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Judicial Intervention in Arbitration Proceedings: The Indian Perspective

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ABSTRACT

According to Halsbury, arbitration is the referral of a disagreement or difference between at least two parties for resolution by a person or individuals other than a court with competent jurisdiction, after hearing both sides in a judicial fashion.

Varied countries' domestic laws take different approaches to how much adjudication power can be entrusted in tribunals that operate outside of the state's monopoly on justice administration. This is mirrored in different jurisdictions' opinions on the permissibility and scope of domestic judicial intervention in international commercial arbitrations. In terms of its power of intervention, the Indian judiciary has taken an expansive approach. There are millions of cases waiting in Indian courts. The Arbitration was established to relieve the courts of their burden. Arbitration is a quick, cost-effective, and time-efficient means of resolving a dispute. Arbitration law is based on the notion of removing a dispute from the usual courts and allowing the parties to choose a domestic body to resolve it.

I. INTRODUCTION

Arbitration is becoming more popular as a means of conflict settlement due to various considerations, including its consensual nature, dispute resolution by non-governmental decision-makers, flexibility in comparison to typical court proceedings, and the ability to enforce a binding judgement.[2] Arbitration is often regarded as international when it involves parties from different jurisdictions.[3] The Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") was enacted in response to the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985 (hereinafter referred to as "UNCITRAL Model Law") on International Commercial Arbitration. The Arbitration Act of 1940 governed arbitration proceedings prior to the UNCITRAL Model Law. As a result, it is constructed in such a way that conflicts are settled neutrally using internationally neutral procedural standards, with the arbitrator often choosing a seat of arbitration that is not native to either party.[4]

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[2] GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 1 (2001).
[3] UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter Model Law), Article 1.3.
[4] ALAN REDFERN & MARTIN HUNTER, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION ¶¶ 1-42 (2004).

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"Arbitration" is defined in Section 2 of the Arbitration and Conciliation Act of 1996 as "unless the context otherwise requires (a) Arbitration means any arbitration, whether or not administered by a permanent Arbitral Institution, and (b) " Arbitration Agreement," means the Agreement referred to in Section 7."

In India, the evolution of arbitration law has a lengthy history. The Bengal Regulations were the first to implement modern arbitration in British India in 1772. Eventually, the Arbitration and Conciliation Act of 1996 was enacted. When a disagreement over the nomination of an arbitrator develops at the outset, the court must intervene. The court's intervention is required during the proceedings to aid the proceedings. The court can help by granting interim protection or other measures. Finally, once the arbitral award has been announced, judicial involvement is required for either the award's enforcement or dispute.

The Model Law was adopted by the United Nations Commission on International Trade Law (hereafter UNCITRAL) in 1985[5] to promote uniformity in national arbitration statutes, and legislation based on it has been implemented in over sixty nations.[6] In certain cases, such as interim measures of protection,[7] the nomination of arbitrators,[8] and the setting aside, recognition, and enforcement of arbitral rulings,[9] the Model Law allows for court involvement[10]. The capacity of national courts to intervene in the arbitration process, both while arbitral procedures are continuing and while reviewing final arbitration verdicts, is severely limited in most modern arbitration statutes.

II. LEGAL INTENTIONS BEHIND THE 1996 ACT

The 1996 legislation was only enacted after two ordinances were passed following the implementation of the New Economic Policy of 1991.[11] The 1996 act is structured in such a way that the courts' supervisory authority in arbitration processes and arbitral rulings is diminished. The preamble of this Act states that it is based on the UNCITRAL Model Law. The problem of judicial involvement in arbitration is riddled with ambiguities, making it easy to get weighed down in the details of the definition and limitations. The constantly changing and expanding state of arbitration in India contributes to the topic's intricacy. The important point here is whether or not the judiciary should intervene in Arbitration procedures, and to what extent this interference is admissible. The 1996 Act, as well as the 2015 and 2019 revisions, were enacted to relieve the overburdened courts and encourage the use of arbitration as a way of conflict settlement. The Act was designed to divert cases

