

## **CHAPTER VII OF THE ARBITRATION AND CONCILIATION ACT, 1996: ESTABLISHING FINALITY OF AN AWARD BY PROVIDING INADEQUATE RECOURSE FOR SETTING ASIDE?**

*Written by Chintan Bhardwaj*

*5th Year BA LLB Student, O.P Jindal Global University, Haryana*

---

### **INTRODUCTION**

Immediately after Chapter VII of the Arbitration and Conciliation Act, that provides for a recourse against an arbitral award, is Chapter VIII which is titled, 'Finality and Enforcement of Arbitral Award'. It is well-known information that one of the major reasons for India to buckle up on its existing Arbitration mechanism in the 1990s was to provide for a more citizen-friendly discourse in solving disputes; not only for speedy justice but also for trying to reduce the enormous backlog of cases in the Indian courts. The 1990s saw rapid globalization and industrialization, especially by India due to changes in its foreign policies, and therefore growth of the country as a whole required its justice system to be strong and reliable.

For the abovementioned reasons, alternate dispute resolution methods have since then been encouraged. So much so, that its preference over traditional judicial discourse is evident. This statement can be backed by various sections of the Arbitration and Conciliation Act, in particular Section 34. This section seeks to establish the extent of judicial intervention in arbitral awards—and lists down criteria on when they can be set aside by said intervention. On the face of it, this extent granted to the judicial authorities seems limited.<sup>i</sup> The reason stands clear; the entire process of an arbitration would be redundant if the ultimate decision-making power stood with the court, and the aggrieved would end up in a lengthy judicial process even after going through with an 'alternate' dispute resolution method. However, in trying to

supersede arbitral awards as all-encompassing with little scope of appeal—how effective would this method be if it is unable to remedy a person approaching it?

## **SECTION 34 UNDER THE ACA**

This section lays down exhaustive guidelines on when an arbitral award can be set aside by a court. Subsection 2(a) deals with situations wherein the arbitration proceedings or the arbitration agreement itself somehow stand faulty; for example, if the composition of the tribunal was in contravention to any of the procedural guidelines given under Chapter III or if the agreement was made in a circumstance where one of the parties was prejudiced against. However, Subsection 2(b) is concerned with the award in itself is faulty, in a way that the tribunal committed error in its findings. In this case, the only recourse for the aggrieved party to appeal against the award was if it stands in contravention to the public policy of India. Prior to the 2016 amendment, there existed no substantial standards for the application of this phrase with room for wide interpretation by the courts. This scope, however, was narrowed by the addition of an explanation under this subsection, listing three situations where such a contravention could arise—once again, exhaustive.<sup>ii</sup> These included the presence of fraud or corruption in making of the award, being contrary to the fundamental policy of Indian law and also with the very ideals of morality and justice. Interestingly, another addition as Subsection (2-A) was also inserted, with a proviso that barred any intervention in the case that the tribunal had applied the law erroneously.

## **FINALITY GIVEN PRECEDENCE OVER A FAIR TRIAL: GOOD LAW?**

On an examination of the existing case laws concerning judicial intervention, it is safe to state that the courts have generally been in favour of it.<sup>iii</sup> Taking in context the case of *Bhatia International v Bulk Trading*<sup>iv</sup>, that essentially extended the powers of the court to grant interim relief to any arbitration proceedings seated outside India, though successfully created a reliable mechanism for the Indian nationals to resort to, was overruled by the 2012 judgment of *Bharat Aluminium Co vs Kaiser Aluminium Technical Service, Inc*<sup>v</sup>. due to the backlash faced by its previous counterpart. Another such case wherein the courts tried to widen their powers

concerned with arbitration which faced subsequent adverse comments was *O.N.G.C. v Saw Pipes*<sup>vi</sup>; that established an additional ground as a contravention to public policy, namely, a patent illegality which led to the legislative addition of it in the Act. Therefore, in such a situation the courts would be open to intervention. However, this decision was seen as a power move on the Court's authority as an adjudicator—and as a means to dilute the efforts of the Government to establish arbitration as an independent means of dispute resolution. This stance can be contrasted though<sup>vii</sup>, with the simple explanation as given by the Court itself in its judgment, “What is for public good or in public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest.”<sup>viii</sup> In addition to this, the Court also stated how judicial intervention should be allowed in cases where the award is “so unfair and unreasonable that it shocks the conscience of the Court.” This suggestion, however, was left out of the legislative amendment; perhaps not wanting to delve into the possibilities of interpretation of the phrase ‘conscience of the Court’ and thereby widening its scope.

In defence of this judgment, and judicial intervention in general, there stands the reasonable argument of error of judgment. The appeal mechanism that exists in courts, is the sole proprietor of this. Judges are bound to make mistakes—so how then can the legislature assume that the arbitral tribunal may not? With the rise of the kind of disputes that can be called ‘arbitrable’, and with judgments continuing to grant arbitrability of matters other than commercial ones, it is highly necessary for such a recourse to exist wherein even on a misapplication of law the award can be set aside. Furthermore, another consequence of the 2016 amendment being the granting of enforceability to an award even after an application to set it aside only goes to solidify the position of the arbitral award—even in a case it stands bad in law.

## CONCLUSION

There exists a clear struggle of the Legislature to create a balance in granting judicial intervention for the purpose of redressal of grievances pertaining to arbitral awards and of creating an alternate dispute resolution mechanism that is wholly independent and reliable with no necessary requirements of intervention by anyone. However, here then arises the need to

examine the weight of both and subsequently giving priority to one over the other. One must think in this way—who does the system serve? The ideal answer must be the people and their rights. If by some occurrence, a right of a person is surpassed by the finality of an arbitral award, how then can arbitration as a method of dispute resolution be rendered effective? Therefore, it holds good for the Court to have certain powers in such a case, thereby upholding the interest of the individual above the interest of the mechanism itself.

## ENDNOTES

- 
- <sup>i</sup> Singh A, *Law of Arbitration and Conciliation* (Eastern Book Co 2009)  
<sup>ii</sup> LCR No. 246: Amendments to the Arbitration and Conciliation Act 1996 [2014]  
<sup>iii</sup> Banerji, G. (2009). Judicial Intervention in Arbitral Awards: A Practitioner's Thoughts. *National Law School of India Review*, 21(2), 39-53. Retrieved from <http://www.jstor.org/stable/44283802>  
<sup>iv</sup> Bhatia International v. Bulk Trading SA., (2002) 4 SCC 105  
<sup>v</sup> *Bharat Aluminium Co vs Kaiser Aluminium Technical Service, Inc* (2012) 9 SCC 552  
<sup>vi</sup> *O.N.G.C. v Saw Pipes* (2003) 5 SCC 705  
<sup>vii</sup> V.K. Gupta, In Defence of O.N.G.C. v. Saw Pipes Ltd. 1 ARBITRATION LAW REPORTS (Journal) 28 (2004)  
<sup>viii</sup> *O.N.G.C. v Saw Pipes* (2003) 5 SCC 705