

Confusion over Ordinance on Arbitration

In an interesting to and fro over a proposed ordinance to amend the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), Government had initially issued a press release announcing that the ordinance was approved by the Cabinet. However, the said press release was removed after some time.

As per news reports, the short-lived press release proposed some radical reforms to the Arbitration Act to ensure increased investor confidence in the arbitration process by reducing the timelines of the arbitral process and improving the certainty over the enforcement of awards to make the arbitration process faster, efficient and more cost-effective.

Some of the proposed changes are reported to be:

- a. Amendment of Section 34 relating to grounds for challenge of an arbitral award, to restrict the term ‘Public Policy of India’ to cases only where (i) making of award was induced by fraud or corruption; or (ii) is in conflict with the fundamental policy of Indian Law; or (iii) is in conflict with the most basic notions of morality or justice, the award shall be treated as against the Public Policy of India.
- b. Arbitrators to provide a composite cost for disposal of cases otherwise than a fee per sitting.
- c. Introduction of 9 month limitation for Arbitral Tribunal to decide the award. If the Court finds that the arbitrator has delayed the matter for his personal benefit, it may debar the arbitrator from taking fresh arbitration for 3 years.
- d. Application for challenging an award will not lead to an automatic stay in execution of that award. Award can only be stayed where the Court passed any specific order on an application filed by the party.
- e. While considering any application for appointment of Arbitrator, the High Court or the Supreme Court shall only examine the existence of a prima facie arbitration agreement and not other issues.

The retracted press release showed significant promise to bring long-awaited changes to the well intentioned but severely flawed Arbitration Act. The proposed changes are clearly indicative of the Government’s intent to restore confidence in the arbitration process.

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