

**NOTES ON CLAUSES THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2003 [AS INTRODUCED IN RAJYA SABHA ON 22<sup>ND</sup> DECEMBER 2003]**

*Clause 2* of the Bill seeks to amend the long title of the Arbitration and Conciliation Act, 1996.

*Clause 3* seeks to amend the proviso to sub-section (2) of section 1.

*Clause 4* seeks to amend section 2 to re-define some of the expressions used in the Act. The scope of some of the definitions have been broaden and some new definitions have been added.

*Clause 5* seeks to enable the principal Civil Court of original jurisdiction in a district or the Court of principal judge of the City Civil Court to transfer cases to other Courts of coordinate jurisdiction in the district or the city, so that all cases do not stagnate in the principal Courts.

*Clause 6* seeks to amend section 5 to provide clarification that all other remedies, *i.e.*, remedies under the Code of Civil Procedure, 1908, remedies of internal appeals within the High Court and under any other special law, are barred.

*Clause 7* seeks to amend section 6 to provide that the arbitral tribunal can arrange administrative assistance without consent of parties.

*Clause 8* seeks to amend clause (b) of sub-section (4) of section 7 to provide that, apart from written agreements, other written communications accepted expressly or by implication which also result in an arbitration agreement shall come within the scope of an arbitration agreement.

*Clause 9* seeks to amend section 8 to enable the judicial authority to decide jurisdictional issues subject to strict rules, in case they are raised before filing the first statement and also to enable that authority to stay the action till a decision is given by the Judicial authority on those authorities, provided the strict rules imposed by new sub-sections (4) and (5) are satisfied. The judicial authority will not decide jurisdictional issues if it finds the reasons specified in sub-section (5) for not deciding the issues. Sub-section (6) provides that when the arbitration clause is declared void, *etc.*, the principle that if there is an arbitration clause, no party can file an action in Court unless he first obtains an award, shall not apply.

*Clause 10* seeks to insert a new section 8A to enable to permit reference to arbitration at any stage of a civil suit, whether in appeal in Supreme Court or High Court, if all parties enter into an arbitration agreement to resolve their disputes, after the action is filed.

*Clause 11* seeks to substitute section 9 with a reconstructed section to bring to the forefront the larger and more general part of the powers which are relegated towards the end and shift the specified interim measures lower down. It also provides to further enlarge the categories of interim measures specified in the substituted section.

*Clause 12* seeks to amend section 11 to provide that after the time limit specified in the sub-section (4), if no reply is sent, the privilege under the agreement to appoint arbitrators gets extinguished (this is to resolve conflicting judgments in High Court and to adopt the principle laid down by the Supreme Court). Secondly, it provides that the appointment of arbitral tribunal by the Supreme Court and the High Court will be on the judicial side and not on the administrative side as decided by the Supreme Court.

*Clause 13* seeks to amend section 12 requiring the arbitrator to disclose 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.

*Clause 14* seeks to amend section 14 to provide that where the mandate of the arbitrator is terminated, the Court may decide the quantum of fee payable to him.

*Clause 15* seeks to amend section 15 to fix a time limit of thirty days for appointing a substitute arbitrator and also provides that when the mandate of the arbitrator is terminated, the Court may decide the quantum of fee payable to him.

*Clause 16* seeks to substitute section 17 to provide that powers of the arbitral tribunal to issue interim measures and to increase the types of interim measures as contained in the English Arbitration Act that may be issued by the arbitral tribunal.

*Clause 17* seeks to substitute section 20 to bring out the real purport of the section, namely, that the place of arbitration under Part I is in India, whether in regard to arbitration in India between Indian parties or where it is an international arbitration in India. It is intended to prevent Indian subsidiaries incorporated by foreign companies from stipulating a venue of arbitration outside India.

*Clause 18* seeks to amend section 23 to provide that the time for filing statements of claim or defence will be as per the order of the arbitrators and will no longer be based on agreement of the parties and also to empower the High Court to make rules to expedite the arbitral process.

