

# The Arbitration and Conciliation Act, 1996 – Review & Proposed Amendment

■ S. K. Singhi

5

th August 2014 may become a red letter day for the “Arbitrations” in India as the law

commission of India submitted its 246th report to the Hon’ble minister for law and justice, Government of India. The report envisages radical amendments to the Act to bridge the loop holes existing in the present act.

The Arbitration and Conciliation Act, 1996 (herein after referred as the act) in its present form has rendered adjudication of disputes between the parties a mere dream than a reality. The act was enacted to consolidate and amend the law relating to domestic arbitration, International Commercial Arbitration and enforcement of foreign arbitral awards etc. The act of 1996 is based on the UNCITRAL (United Nations Commission on International Trade Law) model law on International Commercial Arbitration, 1985 and the UNCITRAL conciliation rules, 1980. It repeals all three earlier laws of 1937, 1940 and 1967. Although UNCITRAL model law was intended to provide a model law to deal with International Commercial Arbitrations but the Act has been made applicable to both Domestic and International Arbitrations. However the

purpose for which the act was notified has lost its relevance in the various loose ends of the provision and the litigants now pray to avoid the arbitration and prefer litigations instead.

The major deficiencies in the Act relates to appointment of arbitrator, conduct of arbitration proceedings, fees of arbitrators, execution of the award, Judicial Intervention in execution of award in particular foreign awards, credibility of the arbitrators and lack of institutional arbitration.

Amidst various provisions of the act, unclear and ambiguous provisions regarding applicability of the provisions of the civil procedure code, 1908 and the Evidence Act 1872 and plethora of conflicting judgments from various courts in the country, the mediation and conciliation have been completely lost. The arbitration is now used by the litigants as a tool to serve their own purpose rather than adjudication of disputes.

We should not be ashamed to accept that we have lost credibility before the International Community as far as arbitration in our country is concerned. No foreign institution or litigant are interested in submitting to the Indian arbitration. It is painful to hear that even the Indian corporates and litigants

who have nothing to do in foreign countries are preferring foreign arbitration laws like SIAC, LCIA etc. and countries like Singapore, London, Switzerland as their choice of arbitration. This clearly demonstrates that our Indian Arbitration Act has failed to live up to the expectations of the corporates, foreign investors, litigants and even judiciary.

With the Indian economy growing up rapidly, government all set to bring reforms in every sector at bullet speed and Foreign Direct Investments (FDI) making its way into the country as never before, its is essential that a effective alternate dispute resolution mechanism is in place in form of “Arbitration” to deal with and resolve the “Commercial Disputes”.

In this backdrop the Law Commission of India examined extensively the various deficiencies noticed while administering the provisions of the present Act and to overcome the same.

The amendment proposed will include clarification by the courts, reinforce the principles led down in various judgments and will also over rule various judgments pronounced by the courts which are against the spirit of the act like Bhatia International case.

**Following are the major amendments proposed by the Law Commission of India :-**

Issues	Purpose	Amendment of provisions of the Act
Achieve fairness, speed and economy	To demonstrate and reaffirm the Act's focus to	Preamble
Appointment of Emergency Arbitrator	To ensure statutory recognition to institutional rules in India	Section 2 (i) (d)
Principle Civil Court of original jurisdiction	To avoid conflict of Jurisdiction	Section 2 (i) (e)
Parties to arbitration	To include a person who derives his interest from such party	Section 2 (i) (h)
Seat of Arbitration	To differentiate between seat of arbitration and venue of arbitration	Section 2 (i) (hh) – New insertion. Amendment to Section 20
Jurisdiction of Indian Court	To ensure Indian courts can only exercise jurisdiction under part (i) and with respect to certain provisions even where seat of arbitration is outside India	Section 2 (ii)
Regime of costs including fees and expenses of the arbitrators	To discourage frivolous proceedings and inequitable conduct	Section 6A – New insertion
Existence of arbitration agreement	To ensure judicial authority not refer the parties to arbitration – non existence of arbitration agreement or it null and void	Section 8
Copy of Affidavit/ Certified copy	To ensure the smaller market players are not prejudiced by the action of the powerful bodies	Section 8 (ii)
Independence or impartiality – time limit to finish the arbitration and publish the award	To ensure independence and impartiality of arbitrators, avoid undue delay and lengthy arbitration proceedings and to publish the award within a definite time	Section 12 (i) Section 14
Allegations of fraud and corruption	To empower tribunal to decide on issue of fraud	Section 16 (vii) – New insertion
Interim protection and its effective enforcement	To provide tribunal same powers as Civil Court for interim protection and its enforcement	Section 17
Continuous Hearings	To avoid unnecessary adjournments and to ensure expeditious hearings	Section 24
Rate of Interest	To ensure default rate of interest is in line with prevailing commercial realities and not arbitrary figures	Section 31
Standards for setting aside an award	To ensure minimum judicial intervention in the execution of arbitral awards	Section 34
Stay on enforcement of award	To ensure mere filing of an application under Section 34 does not operate as an automatic stay	Section 36



**S. K. Singhi**, (B.Com[Hons.], ACS, LLB) Advocate is the founder/ proprietor of M/s S.K.Singhi & Co., Advocates, Kolkata, a full service young law firm established in November 2009. He is on the panel of Arbitrators of ICA, FICCI, BCCI. He is involved in various domestic and international arbitration proceedings. Besides representing his client in the arbitration proceedings, Mr. Singhi is conducting various arbitrations as Sole Arbitrator.

Mr. Singhi prior to getting enrolled as an Advocate and starting his own law firm, was a practicing Company Secretary for nearly five years.



**S.K. SINGHI & CO.**  
ADVOCATES

4, Kiran Shankar Roy Road  
Raja Chambers, 1st Floor  
Kolkata - 700001

E: surendra.singhi@sksinghiandco.com  
O: 033-22318652

It is hoped that the proposed amendments which are pending before the government becomes law immediately and India becomes the most favourite destination for arbitration. 