[5] Adopted on June 21, 1985 at the UNCITRAL's 18th Annual Session.
[6] United Nations Commission on International Trade Law, Status: UNCITRAL Model Law on International Commercial Arbitration.
[7] Model Law, Article 9: 'It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.'
[8] Model Law, Articles 11, 13, 14.
[9] Model Law, Article 5: "In matters governed by this law, no court shall intervene except where so provided in this Law".
[10] Model Law, Articles 34-36.
[11] A.K. Ganguly, The Proposed Amendments to the Arbitration and Conciliation Act , 1996 Critical Analysis, , 45 JILI 3, 5-6 (2003)

from the traditional route of litigation to arbitration, so legislators made sure to include provisions that could limit judicial intervention, which would be a time-consuming process that would slow down the speedy resolution that Alternate Dispute Resolution provides. However, not all of the UNCITRAL Model Law's safeguards were included in this Act. Article 16 of the Model Law stated that Arbitration Tribunals may rule in their own jurisdiction, and jurisdictional questions were to be handled by the arbitral tribunal as preliminary matters before appealing to the Court. The Act was amended to remove this provision.

III. INTERIM MEASURES BY ICA: INDIAN PERSPECTIVE

The Arbitration and Conciliation Act, 1996 (hereafter referred to as the "Act") is an attempt to implement the Model Law[12] and establish a pro-arbitration legal framework in India, which was a pipe dream under the Arbitration Act, 1940. The Act aims to keep judicial intervention out of arbitration as far as possible. 84 However, a closer examination of diverse court interpretations, particularly in the field of International Commercial Arbitration, demonstrates that this goal has not been met.

The act's section 9 deals with the court's ability to give interim measures. Section 17 gives arbitral tribunals the authority to make orders in accordance with the section. While Section 9 has the same authority as the Judiciary, the two sections serve fundamentally different purposes. The power granted to courts by Section 9 is obligatory in nature. It is not dependent on the autonomy of the disputants. Interim methods aren't a real solution.[13] An application filed under Section 9 is not a lawsuit, and the relief sought is not a contractual right. The court's duty is limited to ensuring that the rights to adjudication before an arbitral panel are not violated.[14]

One of the issues that arises is that Section 17 of the Act demonstrates the lack of an appropriate legislative mechanism for the execution of interim orders issued by the arbitral tribunal. The Delhi High Court attempted to advise revisions to section 17 in the matter of Sri Krishan v. Anand[15], which would provide arbitral tribunals more jurisdiction and security. So that parties are not required to appear in court to contest the same.

The N.E.C.P. could not have sought relief from the Civil Court in M/s. Sundaram Finance Ltd. v. M/s. N.E.P.C.[16] India Limited in order to prolong the proceedings pending adjudication by the arbitrator. The court went on to say that the section 9 rules were put in place to make arbitral procedures easier. It should not be used to stymie the procedures by the parties involved. In the case of ITI Ltd v. Siemens Public Communications Network Ltd,[17] it was held that

[12] R.M. Investment & Trading Co. Pvt. Ltd. v. Boeing Co., (1994) 4 SCC 541; Sundaram Finance Ltd. v. NEPC India Ltd. (1999) 2 SCC 479; Malaysian Airlines Systems Bhd (II) v. STIC Travels (P) Ltd. 2000 (7) SCALE 724.

[13] Liverpool and London Steamship Protection and indemnity Association Ltd., V Arabian Tankers Company 2004 (1) RAJ 311 (Bom).

[14] Firm Ashoka Traders V. Gurumukh Das Saluja, 2004 (3) SCC 155.

[15] Sri Krishan v. Anand, (2009) 3 Arb LR 447 (Del).

[16] M/s. Sundaram Finance Ltd., v. M/s. N.E.P.C. India Limited, AIR 1999 SC 565.

[17] ITI Ltd V. Siemens Public Communications

when evaluating an application under section 9, the provisions of the Code of Civil Procedure, 1908, had to be considered.

