

7 DAYS COURSE IN ARBITRATION

Monday, 25th March 2019 to Monday, 1st April 2019 (Excluding Sunday)

Broad Course Content

SESSION I

Introduction to Arbitration - Part I

1. What is essence of Arbitration, as compared with mediation, conciliation and as opposed to valuation, opinion and other similar processes;
2. The advantages of Arbitration;
3. What types of disputes could be referred to arbitration (commercial, family, etc.);
4. Arbitration is adjudicatory in nature;
5. Contractual Arbitrations and Statutory Arbitrations;
6. To what extent the Arbitration and Conciliation Act, 1996 (as amended) differs from UNCITRAL (as updated in 2010);
7. Suggested books on Arbitration. - Very briefly;
8. Objectives and salient features of Arbitration and Conciliation Act, 1996 (as amended by the Arbitration & Conciliation Act, 2015) – Very briefly; and
9. Institutional Arbitration vs. Ad-hoc Arbitration – [Very briefly an overview].

SESSION II

Introduction to Arbitration – Part II

Advantages of Arbitration and Institutional Arbitration

1. How to have cost effective Arbitrations;
2. Arbitrator's Fees and administrative costs in arbitral proceedings; (Ad-hoc Arbitrations and Institution based Arbitrations);
3. Institutions named in arbitration clause;
4. Multi-tiered arbitration clauses, providing for an appeal in arbitration, and whether it is preferable to incorporate it. Judgments of the Courts;
5. Pros and cons of the new provisions requiring that arbitrations should be completed within one year;
6. Advantages and necessity of faster Arbitrations (S.29A and S.29B – Fast track procedure);
7. How to make the process of Arbitrations faster;
8. Institutional Arbitrations vis-à-vis Ad hoc Arbitrations (also the recent policy by the Government of Maharashtra for Institutionalised Arbitrations);
9. Importance of administrative assistance in Arbitrations; and
10. [can also discuss entry and exit of foreign law firms for arbitration proceedings - AK Balaji vs Govt of India (MADHC 2012)];

SESSION III**Introduction to Arbitration - Part III**

1. Arbitration Agreements as defined in the Act (S.7, as amended for electronic records);
2. How to draft an Arbitration Agreement / Clause:
 - a. what provisions can and ought to be included in it;
 - b. precautions to be taken;
 - c. Place of arbitration (Seat and Venue) - Seat / Place of Arbitration (S.2(2) as amended r/w Sec. 20) (distinguished between Venue and Seat of Arbitration) (ONGC - Videocon - Cairn India (DHC 2016));
 - d. substantive & procedural laws applicable to arbitrations;
 - e. rules of procedure, if any;
 - f. jurisdiction of law courts; and
 - g. Institutions named in arbitration clause.
3. Exceptions to the rule that an arbitration agreement in writing is necessary. [The effect of the judgment of the supreme court in Chloro Control and Indowind, and of Hon'ble Bombay High Court in Kathotia; Taiyo Membrane Corporation vs Shapoorji Pallonji (SC 2016) – With regard to parties not party to the Arbitration Agreement];
4. Drafting an arbitration clause when one or more parties to the contract are not in India.

SESSION IV**Introduction to Arbitration - (Part IV)**

1. Doctrine of Separability – an Arbitration Agreement has a life independent of the Main Contract;
2. Arbitrability - What disputes are not arbitrable; & issues of arbitrability of disputes;
3. Multiparty Arbitration and Arbitrations under Multiple Contracts;
4. What is Incorporation by Reference;
5. In rem – In personam – Ref. (i) SC Booz Allen judgment;(ii) Shri Vimal Kishor Shah & Ors. vs Mr. Jayesh Dinesh Shah & Ors. (SC 2016);
6. Dealing with allegations of 'Fraud' in arbitral proceedings – A. Ayyasamy vs A. Paramasivam & Ors. (SC 2016);
7. Scope of Arbitral Reference (State of Goa vs Praveen Enterprises (SC 2011) – Making claims or counter-claims beyond the notice of reference;
8. Successive references under one Arbitration Agreement;
9. Effect of death of a party on Arbitration Agreement (s. 40);
10. Effect of insolvency of party on Arbitration Agreement (Relevance of Bankruptcy & Insolvency Code, 2015); and
11. Scott vs. Avery clause.

SESSION V

Introduction to Arbitration – Part V

Arbitration Agreements

1. Supersession of arbitration agreements, what is and its effects;
2. Applicability of the Arbitration and Conciliation Act, 1996, including Section 21 r/w Section 85;
3. Applicability of the amendments to the Arbitration and Conciliation Act, 1996 and its effect on existing arbitrations and court proceedings (i) New Tirupur Area Development Corporation Ltd. (“NTADCL”) v. M/s Hindustan Construction Co. Ltd. (Madras HC 2015); (ii) Electro Steel Casting Limited v. Reacon (India) Pvt. Ltd (CalHC 2016); (iii) Raffles Design International India Pvt Ltd. vs. Educomp Professional Education Ltd (DHC 2016); (iv) Rendezvous Sports World vs. the Board of Control for Cricket in India, Bombay High Court, Chamber Summons No. 1530 of 2015 (Mumbai);
4. Territorial application (arbitrations taking place in India (domestic) and Abroad (foreign) and *Bhatia International* judgment and effect of Balco judgement on arbitrations), applicability to International Commercial Arbitrations; types of Arbitrations to which applicable (also discuss Union of India vs Reliance Industries Limited (SC 2015) where Bhatia International is clarified); and
5. Scope and applicability of Section 89 of the Code of Civil Procedure, 1908.