*Clause 19* seeks to amend section 24 to provide for the manner in which the hearings and written proceedings are to be conducted before the arbitral tribunal, with out any scope for parties to agree in a manner different from the one fixed by the arbitral tribunal. Sub-sections (1B) and (1C) provide for the arbitral to tribunal control the time schedule of hearing and the time schedule fixed by the arbitral tribunal shall be binding on the parties. The arbitral tribunal can also receive affidavits in lieu of oral evidence subject to the arbitral tribunal's right to call the witnesses for oral examination.

*Clause 20* seeks to insert two new sections 24A and 24B. Section 24A empowers 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. Section 24B enables the parties or the arbitral tribunal to approach the Court for implementation of the orders of the arbitral tribunal.

*Clause 21* seeks to amend section 28 to provide that in the case of an arbitration other than international arbitration under Part I in India, the dispute is to be decided in accordance with the substantive law in force in India.

*Clause 22* seeks to amend section 29 to provide that where there is no majority, the award shall be the one prepared by the presiding arbitrator of the arbitral tribunal and that the minority decision, if made available in thirty days, is appended to the award so that the Court when it considers the validity of the award, it may have an idea about the reasons for the dissent.

*Clause 23* seeks to insert new section 29A to provide for the pronouncement of the award within one year after the commencement of the arbitral proceedings unless the time is extended in accordance with the provisions of sub-sections (2) to (5). In order to avoid stay of arbitral proceedings by the Court pending decision on applications for extension filed in the Court, it is provided that at the end of one year from the date of commencement of arbitration proceedings, the proceedings shall stop but would get automatically revived if an application is filed in the Court by any party or by the arbitral tribunal, for extension of time. Further, the Court will then fix up a time schedule for completion of the proceedings until the award is passed. The Court can impose costs to prevent delays before the arbitral tribunal. While fixing time schedule to the arbitrators, the Court will bear in mind certain conditions specified in the section.

*Clause 24* seeks to amend section 31 to empower the arbitral tribunal to specify such rate of interest, which a sum directed to be paid by the arbitral award shall carry, from the date of award to the date of payment, as it may deem reasonable.

*Clause 25* seeks to insert a new section to provide that a photo copy of every award together with original records of arbitration proceedings to be sent to the Court for purposes of record and a register containing the specified particulars will be maintained by the Court. The new section also provides that parties can obtain copies of award or the arbitral records.

*Clause 26* seeks to amend section 34 to provide that the party which does not have the original order, can file a photocopy of the award along with his application to set aside the award and that in all arbitrations in India whether international or not, the award can be set aside on an additional ground, *i.e.*, if the award does not contain reasons as required by sub-section (3) of section 31. It is provided to fix time limit for the arbitral tribunal to pass orders in case of remittal to it, as to the manner in which the Court should thereafter deal with the award and the procedure on remittal to arbitral tribunal. Further, in order to clarify that 'public policy' does not have the extended meaning as in the recent case of *ONGC vs. Saw Pipes: 2003 (5) SCC 705* decided by the Supreme Court for purposes of Parts I and Part II and to remove doubts, an Explanation to the words 'contrary to public policy' in sections 34, 48(2)(b) and 57(1)(e) is provided to mean contrary to (i) fundamental policy of India or (ii) interests of India or (iii) justice or morality, thus retaining the meaning given by the Supreme Court in the *Renusagar* case both for purposes of Parts I and Part II.

*Clause 27* seeks to insert a new section 34A to provide that where the award is not an international award in India, the parties can challenge the award on the additional ground that there is an error which is apparent on the face of the award giving rise to a substantial question of law. However, in order to prevent abuse of this right, it is provided that a separate application for raising the ground must be independently accepted by the Court (Arbitration Division) and that the right is subject to further stringent conditions set out in clauses (a), (b) and (c) of sub-section (2).

*Clause 28* seeks to substitute a new section for section 36 to provide that the award will be enforceable after the period fixed for filing applications under section 34 has expired, unless the Court stays its enforcement and the Court is being vested with powers to refuse stay or grant stay subject to conditions. While granting stay, the Court can impose conditions, keeping the scope of interference in applications under sub-section (1) of section 34 in mind. The manner of imposing conditions and interim measures are also specified.