IV. JUDICIAL INTERVENTION BEFORE ARBITRATION PROCEEDINGS

Section 5 of the Arbitration and Conciliation Act of 1996 specifies the scope of court action that is permissible.[18] In Fair Air Engineers Pvt Ltd. v. NK Modi[19], the Supreme Court ruled that the State Commission and National Commission established under the Consumer Protection Act of 1986 should be recognised as "Judicial Authority." A commission established under the Monopolies and Restrictive Trade Practices Act of 1969 is also stated to have judicial authority. The Supreme Court of India held in Canara Bank v. Nuclear Power Corporation of India Ltd[20] that the Company Law Board might be deemed a judicial body.

V. JUDICIAL INTERVENTION AFTER ARBITRATION PROCEEDINGS

Section 34 of the Act is one of the most important sections. This section establishes the permissible grounds for challenging an arbitral award. Arbitral awards are not appealable to the Court. This portion is also a testament to the statutorily limited extent of judicial intervention.[21]

Section 34 contains four significant sub-sections that define the grounds for annulling an arbitral ruling. Currently, an arbitral award is unenforceable while a petition under this clause is pending. In National Aluminum Co. Ltd. v. Pressteel & Fabrications[22], the Supreme Court criticised the current situation and recommended some changes.

The Apex Court further stated that the Court's interference in Arbitration Proceedings should be limited because when parties adopt an Alternative Dispute Resolution process such as Arbitration, they choose to exclude the Court's jurisdiction because they prefer the convenience it provides. The grounds set forth in section 34(2)(a) are so narrow that the courts are unable to intervene in arbitral judgements. 'Indian public policy' is the sole confusing phrase in this section. It leaves itself open to interpretation, resulting in court involvement.

The Supreme Court expanded the ambit of public policy in ONGC Ltd. v. Saw Pipes Ltd.[23] in 2003. The court explained that the term "public policy" relates to a long-term issue affecting the public benefit and public interest, and so added a new ground of "patent illegality" to Renusagar's argument.

VI. RECENT DEVELOPMENTS

1. *CASE1: Bharat Aluminum Co v. Kaiser Aluminum Technical Services* [24]:

1.1. Introduction:

Network Ltd, 2002 (5) SCC 510.

[18] Section 5: Extent of Judicial Intervention: Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

[19] Fair Air Engineers Pvt Ltd. v. NK Modi, AIR 1997 SC 533

[20] Canara Bank v. Nuclear Power Corporation of India Ltd, AIR 1999 SC 1505

[21] P.R. Shah, Shres and Stock Broker (P) Ltd., V.B.H.H. Securities (P) Ltd, AIR 2012 SC 1866

[22] National Aluminum Co. Ltd. v. Pressteel & Fabrications, (2004) 1 SCC 540

[23] O.N.G.C. v. Saw Pipes, (2003) 5 S.C.C. 705

[24] *Bharat Aluminium Co v. Kaiser Aluminium*

In BALCO, a two-judge Supreme Court court noted reservations about the BHATIA ruling and submitted the case to a three-judge Supreme Court bench, which included India's Chief Justice. The case was eventually sent to a five-judge bench. Because of the importance of the subject matter, the court also requested amicus curiae briefs from India's leading arbitral institutes. In line with the fundamental theory and ethos of the New York Convention and UNCITRAL Model Rule, the general thrust of the BALCO judgement is to protect the future from previous incorrect and anachronistic rulings, and to encourage Indian courts to become more arbitration-friendly and thus less likely to participate in the arbitral phase.

1.2 Facts:

The delivery of equipment, as well as the modernization and upgrading of industrial facilities, had been agreed upon by the parties. Unavoidable differences arose, which were referred to arbitration in England, where the Respondent was awarded. The Appellant had filed to the Chhattisgarh High Court to have the award set aside under Section 34 of the Act.

1.3 Issues:

The arbitral tribunal is a body that hears disputes.

1. Is it possible to challenge the two awards made in England under section 34 of the Act in India?

Whether or not Section 9 of the act supposed to apply?

1.4 Held:

The purpose of section 2(7) of the Act, according to the court, is to distinguish the domestic award (Part I of the Act) from the "international award" (Part II of the Act), i.e., there is a clear demarcation between Parts I and II, with terms that apply to completely different domains with no overlap.

Furthermore, the Court distinguished between a'seat' and a 'location,' which is important if the arbitration agreement specifies a foreign country as the'seat' of the arbitration and the Act as the curial legislation governing the proceedings. The Court went on to declare that choosing another country as the venue of arbitration always means that the proceedings will be governed by that country's regulations governing arbitral behaviour and oversight.

As a result, even if the arbitration agreement states that the Act governs the proceedings, Part I of the Act will not be valid or allow Indian courts to exercise supervisory authority over the arbitration or the award if the arbitration agreement is identified or kept to provide for a seat/position of arbitration outside of India.It simply implies that the parties have contractually imported particular clauses from the Act relevant to the internal functioning of their arbitration that are not in conflict with English procedural or curial law. As a result, it's safe to presume that Part I exclusively applies to India-based arbitrations.

The findings in the Bhatia International case were overturned by the Court. It went on to argue that, according to a fair reading of the Act, Indian

Technical Services, AIR 2016 SC 1285

courts do not have the ability to award temporary measures in cases where the arbitration is held outside of India. A brief examination of Section 9 of the Act indicates that it deals with interim measures adopted before or after arbitral hearings, or at some point after the arbitral award is issued but before it is implemented in accordance with Section 36. (enforcement of domestic awards). As a result, only arbitrations convened in India will be subject to the arbitral proceedings required by Section 36.

The Court went on to state that no appeal for temporary relief can be filed in India in international commercial action involving foreign parties, whether through arbitration or a lawsuit.

1.5 Analysis:

The principles established in the stated judgement would be applied to arbitration agreements entered into on or after September 7, 2012. Although it may not appear to be a major issue at first glance, parties who signed arbitration agreements on or before September 6, 2012, providing for foreign seated international commercial arbitrations, would be required to repeat the time-consuming process of reviewing all such arguments in light of the BALCO Case rulings and amending the agreement(s), if necessary, to avoid any ambiguity.

The BALCO decision took a pro-arbitration attitude, abandoning the interventionist approach taken by the Indian judiciary up to that point and opining in favour of arbitral autonomy. It also had some drawbacks, such as the lack of interim relief in foreign-seated arbitrations and the prohibition on retroactive application of the verdict. As previously stated, these disadvantages could result in unjustified disposition of the subject matter of arbitration and misunderstanding over the performance of arbitration agreements. To that end, BALCO lives up to the excitement generated in the international arbitration community earlier this year when it was announced that the Indian Supreme Court was hearing a case seeking reconsideration of its earlier decisions in Bhatia International v. Bulk Trading SA[25] and Venture Global Engineering v. Satyam Computer Services Ltd[26].

The 2015 Amendment Act, on the other hand, addressed some of BALCO's flaws by inserting a proviso to S.2(2) of the Act, which stated that the provision for interim remedy by the court (S.9) would apply to foreign-seated arbitrations as well.

2. CASE 2: Amazon.com NV Investment Holdings LLC Vs. Future Retail Limited and Ors[27]:

2.1 Introduction:

One of the largest commercial battles in Indian history is ready to come to a close. The Amazon-Future Group legal battle, which is taking place in numerous courts across India and even in Singapore, might define the future of Indian retail and ecommerce.

[25] Bhatia International v. Bulk Trading SA, AIR 2002 SC 1432

[26] Venture Global Engineering v. Satyam Computer Services Ltd, AIR 2010 SC 3371

[27] Amazon.com NV Investment Holdings LLC Vs. Future Retail Limited and Ors, AIR 2021 SC 3723

Following the Delhi High Court's decision in the Amazon-Future fight, the Supreme Court of India suspended proceedings in the case on April 19, 2021, after hearing Amazon's special leave plea. The next date for the final disposition of the case has been set on May 4 by the Supreme Court.

On March 18, a single bench of the Delhi High Court held that the Singapore International Arbitration Centre's (SIAC) interim order was valid in India and that Future Group had deliberately disobeyed the emergency arbitrator's order. The court dismissed Future Group entities' objections and imposed costs of INR 20 lakh on them.

The ruling was later stayed by the Delhi High Court's divisional bench on March 22, 2021. The case has now reached the Supreme Court. While the Supreme Court's decision on the case is already being hailed as a possible landmark decision since it could establish the precedent for arbitration awards cases in India, there's a lot more in the balance with the future of Indian retail at stake.

2.2 Facts:

- On the 10th of May, 2020, Arbitration Proceedings were started.

An application has been made for "Emergency Interim Relief" to prevent respondents from proceeding with the Disputed Transaction.

- On 06-10-2020, Respondent 2 submitted an objection to the jurisdiction of the Emergency Arbitrator.
- On 09-10-2020, the petitioner requested that the status quo be maintained, but the respondents refused to provide any assurances while the Emergency Arbitrator's procedures were pending.
- On October 13, 2020, the Emergency Arbitrator requested that all parties respond to the following four Supreme Court judgments:
- Canara Bank v. MTNL[28]; Chatterjee Petrochem v. Haldia Petrochemicals Ltd,[29]; Gangavaram Port Ltd. v. Duro Felguera S.A. (2017)[30]; Rishabh Enterprises v. Ameet Lalchand Shah, (2018)[31].
- The jurisdiction of the Emergency Arbitrator was challenged by the respondents. The arbitrator heard all of the parties on October 16, 2020.
- The Emergency Arbitrator issued an interim order on October 25, 2020, stating that: "For all intents and purposes, the Emergency Arbitrator is an Arbitral Tribunal." The Emergency Arbitrators are also recognised under the Indian Arbitration framework, according to the Emergency Arbitrator.
- The petitioner established a strong prima facie case that the respondents were in breach of their contractual responsibilities, according to the arbitrator. The adjudicator

[28] Canara Bank v. MTNL AIR 2019 SC 4449
[29] Chatterjee Petrochem v. Haldia Petrochemicals Ltd 14 SCC 574
[30] Gangavaram Port Ltd. v. Duro Felguera S.A. MANU/SCOR/17323/2017
[31] Ameet Lalchand Shah v.Rishabh Enterprises MANU/SCOR/38669/2017

further stated that if the temporary injunction was not granted, the petitioner would suffer irreparable harm.(SCC)

2.3 Siac's Decisions:

The arbitration hearings, which began on October 5th, 2020, lasted until October 25th, when the SIAC issued an interim injunctive order. The order favoured Amazon since it prevented FRL from continuing with the disputed transaction with Reliance. According to the SIAC Rules, an interim order issued by an Emergency Arbitrator is effective for 90 days, during which time a Tribunal must be formed or the award would cease to be binding. Because everything was done correctly in this circumstance, the Award's validity was extended. As a result, Amazon sought the appropriate statutory agencies for enforcement, such as SEBI, CCI, and others.

2.4 Held:

The Supreme Court on Thursday granted Future Group a huge victory by staying all proceedings in the Delhi High Court relating to Amazon's dispute over the merger of Future Group and Reliance Retail for four weeks. The Supreme Court also put a hold on the Delhi High Court's implementation of an emergency arbitrator's decision.

The seizure of Future Coupons, Future Retail, and promoter Kishore Biyani's assets has been halted by a Supreme Court order. In March, a single-judge bench of the Delhi High Court ordered the attachment of Future Group's assets for violating the emergency arbitrator's ruling.

The panel, which included Chief Justice N.V. Ramana and Justices Surya Kant and A.S. Bopanna, ordered the NCLT, the Competition Commission of India, and the Securities and Exchange Board of India (SEBI) not to make a final decision on the issue for four weeks.

Senior attorneys Harish Salve and Mukul Rohatgi, representing FRL and Future Coupons Private Ltd (FCPL), respectively, testified that the arbitrator had reserved the final judgement in the case after hearing both parties.