SESSION VI

Initiation and Invocation of Arbitrations - Procedures

1. Disputes and differences - When arise;
2. How to initiate Arbitration - Notice invoking Arbitration, precautions to be taken; Section 21 r/w Section 29-A(1);
3. Is Section 21 exhaustive? If not, what are the other possible ways? [r/w Section 8(3)];
4. Reference to Arbitration in pending litigation (S. 8, as amended), including *Sukanya Holding* decision (reported in (2003) 5 SCC 531);
5. Constitution of an Arbitral Tribunal:
 - a. What parties should consider while selecting and appointing arbitrators;
 - b. Procedures in Arbitration Agreements; Govt. contracts; and
 - c. Pre-named Arbitrations.
6. Selection and Appointment of Arbitrators (Section 10 & 11, as amended r/w Section 11(14) and Fourth Schedule and its effect and implementation); Whether this procedure is judicial or administrative, ramifications of the judgements holding it to be judicial, scope of Section 11 (as amended) proceedings (Assignia-VIL (reported in (2016) 230 DLT 235 = 2016 SCC OnLine Del 2567)) and issues that can

be raised and decided therein; Relevance and importance of institutional arbitrations compared with ad-hoc arbitrations & Ref. SBP vs. Patel Engineering (reported in (2009) 10 SCC 293);

7. What the Courts are required to do in application u/s 11 including sub -sections (6-A), (6-B) and (13) (as amended), u/s 16 (as amended) of Arbitration Act;

Note: Judgments referred can't be cited as a precedent?

8. Applicability of Section 11 (as amended), where Arbitration Clause refers to Particular Rules of Arbitration which Rules incorporate a method or procedure for reference to Arbitration.

SESSION VII

Powers of Courts of Law (Before commencement of and during the course of arbitral proceedings)

1. Scope of intervention by Courts (S. 5);
2. Court that can be approached and has jurisdiction (Sections 2(1)(e), as amended and 42, as amended);
3. Interim Measures of Protection (Sections 9, as amended r/w Sections 2(2), as amended and Section 17 r/w Section 9(2) & (3), as amended) - Scope, applicability, differences between the two sections;
4. Enforceability of interim Orders;
5. Sec. 37 Appeals from Orders u/ss. 8, 9 & 17 (as amended);
6. Appeals from Orders u/s 37 – Maintainability; and
7. Emergency Arbitrations (i) HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd & Ors. (BHC 2014), (ii) Raffles Design International India Private Limited & Ors. v. Educomp Professional Education Limited & Ors (DHC 2016).

SESSION VIII

Practical Aspects of conducting Arbitration - (Part I)

1. Challenge to jurisdiction (u/s. Sec. 16); grounds of challenge; termination of OR continuation of arbitral proceedings.
2. Disclosure and acceptance by an Arbitrator (Sec. 12, as amended r/w Fifth, Sixth and Seventh Schedule) (i) Dream Valley vs Religare (DHC 2016); (ii) Picasso Digital vs Pick-A-Cent (DHC 2016). Judgments of Bombay High Court in BSE case where the question of Panel of two Arbitrators was discussed. (Vinay Bubna case). Challenge to Arbitrator (u/s. Sec. 12-13, as amended). – Grounds of challenge – order of termination.
3. Sec. 37 (as amended) Appeals from Orders – u/s. 16.

SESSION IX**Practical Aspects of conducting arbitral proceedings (Part II)**

1. Applicability of CPC and Evidence Act to Arbitrations; Judgments, analogous provisions – Section 19.
2. Determination of Rules of Procedure (Sec. 19) and those applicable to the substance of the dispute (S.28, as amended);
3. Law and other matters to be applied in determining the dispute (Sec.28 and its Amendment) – Substantive laws and procedures of laws;
4. What is required to be done at the first Meeting of Arbitral Tribunal and necessity of fixing dates for hearings & meetings; How? Where no Section 11 application is involved?
5. Language of proceedings (Sec. 22);
6. Minutes of Meetings / Hearings - Practical suggestions about contents, signatures, copies to be given;
7. Administrative assistance (Sec. 6);
8. Pleadings of Parties - (Statement of Claim, Reply, Rejoinder, Counterclaim etc.) (S.23, as amended) (r/w Section 2(9), Section 25 r/w Section 32(2)(a) & (b); Amendment applications and how to deal with them (compared with O. VI R. 17 of the Civil Procedure Code, 1908).
9. Hearing and Written proceedings (Sec. 24) (discuss the amendments providing for oral hearings to be conducted on a day to day basis and imposition of exemplary costs)
10. Framing of Issues / Points for determination - how, why - whether required, advisable or not;

SESSION X**Practical Aspects in conducting Arbitral proceedings – Part III)**

1. Exploring the possibility of Settlement (Sec. 30):
 - a. taking on record settlements;
 - b. passing of awards in terms of settlement;
 - c. settlement outside the arbitral tribunal /proceedings; and
 - d. Role of Arbitrator on Settlement.
2. Death of an Arbitrator;
3. Failure or impossibility to act on part of an Arbitrator including substitution of an arbitrator (Sec. 14, as amended);
4. Termination of Mandate and substitution of an Arbitrator (Sec. 15) (Shailesh Dhairyawan vs Mohan Balkrishna Lulla (SC 2015));
5. Defaults by party in filing pleadings or default in appearance by a party (Sec. 25 including amendments providing for discretion to treat default as forfeiture);

6. