

**Bill No. 252 of 2015.**

THE ARBITRATION AND CONCILIATION (AMENDMENT)  
BILL, 2015

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BILL

*to amend the Arbitration and Conciliation Act, 1996.*

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

**1.** (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 23rd October, 2015.

Short title  
and  
commence-  
ment.

26 of 1996.

**2.** In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 2,—

Amendment  
of section 2.

(1) in sub-section (1),—

(A) for clause (e), the following clause shall be substituted, namely:—

‘(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original

jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes; 5

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;’; 10

(B) in clause (f), in sub-clause (iii), the words “a company or” shall be omitted;

(II) in sub-section (2), the following proviso shall be inserted, namely:— 15

“Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.”. 20

Amendment  
of section 7.

3. In section 7 of the principal Act, in sub-section (4), in clause (b), after the words “or other means of telecommunication”, the words “including communication through electronic means” shall be inserted.

Amendment  
of section 8.

4. In section 8 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:— 25

“(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.”; 30

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.”. 35 40

Amendment  
of section 9.

5. Section 9 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) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine. 45

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”. 50

6. In section 11 of the principal Act,—

(i) in sub-sections (4), (5) and (6), for the words “the Chief Justice or any person or institution designated by him” wherever they occur, the words “the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court” shall be substituted;

(ii) after sub-section (6), the following sub-sections shall be inserted, namely:—

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

“(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.”;

(iii) in sub-section (7), for the words “the Chief Justice or the person or institution designated by him is final”, the words “the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision” shall be substituted;

(iv) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

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

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

(v) in sub-section (9), for the words “the Chief Justice of India or the person or institution designated by him”, the words “the Supreme Court or the person or institution designated by that Court” shall be substituted;

(vi) for sub-section (10), the following sub-section shall be substituted, namely:—

“(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.”;

(vii) in sub-section (11), for the words “the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made”, the words “different High Courts or their designates, the High Court or its designate to whom the request has been first made” shall be substituted;

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

“(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”; and

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

(ix) after sub-section (12), the following sub-sections shall be inserted, namely:—

“(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. 15

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

*Explanation.*—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.”. 20

7. After section 11 of the principal Act, the following new section shall be inserted, namely:— 25

“11A. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.”. 30 35

8. In section 12 of the principal Act,—

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

“(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,— 40

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and 45

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Insertion of new section 11A.

Power of Central Government to amend Fourth Schedule.

Amendment of section 12.

*Explanation 1.*—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

5 *Explanation 2.*—The disclosure shall be made by such person in the form specified in the Sixth Schedule.”;

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

10 “(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing:

15 Provided further that this sub-section shall not apply to cases where an arbitrator has already been appointed on or before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.”.

9. In section 14 of the principal Act, in sub-section (1), in the opening portion, for the words “The mandate of an arbitrator shall terminate if”, the words “The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if” shall be 20 substituted.

Amendment of section 14.

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

Substitution of new section for section 17.

25 “17. (1) A party may, during the 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 the arbitral tribunal—

Interim measures ordered by arbitral tribunal.

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

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

30 (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;

35 (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;

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

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

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

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.”.

5 of 1908.

Amendment  
of section 23.

**11.** In section 23 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

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“(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.”.

Amendment  
of section 24.

**12.** In section 24 of the principal Act, after the proviso to sub-section (1), the following proviso shall be inserted, namely:—

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“Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.”.

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Amendment  
of section 25.

**13.** In section 25 of the principal Act, in clause (b), at the end, after the words “allegations by the claimant”, the words “and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited” shall be inserted.

Amendment  
of section 28.

**14.** In section 28 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

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“(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”.

Insertion of  
new sections  
29A and 29B.

**15.** After section 29 of the principal Act, the following new sections shall be inserted, namely:—

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Time limit for  
arbitral award.

“29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

*Explanation.*—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

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(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

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

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

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Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

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(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

29B. (1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

Fast track procedure.

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;

(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;

(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.”

**16.** In section 31 of the principal Act,—

(i) 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, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Amendment of section 31.

*Explanation.*—The expression “current rate of interest” shall have the same meaning

(ii) for sub-section (8), the following sub-section shall be substituted, namely:—

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

Insertion of  
new section  
31A.

Regime for  
costs.