The Supreme Court issued the ruling while hearing a petition by Future Coupons Private Ltd challenging a Delhi High Court order that had placed Future Group's order to transfer its retail businesses to Reliance Retail on hold.

The Supreme Court declared on August 6 that the emergency arbitrator's decision was enforceable in India.

2.5 Analysis:

The case is one of the most important in India because it examines the intricacies of the Arbitration Law. The never-ending legal struggle between FRL and Amazon exemplifies the flaws in India's arbitration law. The Act has some contentious elements, which has resulted in this judicial battle. This squabble, which is nearing its conclusion, will undoubtedly set a precedent for whether or not an Emergency Arbitration Award is enforceable in India. An Emergency Award is nothing more than a temporary injunction issued by an Emergency Arbitrator prior to the formation of a Tribunal. This is to shield the parties from any negative consequences that may come as a result of the Tribunal's formation.The

Singapore International Arbitration Centre is one of the several Arbitration Tribunals located throughout the country (SIAC).

However, the problem is that such recognition is not included in the A&C Act, which is India's primary arbitration statute. However, if we review all of the past decisions in this case, we may become perplexed as well. This is the real reason why this lawsuit has been dragged out so long. It is evident that a strict interpretation of the A&C Act could lead to the conclusion that EA Awards are not enforceable in India. However, most of the time, such laws are interpreted broadly.

The case's actual significance resides in the SIAC Emergency Arbitration Award's legality. Validating such awards is vital since it is usual for parties to settle their differences in a neutral setting. Furthermore, as a signatory to the New York and Geneva Conventions, it is quite likely that our country will be able to enforce such awards.

VII. Is there any need for judicial intervention in arbitration proceedings?

In India, domestic arbitrations are the most common. As a result, any foreign substance is scarce. The government and related agencies are simply turned into antagonistic parties. The center's arbitrators are government employees who may be biassed in favour of one party or the other for a variety of reasons. Politics, power, and money are all tools that can be used to purchase justice. It's also easier in arbitration hearings because they're more casual, and arbitrators are often unfamiliar with how to conduct arbitration processes efficiently. Arbitration law as a concept does not correspond to the reality of the legal system.

In the cases of Hindustan Zinc v. Friends Coal Carbonisation[32] and Delhi Development Authority v. R.S. Sharma,[33] the Supreme Court intervened. In the first case, the Court overturned an arbitral decision. The arbitrators' price escalation calculation was not in compliance with the contract. In the latter case, an award for additional compensation was rejected because it was in contravention of a contract clause. As a result, awards were put out in both cases because they were in violation of the contract's conditions. As a result, it fails to achieve its goal. When the Act's goal and purpose are not protected or followed by its supporters, injustice will befall the ordinary man, prompting him to seek justice at the Court's door. As a result, the involvement of courts to safeguard a party's right, dispense justice, and achieve the Act's goal or intent is justifiable.

VIII. Conclusion

Our judicial system is overburdened with thousands of cases awaiting resolution. In India, judicial proceedings are a long process that consumes a lot of time and money. We understand that a quick dispute resolution mechanism is necessary for a better business

[32] Hindustan Zinc v. Friends Coal Carbonisation, (2006) 4 SCC 445

[33] Delhi Development Authority v. R.S. Sharma, (2008) 13 SCC 80

environment and development. Parties to an Arbitration Agreement direct all of their issues to arbitration for resolution. Arbitration is one of the greatest Alternative Dispute Resolution Procedures. Although arbitration is a completely autonomous conflict resolution mechanism, the courts have limited authority to intervene in arbitration procedures, as stated in the Arbitration Act of 1996. The courts have a supervisory function in ensuring that justice is delivered in a fair and equitable manner to those who have been wronged. However, as seen in a handful of the cases above, courts continue to disregard it in reality. In order to shift its own burden, the court has a duty and statutory obligation to assist arbitration. Arbitration can assume inconceivable relevance in the Indian context if appropriate reforms are adopted with foresighted judicial help. The intervention of the court can be justified by claiming that it preserves the parties' rights or that it keeps an eye on the arbitration processes to prevent injustice.

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