

**JOURNAL FOR LAW STUDENTS AND RESEARCHERS****GROUND FOR SETTING ASIDE****ARBITRAL AWARD****Chanderveer Singh Bhati****Manipal University, Jaipur**

Arbitration is a way for settling the disputes between the parties which are ready to leave their disagreement and agrees to have one or more arbitrators for making binding decisions. An Arbitration Award is a decision given in an arbitration proceeding by an Arbitration Tribunal which is deemed to be the judgment given by the court of Law. When the claim of a claimant fails, then an Arbitral award can be of non-pecuniary character as neither of the parties have to pay any amount of money to either of the parties.

The Act of 1940 provide three kinds of remedies against arbitral awards which are rectification, remission and setting aside of the Arbitral Award. Section 34 of the Arbitration and Conciliation Act, 1996 gives the Court or the Judiciary the power to intervene in the Arbitration process for the purpose of setting aside the Award rendered by the Arbitration Tribunal. This section deals with the procedure for the application and also the grounds for setting aside the arbitral Award. Moreover, a limitation period has also been set within which the application has to be filed with the Court.

From October 23, 2015 amendment of Arbitration and Conciliation Act, 1996 came into force and is perspective in nature. 2015 amendment aimed at introducing a new S87 to the Act which aims to make 2015 amendments applicable to arbitrations and court proceedings commenced after 2015.

**S34:- Application for setting aside arbitral award.<sup>1</sup>**

- (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—
- (a) The party making the application furnishes proof that—
- (i) A party was under some incapacity, or
  - (ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
  - (iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - (iv) The arbitral award deals with a dispute 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, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
  - (v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
- (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.

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<sup>1</sup> The Arbitration and Conciliation Act, 1996

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

In **Municipal Corporation of Greater Mumbai v. Prestress Products (India)**<sup>2</sup>, Court stated that the amendment of 2015 was made with a view of reducing judicial intervention.

In **ONGC Ltd. v. Saw Pipes Ltd.**<sup>3</sup>, Court gave a wide scope to the term ‘public policy’ and said that it is not defined in the Act but is very vague. It can be interpreted according to the context in which it is to be used.

In **Renusagar Power Co. Ltd v. General Electric Co.**<sup>4</sup>, Court restricted the meaning of the term ‘public policy’ in international cases and stated that an award can only be refused when it is against fundamental policy of India or interest of India or justice or morality.

In **Ssanyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)**<sup>5</sup> (Justice Indira Banerjee and Justice Anil Kumar Chawla), both the parties signed a contract for construction of bypass. Appellant started to work and escalation was paid to the appellant on the basis of Wholesale Price Index (WPI) based on the year 1993-94. Appellant started raising bills on the basis of indices published under 2004-05, which was rejected by respondent

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<sup>2</sup> (2003) 4 RAJ 363 (Bom)

<sup>3</sup> AIR 2003 SC 2629

<sup>4</sup> 1994 SCC Supl. (1) 644

<sup>5</sup> Civil Appeal No. 4779 of 2019

for calculation of Price Adjustment. The issue between the parties was regarding the payment as whether it would be made as per the new circular or as per the conditions agreed in the agreement.

It was stated that introduced amendments of 2015 would be applicable on all the applications filed under Section 34 after October 23, 2015, even if the arbitration commenced before the amendment came into force. Supreme Court, in this case, awarded retrospective effect to the amendments without any proper reason inspite of the fact that the amendments must be given prospective effect as the proceedings under Section 34 of the Act commenced before the amendments came into force.

In cases of **Union of India and Others Vs Chaman Rana**<sup>6</sup> (Justice Arun Mishra and Justice Navin Sinha), promotion and consequential benefits were given to juniors in the Border Security Force (BSF). The Supreme Court set aside the order of High Court which sustains the promotion of juniors and allowed both the appeals on the ground that any decision made in respect of considering promotion retrospectively of respondent would, in duration of 17-20 years, bring adversial effects in the services which could lead to administrative disorder.

In case of **JK Spinning & Wvg. Mills Ltd. Vs Union of India**<sup>7</sup>, the court held in this case that tax could be retrospectively charged due to retrospective amendment of Central Excise Rules 9 and 49, but there could not be any retrospective imposition of penalty or confiscation of goods.

## CONCLUSION

The Arbitration and Conciliation Act, 1996 deals with the procedure of settling of disputes between the parties where the parties are willing to give up their disagreements and ready to accept the binding decision made by one or more arbitrators either chosen by them or by the arbitral tribunal on behalf of them. The decision of the arbitral tribunal has given the equal status as to the judgment given by the Court of Law.

S34 of the Act has given certain grounds to set aside the arbitral award passed by the Arbitral Tribunal. S34(3) of the Act lays down the limitation period for filling an application for setting

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<sup>6</sup> Civil Appeal No. 2763 of 2018

<sup>7</sup> 1987(32) ELT234(SC)

aside the arbitral award. After October 23, 2015, the Amendments of the Act came into force being prospective in nature and leading S34 of the Act to have retrospective and prospective effects on certain provisions of law.