17. After section 31 of the principal Act, the following new section shall be inserted,  
namely:—

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‘31A. (1) In relation to any arbitration proceeding or a proceeding under any of  
the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal,  
notwithstanding anything contained in the Code of Civil Procedure, 1908, shall have  
the discretion to determine—

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(a) whether costs are payable by one party to another;

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(b) the amount of such costs; and

(c) when such costs are to be paid.

*Explanation.*—For the purpose of this sub-section, “costs” means reasonable  
costs relating to—

(i) the fees and expenses of the arbitrators, Courts and witnesses;

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(ii) legal fees and expenses;

(iii) any administration fees of the institution supervising the  
arbitration; and

(iv) any other expenses incurred in connection with the arbitral or Court  
proceedings and the arbitral award.

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(2) If the Court or arbitral tribunal decides to make an order as to payment of  
costs,—

(a) the general rule is that the unsuccessful party shall be ordered to pay  
the costs of the successful party; or

(b) the Court or arbitral tribunal may make a different order for reasons to  
be recorded in writing.

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(3) In determining the costs, the Court or arbitral tribunal shall have regard to all  
the circumstances, including—

(a) the conduct of all the parties;

(b) whether a party has succeeded partly in the case;

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(c) whether the party had made a frivolous counterclaim leading to delay  
in the disposal of the arbitral proceedings; and

(d) whether any reasonable offer to settle the dispute is made by a party  
and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including  
the order that a party shall pay—

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(a) a proportion of another party’s costs;

(b) a stated amount in respect of another party’s costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

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(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.’

**18.** In section 34 of the principal Act,—

Amendment of  
section 34.

(I) in sub-section (2), in clause (b), for the *Explanation*, the following *Explanations* shall be substituted, namely:—

“*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

*Explanation 2.*—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”;

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

“(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.”;

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

“(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”.

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

Substitution  
of new  
section for  
section 36.

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

Enforce-  
ment.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”

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Amendment of section 37. **20.** In section 37 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

- “(a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.”.

Amendment of section 47. **21.** In section 47 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

*‘Explanation.—*In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award 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.’.

Amendment of section 48. **22.** In section 48 of the principal Act, for the *Explanation* to sub-section (2), the following *Explanations* shall be substituted, namely:—

*“Explanation 1.—*For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

*Explanation 2.—*For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

Amendment of section 56. **23.** In section 56 of the principal Act, for the *Explanation*, the following *Explanation* shall be substituted, namely:—

*‘Explanation.—*In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award 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.’.

Amendment of section 57. **24.** In section 57 of the principal Act, in sub-section (1), for the *Explanation*, the following *Explanations* shall be substituted, namely:—

*“Explanation 1.—*For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

*Explanation 2.*—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

25. After the Third Schedule to the principal Act, the following new Schedules shall  
5 be inserted, namely:—

Insertion of  
new Fourth  
Schedule, Fifth  
Schedule,  
Sixth Schedule  
and Seventh  
Schedule.

#### ‘THE FOURTH SCHEDULE

[See section 11 (14)]

	Sum in dispute	Model fee
	Up to Rs. 5,00,000	Rs. 45,000
10	Above Rs. 5,00,000 and up to Rs. 20,00,000	Rs. 45,000 plus 3.5 per cent. of the claim amount over and above Rs. 5,00,000
	Above Rs. 20,00,000 and up to Rs. 1,00,00,000	Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000
15	Above Rs. 1,00,00,000 and up to Rs. 10,00,00,000	Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000
	Above Rs. 10,00,00,000 and up to Rs. 20,00,00,000	Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000
20	Above Rs. 20,00,00,000	Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000

**Note:**— In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent. on the fee payable as per the table set out above.

#### THE FIFTH SCHEDULE

25 [See section 12 (1)(b)]

The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators:

##### **Arbitrator’s relationship with the parties or counsel**

30 1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.

2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

35 4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

40 6. The arbitrator’s law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom. 5

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration. 10

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom. 15

**Relationship of the arbitrator to the dispute**

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.

16. The arbitrator has previous involvement in the case. 20

**Arbitrator's direct or indirect interest in the dispute**

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute. 25

19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

**Previous services for one of the parties or other involvement in the case**

20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship. 30

21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter. 35

22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.

