act.

(19) The provisions of sub-section (5) of section 43, as inserted in the principal Act by clause (b) of section 32 of this Act, shall apply to the orders referred to in that sub-section, if such orders are passed on or from the commencement of this Act, in arbitral proceedings under the principal Act, pending before an arbitral tribunal on such commencement.

STATEMENT OF OBJECTS AND REASONS

The general law relating to arbitration is contained in the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the existing Act) The Act, which is based on the UNCITRAL Model Law on International Commercial Arbitration as adopted in 1985 by the United Nations Commission on International Trade Law (UNCITRAL), applies to both international as well as to domestic arbitration.

Ever since the commencement of this Act, requests have been voiced for its amendment. The main problem with the existing Act was that UNCITRAL Model Law which was meant as a Model for International Arbitration was adopted also for domestic arbitration between Indian parties in India. In several countries the laws of arbitration for international and domestic arbitration are governed by different statutes.

2. Some of the major shortcomings in the existing Act are as follows:—

(a) there is no provision for expediting awards or the subsequent proceedings in Courts when applications are filed for setting aside awards;

(b) for challenging an award an aggrieved party has to start again from the District Court;

(c) there is no provision enabling the Indian parties to obtain interim measures from Indian Courts before a foreign arbitration could commence outside India,

(d) the language of sections 20 and 28 is such that multinational company, even if the entire contract had to be implemented in India, could stipulate that foreign law could apply or parties could have a foreign venue—a procedure which is inconsistent with the sovereignty of the laws of our country.

3. The Law Commission of India undertook a comprehensive review of the existing Act and made recommendations in its 176th Report. The Report also contains a draft Arbitration and Conciliation (Amendment) Bill, 2001: The Government, after inviting comments of the State Governments and certain commercial organisations, on the Report and draft Bill has decided to accept almost all the recommendations. In addition some suggestions made in a special seminar organized by the Law Ministry by the leading senior lawyers, jurists and representatives of commercial organisations have also been accepted.

4. Important features of the Bill are as follows:—

(i) to enable the judicial authority to decide jurisdictional issues, subject to strict rules, where an application is made before it by a party raising any jurisdictional question;

(ii) to empower the Courts to make reference to arbitration in case all the parties to a legal proceeding enter into an arbitration agreement to resolve their disputes during the pendency of such proceeding before it;

(iii) to provide for the appointment of arbitrators by the Chief Justice of the Supreme Court or the High Court or his nominees to be an appointment made on the judicial side with a view to prevent writ petitions being filed on the basis that it is an administrative order of the Chief Justice.

(iv) to provide that where the place of arbitration under Part I of the existing Act is in India, whether in regard to arbitration between Indian parties or an international arbitration in India and arbitration between Indian parties Indian law will apply.

(v) to provide for completion of arbitrations under the existing Act to be completed within one year from commencement of arbitration proceedings, but at the end of one year the Court will fix up a time schedule for completion of the proceedings until the award is passed.

(vi) to empower the arbitral tribunal to pass peremptory orders for implementation of interlocutory orders of the arbitral tribunal and in case they are not implemented, to enable the Court to order costs or pass other orders in default.

(vii) to provide for the Arbitration Division in the High Courts, and also for its jurisdiction and special procedure under Chapter IXA for the speedy enforcement of awards made under the Arbitration Act, 1940, the existing Act including awards made outside India;

(viii) to provide provisions for speeding up and completing all arbitrations under the existing Act, including those arbitrations pending under the repealed Arbitration Act, 1940 within a stipulated time.

(ix) to introduce a new Chapter XI relating to single member fast track arbitral tribunal wherein the filing of pleadings and evidence will be on fast track basis and award will have to be pronounced within six months and to specify procedure therefor in a new Schedule.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 19th December, 2003.

ARUN JAITLEY.