*Clause 29* seeks to amend section 37 to provide that all applications under section 34 are to be filed in the High Court to be dealt with by the Arbitration Division irrespective of pecuniary value and also in the disposal of interlocutory appeals, the appellate Court shall, so far as may be, follow the special procedure contained in sections 37C to 37F.

*Clause 30* seeks to insert new sections 37A to 37F under a new Chapter IXA to provide that every High Court shall as soon as may be after the commencement of the Arbitration and Conciliation (Amendment) Act, 2003, constitute an Arbitration Division in the High Court to deal, irrespective of pecuniary value, with matters, (a) applications under sub-section (1) of section 34 to set aside awards under the principal Act, new and pending, (b) appeals to set aside awards under the Arbitration Act, 1940, new and pending, (c) enforcement of awards under the principal Act, new and pending and (d) execution of awards under the Arbitration Act, 1940, new and pending, so that the present procedure at two levels, one in the subordinate Courts (or original side of High Court) and another by way of appeal to or in the High Court is avoided. For all these classes of cases, time limits have also been provided. Section 37A is to deal with future matters and section 37B to deal with pending matters. Section 37C is similar to Order 41, Rule 11 of the Code of Civil Procedure, 1908 and permits dismissal of fresh applications under section 34 and fresh appeals under the Arbitration Act, 1940, if no *prima facie* case made out. Section 37D prescribes the time limits of one year or six months for main matters or six months depending upon the stage of the matter from the date of commencement of the Arbitration and Conciliation (Amendment) Act, 2003 and section 37E prescribes the time limits for filing papers books, written submissions and oral submissions. Section 37F requires case management procedures to be followed before a Single Judge for fixing time schedules in the Arbitration Division.

*Clause 31* seeks to substitute new sections 42, 42A and 42B for section 42. Substituted section 42 provides as to where subsequent applications have to be filed, that is to say, if a reference to arbitration is made by the Supreme Court or the High Court in a pending matter under section 8A, all subsequent applications shall respectively be made in those Courts only. Section 42A enables the Chief Justice of India to prepare a scheme, empanelling retired Judges or experts in various branches as arbitrators subject to such conditions as may be specified by the Chief Justice of India. Section 42B seeks to nullify the effect of, or remove the disability carried by, any amendment made in section 69 of the Indian Partnership Act, 1932, excluding arbitration.

*Clause 32* seeks to amend section 43 by deletion of sub-section (3) in view of the fact that time barred clauses have already become void on account of the amendment of section 28 of the Indian Contract Act, 1832 by the Indian Contract (Amendment) Act, 1996. Further, new sub-section (5) provides for the exclusion of the period covered by various other proceedings enumerated in clauses (a), (b) and (c).

*Clause 33* seeks to insert new sections 43A to 43F to provide speeding up arbitration proceedings on Fast Track Arbitration. New section 43A provides that if arbitration proceedings under the Arbitration and Conciliation Act, 1996 pending before the tribunal, they have to be completed within six months and in other cases, within one year, from the date of commencement of the Arbitration and Conciliation (Amendment) Act, 2003. Otherwise, the provisions under the new section 29A will apply and the Court will monitor the arbitral proceedings till award is passed. Likewise, under proposed section 43B, if arbitration proceedings under the Arbitration Act, 1940 are pending on the commencement of the Arbitration and Conciliation (Amendment) Act, 2003 before the arbitrators, they have to be completed within six months from the date of such commencement, otherwise the procedure as laid down in section 29A will apply. Sections 43C to 43F to deal with fast track arbitration (the procedure therefor is contained in the substituted new First Schedule) providing for 'fast track' arbitration where both parties agree for such fast track arbitration. Notwithstanding the agreement for multiplicity of arbitrators, the arbitration will be by a sole arbitrator. The periods specified in various sections for the purpose of taking various steps in the arbitration proceedings are to be cut down as provided in section 43D. Section 43E provides that all subsequent applications in fast-track arbitration will have to be filed in the High Court and will be allocated to the Arbitration Division. Section 43F seeks to define the 'High Court' for purposes of Chapter XI.