23. The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator. 40

24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

**Relationship between an arbitrator and another arbitrator or counsel**

25. The arbitrator and another arbitrator are lawyers in the same law firm.

26. The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.

5 27. A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.

28. A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

10 29. The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.

**Relationship between arbitrator and party and others involved in the arbitration**

30. The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.

15 31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

**Other circumstances**

20 32. The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.

33. The arbitrator holds a position in an arbitration institution with appointing authority over the dispute.

25 34. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

*Explanation 1.*—The term “close family member” refers to a spouse, sibling, child, parent or life partner.

*Explanation 2.*—The term “affiliate” encompasses all companies in one group of companies including the parent company.

30 *Explanation 3.*—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.

35 THE SIXTH SCHEDULE  
[See section 12 (1)(b)]

NAME:

CONTACT DETAILS:

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS):

40 NUMBER OF ONGOING ARBITRATIONS:

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR  
45 INDEPENDENCE OR IMPARTIALITY (LIST OUT):

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWENTY-FOUR MONTHS AND RENDER AN AWARD WITHIN THREE MONTHS (LIST OUT):

THE SEVENTH SCHEDULE

5

[See section 12 (5)]

**Arbitrator's relationship with the parties or counsel**

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties. 10
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties. 15
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself. 20
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom. 25
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration. 30
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom. 35

**Relationship of the arbitrator to the dispute**

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case. 40

**Arbitrator's direct or indirect interest in the dispute**

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute. 45

19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

5 *Explanation 1.*—The term “close family member” refers to a spouse, sibling, child, parent or life partner.

*Explanation 2.*—The term “affiliate” encompasses all companies in one group of companies including the parent company.

10 *Explanation 3.*—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.’.

Ord. 9 of 2015. **26.** (1) The Arbitration and Conciliation (Amendment) Ordinance, 2015, is hereby repealed.

Repeal and savings.

15 (2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

## 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 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 to domestic arbitration.

2. The Act was enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. With the passage of time, some difficulties in the applicability of the Act have been noticed. Interpretation of the provisions of the Act by courts in some cases have resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, which tend to defeat the object of the Act. With a view to overcome the difficulties, the matter was referred to the Law Commission of India, which examined the issue in detail and submitted its 176th Report. On the basis of the said report, the Arbitration and Conciliation (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 22nd December, 2003. The said Bill was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and Report. The said Committee, submitted its Report to the Parliament on 4th August, 2005, wherein the Committee recommended that since many provisions of the said Bill were contentious, the Bill may be withdrawn and a fresh legislation may be brought after considering its recommendations. Accordingly, the said Bill was withdrawn from the Rajya Sabha.

3. On a reference made again in pursuance of the above, the Law Commission examined and submitted its 246th Report on “Amendments to the Arbitration and Conciliation Act, 1996” in August, 2014 and recommended various amendments in the Act. The proposed amendments to the Act would facilitate and encourage Alternative Dispute Mechanism, especially arbitration, for settlement of disputes in a more user-friendly, cost effective and expeditious disposal of cases since India is committed to improve its legal framework to obviate in disposal of cases.

4. As India has been ranked at 178 out of 189 nations in the world in contract enforcement, it is high time that urgent steps are taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage investment and economic activity.

5. As Parliament was not in session and immediate steps were required to be taken to make necessary amendments to the Arbitration and Conciliation Act, 1996 to attract foreign investment by projecting India as an investor friendly country having a sound legal framework, the President was pleased to promulgate the Arbitration and Conciliation (Amendment) Ordinance, 2015.

6. It is proposed to introduce the Arbitration and Conciliation (Amendment) Bill, 2015, to replace the Arbitration and Conciliation (Amendment) Ordinance, 2015, which *inter alia*, provides for the following, namely:—

(i) to amend the definition of “Court” to provide that in the case of international commercial arbitrations, the Court should be the High Court;

(ii) to ensure that an Indian Court can exercise jurisdiction to grant interim measures, etc., even where the seat of the arbitration is outside India;

(iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days;

(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a *prima facie* arbitration agreement and not other issues;

(v) to provide that the arbitral tribunal shall make its award within a period of twelve months from the date it enters upon the reference and that the parties may, however, extend such period up to six months, beyond which period any extension can only be granted by the Court, on sufficient cause;

(vi) to provide that a model fee Schedule on the basis of which High Courts may frame rules for the purpose of determination of fees of arbitral tribunal, where a High Court appoints arbitrator in terms of section 11 of the Act;

(vii) to provide that the parties to dispute may at any stage agree in writing that their dispute be resolved through fast track procedure and the award in such cases shall be made within a period of six months;

(viii) to provide for neutrality of arbitrators, when a person is approached in connection with possible appointment as an arbitrator;

(ix) to provide that application to challenge the award is to be disposed of by the Court within one year.

7. The amendments proposed in the Bill will ensure that arbitration process becomes more user-friendly, cost effective and lead to expeditious disposal of cases.

8. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

D. V. SADANANDA GOWDA.

*The 25th November, 2015.*

### Notes on Clauses

*Clause 2* of the Bill seeks to amend section 2 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act) to re-define some of the expressions used in the Act. A proviso below sub-section (2) is inserted to provide that some of the provisions of Part I of the Act shall also apply to International Commercial Arbitration, even if the place of arbitration is outside India.

*Clause 3* of the Bill seeks to amend clause (b) of sub-section (4) of section 7 of the principal Act to expressly provide that arbitration agreement contained in the form of communication through electronic means shall also be treated as arbitration agreement in writing.

*Clause 4* of the Bill seeks to amend section 8 of the principal Act to specify that the judicial authority shall refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists. A proviso below sub-section (2) is inserted to provide that where the original arbitration agreement or certified copy thereof is not available with the party who apply under sub-section (1), and is retained by the other party, such party shall file a copy of the arbitration agreement along with application under sub-section (1) praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before the Court.

*Clause 5* of the Bill seeks to amend section 9 of the principal Act to provide that where the Court passes an order for any interim measure under sub-section (1) before the commencement of arbitral proceedings, the arbitral proceedings shall be commenced within a period of ninety days from the date of such order. It further provides that once the arbitral tribunal is constituted, the Court shall not entertain an application for interim measure unless it finds that circumstances which may not render the remedy provided under section 17 efficacious.

*Clause 6* of the Bill seeks to amend section 11 of the principal Act to provide that appointment of arbitrator shall be made by the Supreme Court or the High Court, as the case may be, instead of the Chief Justice of India or the Chief Justice of the High Court. Sub-section (6A) is inserted to provide that the Supreme Court or the High Court while considering application under sub-section (4) to (6) shall confine to the examination of an arbitration agreement. In sub-section (7), it is clarified that a decision on a matter entrusted under sub-section (4) to (6) shall be final and no appeal including Letters Patent Appeal shall lie against such decision. A new sub-section (13) is inserted to provide that an application for appointment of arbitrator(s) shall be disposed of as expeditiously as possible and an endeavor shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. A new sub-section (14) is inserted to empower the High Court to frame rules for the purpose of determination of fees of the arbitral tribunal and the manner of such payment. The High Court while framing rules shall take into account the rates of fee specified in the Fourth Schedule.

*Clause 7* of the Bill seeks to insert a new section 11A in the principal Act to empower the Central Government to amend the Fourth Schedule by notification in the Official Gazette after laying the same in draft form before each House of Parliament.

*Clause 8* of the Bill seeks to amend section 12 of the principal Act to ensure neutrality of arbitrators. When a person is approached in connection with possible appointment of arbitrator, he is required to disclose in writing regarding existence of any relationship or interest of any kind which is likely to give rise to justifiable doubts. He is also required to disclose any circumstances which are likely to affect his ability to devote sufficient time to the arbitration and complete the arbitration within the specified period. A new sub-section (5) is inserted to the effect that a person having relationship as specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator.

*Clause 9* of the Bill seeks to amend sub-section (1) of section 14 of the principal Act to provide that on termination of mandate of an arbitrator, he is to be substituted by another arbitrator.

*Clause 10* of the Bill seeks to amend section 17 of the principal Act to provide that the arbitral tribunal shall have power to grant all kinds of interim measures which the Court is empowered to grant under section 9. It further provides that such interim measures can be granted by the arbitral tribunal during the arbitral proceedings or at any time after making the arbitral award, but before it is enforced under section 36. Sub-section (2) is amended to provide that, any order issued by the arbitral tribunal for grant of interim measures shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 in the same manner as if it were an order of the Court.

*Clause 11* of the Bill seeks to insert a new sub-section (2A) in section 23 of the principal Act to provide that the respondent, in support of his case, may also submit a counterclaim or a set-off, if such counterclaim or set-off falls within the scope of the arbitration agreement.

*Clause 12* of the Bill seeks to insert a proviso in sub-section (1) of section 24 of the principal Act to provide that the arbitral tribunal shall hold oral hearing for the presentation of evidence or oral arguments on the day-to-day basis and shall not grant any adjournments without any sufficient cause.

*Clause 13* of the Bill seeks to amend section 25 of the principal Act so as to treat the right of the respondent to file the statement of defence to have been forfeited, if the respondent fails to communicate such statement in accordance with sub-section (1) of section 23 without reasonable cause.

*Clause 14* of the Bill seeks to insert a new sub-section (3) in section 28 of the principal Act to provide that the arbitral tribunal while deciding and making an award, take into account the terms of the contract and trade usages applicable to the transaction.

*Clause 15* of the Bill seeks to insert new sections 29A and 29B in the principal Act to specify the time limit for making arbitral award. Section 29A provides that the award is to be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. However, the parties may extend such period for a further period not exceeding six months. If the award is made within a period of six months, the arbitral tribunal shall be entitled to received additional fees as the parties agree. If the award is not made within specified period or extended period, the mandate of the arbitrator shall terminate unless the time is extended by the court in accordance with the provisions of sub-sections (4) to (9).

Further, section 29B provides for fast track procedure for conducting arbitral proceedings, in cases where the parties mutually agree for such procedure. In such cases, the arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and written submission and shall not hold oral hearing. The award is to be made within a period of six months from the date the arbitral tribunal enters, failing which the provisions of sub-sections (3) to (9) of section 29A shall apply.

*Clause 16* of the Bill seeks to amend section 31 of the principal Act by substituting clause (b) of sub-section (7) to provide that a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment. It further seeks to substitute sub-section (8) of the said section to provide that the costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A .

*Clause 17* of the Bill seeks to insert a new section 31A in the principal Act to provide in detail provisions related to regime of costs which may be determined and ordered by the Court or arbitral tribunal in relation to any arbitral proceedings or any proceedings under the Act.

*Clause 18* of the Bill seeks to amend section 34 of the principal Act to provide for *Explanation* to the term 'public policy of India' in sub-clause (ii) of clause (b) of sub-section (2) to the effect that an arbitral award shall be treated as an award in conflict with the public policy of India only where making of award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or is in contravention with the fundamental policy of Indian law; or it is in conflict with the most basic notions of morality or justice. *Explanation 2* is inserted to explain that the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute. A new sub-section (2A) is inserted to provide an additional ground of patent illegality to challenge the arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (5) is inserted to provide that an application for setting aside of award under this section is to be filed after issuing prior notice to the other party. Sub-section (6) is inserted to prescribe a period of one year for disposal of an application for setting aside an arbitral award.

*Clause 19* of the Bill seeks to amend section 36 of the principal Act relating to enforcement of award to the effect that mere filing of application under section 34 for setting aside arbitral award would not render that award unenforceable unless the court grants an order of stay on the operation of the said award on a separate application made for that purpose.

*Clause 20* of the Bill seeks to amend section 37 of the principal Act so as to include the order refusing to refer the parties to arbitration under section 8 also appealable.

*Clause 21* of the Bill seeks to substitute the *Explanation* in section 47 of the principal Act to provide that the Court referred to in that section to mean the High Court.

*Clause 22* of the Bill seeks to amend section 48 of the principal Act to provide for *Explanation* to the term 'public policy of India' in clause (b) of sub-section (2), by amending the existing *Explanation*, to the effect that an arbitral award is in conflict with the public policy of India only if the making of award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or is in contravention with the fundamental policy of Indian law; or it is in conflict with the most basic notions of morality or justice. *Explanation 2* is inserted to explain that the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

*Clause 23* of the Bill seeks to substitute the *Explanation* in section 56 of the principal Act to provide that the Court referred to in that section to mean the High Court.

*Clause 24* of the Bill seeks to amend section 57 of the principal Act to provide for *Explanation* to the term 'public policy of India' in clause (e) of sub-section (1) by amending the existing *Explanation* to the effect that an arbitral award is in conflict with the public policy of India only if the making of award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or is in contravention with the fundamental policy of Indian law; or it is in conflict with the most basic notions of morality or justice. *Explanation 2* is inserted to explain that the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

*Clause 25* of the Bill seeks to insert the Fourth, Fifth, Sixth and Seventh Schedules in the principal Act.

*Clause 26* of the Bill seeks to repeal the Arbitration and Conciliation (Amendment) Ordinance, 2015.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill make provisions for amending section 11 of the principal Act relating to appointment of arbitrators. Sub-clause (ix) of the said clause provides for insertion of a new sub-section (14) in the said section empowering the High Court to frame such rules as may be necessary for the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, after taking into consideration the rates specified in the Fourth Schedule.

2. Clause 7 of the Bill provides for insertion of a new section 11A and sub-section (1) of the said section empowers the Central Government to amend the Fourth Schedule by notification in the Official Gazette, if it is satisfied that it is necessary or expedient so to do, and thereupon the Fourth Schedule shall be deemed to have been amended accordingly. Sub-section (2) of the said section provides that every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament.

3. The matters in respect of which notification or order may be made under the aforesaid provisions are matters of administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE ARBITRATION AND CONCILIATION ACT, 1996

(26 OF 1996)

\* \* \* \* \*

PART I

ARBITRATION

CHAPTER I

*General Provisions*

Definitions.

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—

\* \* \* \* \*

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

\* \* \* \* \*

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

\* \* \* \* \*

CHAPTER II

*Arbitration agreement*

Arbitration agreement.

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

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

\* \* \* \* \*

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

\* \* \* \* \*

Power to refer parties to arbitration where there is an arbitration agreement.

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.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

\* \* \* \* \*

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—

Interim measures, etc., by Court.

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

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

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

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

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

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

(e) such other interim measure of protection as may appear to the 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) \* \* \* \* \*

Appointment of arbitrators.

(4) If the appointment procedure is 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-sections 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 (l) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, in the Chief Justice of that High Court.

Grounds for challenge.

**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.

\* \* \* \* \*

Failure or impossibility to act.

**14.** (1) The mandate of an arbitrator shall terminate if—

(a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

\* \* \* \* \*

Interim measures ordered by arbitral tribunal.

**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).

\* \* \* \* \*

Hearings and written proceedings.

**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:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

\* \* \* \* \*

25. Unless otherwise agreed by the parties, where, without showing sufficient cause,—

Default of a party.

\* \* \* \* \*

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

\* \* \* \* \*

CHAPTER VI

*Making of arbitral award and termination of proceedings*

28. (1) \* \* \* \* \*

Rules applicable to substance of dispute.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

\* \* \* \* \*

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

Form and contents of arbitral award.

(7) (a) \* \* \* \* \*

(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.

\* \* \* \* \*

(8) Unless otherwise agreed by the parties,—

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify—

(i) the party entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

*Explanation.*—For the purpose of clause (a), “costs” means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

\* \* \* \* \*

CHAPTER VII

*Recourse against arbitral award*

34. (1) \* \* \* \* \*

Application for setting aside arbitral award.

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

\* \* \* \* \*

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

*Explanation.*—Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

\* \* \* \* \*

Enforcement. **36.** Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.

5 of 1908.

CHAPTER IX

*Appeals*

Appealable orders. **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:—

- (a) granting or refusing to grant any measure under section 9;
- (b) setting aside or refusing to set aside an arbitral award under section 34.

\* \* \* \* \*

Evidence. **47. (1)** \* \* \* \* \*

(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.

Conditions for enforcement of foreign awards. **48. (1)** \* \* \* \* \*

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

- (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
- (b) the enforcement of the award would be contrary to the public policy of India.

*Explanation.*—Without prejudice to the generality of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

\* \* \* \* \*

Evidence. **56. (1)** The party applying for the enforcement of a foreign award shall, at the time of 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) 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.

**57. (1)** In order that a foreign award may be enforceable under this Chapter, it shall be necessary that—

Conditions for enforcement of foreign awards.

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

(b) the subject-matter of the award is capable of settlement by arbitration under the law of India;

(c) 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) 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 or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India.

*Explanation.*—Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

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LOK SABHA

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**BILL**

to amend the Arbitration and Conciliation Act, 1996.

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*(Shri D.V. Sadananda Gowda, Minister of Law and Justice)*