*Clause 34* seeks to amend section 44 to re-number the First, Second and Third Schedules as Second, Third and Fourth Schedules.

*Clause 35* seeks to amend section 47 by modifying the existing Explanation to provide that 'Court' means the 'Arbitration Division', so that applications for enforcement of foreign awards both under Chapter I and Chapter II of Part II can be filed in the High Court and allocated to the Arbitration Division for enforcement.

*Clause 36* seeks to amend section 50 to provide that an appeal shall lie to the Arbitration Division, rather than to a Court at the district level or to the original side of the High Court.

*Clause 37* seeks to amend section 53 to relocate the existing Schedules.

*Clause 38* seeks to amend section 56 by inserting an Explanation on a similar line as in clause 35 above.

*Clause 39* seeks to amend section 59 on the lines of clause 36 above.

*Clause 40* seeks to insert new sections 60A and 60B. Section 60A seeks to provide that fresh application for enforcement of foreign awards under Part II of the Arbitration and Conciliation Act, 1996 (New York and Geneva Conventions) may be filed in the Arbitration Division. Further, provision is made for transfer of pending applications and also appeals in relation to enforcement of foreign awards, to be dealt with by the Arbitration Division. Section 60B prescribes time limits for disposal of these applications for enforcement of foreign awards, whether the matters are fresh or pending.

*Clause 41* seeks to amend section 82 to enumerate in detail some matters on which the High Court may make rules.

*Clause 42* seeks to amend section 84 to enumerate the matters on which the Central Government may make rules.

*Clause 43* seeks to relocate the existing Schedules after insertion of a new First Schedule which deal with Fast Track Arbitrations.

*Clause 44* seeks to provide transitory provision providing that the amendments will be prospective in operation except to the extent referred to in sub-sections (1) to (19).

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new sub-section (15) in section 11 empowering the Central Government, after consultation with the Chief Justice of India, to prescribe 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. Clause 25 of the Bill seeks to insert a new section 33A with a view to providing for filing of a photocopy of the arbitral award together with original arbitral records in the Court and the Central Government is being empowered to prescribe other particulars the register may contain.

2. The aforesaid matters in respect of which rules may be made by the Central Government are matters of detail and it is not practicable to provide for all the matters in the Bill itself. Delegation of legislative power is, therefore, of a normal character.

## ANNEXURE

### EXTRACT FROM THE ARBITRATION AND CONCILIATION ACT, 1996 (26 OF 1996)

\* \* \* \* \*

An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

#### PRELIMINARY

**1.(1)** \* \* \* \* \*

(2) It extends to the whole of India:

Provided that parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

*Explanation.*—In this sub-section, the expression “international commercial conciliation” shall have the same meaning as the expression “international commercial arbitration” in clause (f) of sub-section (1) of section 2, subject to the modification that for the word “arbitration” occurring therein, the word “conciliation” shall be substituted.

#### PART I

#### ARBITRATION

#### CHAPTER I

#### *General provisions*

**2. (1)** In this Part, unless the context otherwise requires,—

\* \* \* \* \*

(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(f) “international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

\* \* \* \* \*

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

**5.** Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

**6.** In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

#### CHAPTER II

#### *Arbitration agreement*

**7. (1)** \* \* \* \* \*

(4) An arbitration agreement is in writing if it is contained in—

**8.** (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

\* \* \* \* \*

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

**9.** A party may, before, or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

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

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

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

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

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

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

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

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

\* \* \* \* \*

**11.** (1) \* \* \* \* \*

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to—

(a) any qualifications required of the arbitrator by the agreement of the parties and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

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

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices 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 competent to decide on the request.

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

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

**12.** (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

\* \* \* \* \*

**15..** (1) \* \* \* \* \*

(2) Where the mandate of an artibrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

\* \* \* \* \*

**17..** (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

\* \* \* \* \*

**20.** (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing winners, experts or the parties, or for inspection of documents, goods or other property.

\* \* \* \* \*

**23.** (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

\* \* \* \* \*

**24.** (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials;

\* \* \* \* \*

**29.** (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

\* \* \* \* \*

**31.** (1) \* \* \* \* \*

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

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## CHAPTER VII

### *Recourse against arbitral award*

**34.** (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

\* \* \* \* \*

**36.** Where the time for making an application to set aside the arbitral award under award shall be endorsed under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.

## CHAPTER IX

### *Appeals*

**37.** (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

\* \* \* \* \*

(b) setting aside or refusing to set aside an arbitral award under section 34.

\* \* \* \* \*

**42.** 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 has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

**43.** (1) The Limitation Act, 1963, shall, apply to arbitrations as it applies to proceedings in court.

\* \* \* \* \*

(3) Where an arbitration agreement to submit further disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

\* \* \* \* \*

PART II  
ENFORCEMENT OF CERTAIN FOREIGN AWARDS

CHAPTER I  
*New York Convention Awards*

**44.** In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

\* \* \* \* \*

**47.** (1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

*Explanation.*—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

\* \* \* \* \*

**50.** (1) An appeal shall lie from the order refusing to—

\* \* \* \* \*

CHAPTER II

*Geneva Convention Awards*

**53.** \* \* \* \* \*

(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

\* \* \* \* \*

**56.** (1) The party applying for the enforcement of a foreign award shall, at the time of application procedure before the Court—

(a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (c) of sub-section (1) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

*Explanation.*—In this section and all the following sections of this Chapter, “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

\* \* \* \* \*

**59.** (1) An appeal shall lie from the order refusing—

\* \* \* \* \*

THE FIRST SCHEDULE  
(See section 44)

CONTENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE 1

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, and State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial undertaking national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertaking to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

### *ARTICLE III*

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

### *ARTICLE IV*

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) the duly authenticated original award or a duly certified copy thereof:

(b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

### *ARTICLE V*

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

(a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

(a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) the recognition or enforcement of the award would be contrary to the public policy of that country.

#### *ARTICLE VI*

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

#### *ARTICLE VII*

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

#### *ARTICLE VIII*

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

#### *ARTICLE IX*

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### *ARTICLE X*

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification,

or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

#### *ARTICLE XI*

In the case of a federal or non-unitary State, the following provisions shall apply:—

(a) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

#### *ARTICLE XII*

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

#### *ARTICLE XIII*

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

#### *ARTICLE XIV*

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

#### *ARTICLE XV*

The Secretary General of the United Nations shall notify the States contemplated in article VIII of the following:—

(a) signatures and ratifications in accordance with article VIII;

- (b) accessions in accordance with article IX;
- (c) declarations and notifications under articles I, X and XI;
- (d) the date upon which this Convention enters into force in accordance with article XII;
- (e) denunciations and notifications in accordance with article XIII.

#### ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary General of the United Nations shall transmit a certified copy of this Convention to the State contemplated in article XIII.

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#### THE SECOND SCHEDULE (See section 53)

##### PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to endure the execution by its authorities and in accordance with the provisions of its national law of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article I applies and including an Arbitration Agreement whether referring to present or further differences with is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories; that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect on month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

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THE THIRD SCHEDULE  
(See sections 53)

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating the existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on arbitration Clauses opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

(2) To obtain such recognition or enforcement, it shall, further, be necessary:—

(a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article I hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:—

(a) that the award has been annulled in the country in which it was made;

(b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.—If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1(a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular:—

(1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;

(3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, Paragraph (1) and paragraph (2) (a) and (c), have been fulfilled.

A translation of the award and of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and Non-member States on whose behalf the Protocol of 1923 on Arbitration Clauses, shall be ratified.

Ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or Non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to the

in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail , *ipso facto*, the denunciation of the present Convention.

Article 10.— The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the colonies, protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations of every Member of the League of Nations and to every Non-Member State which sign the same.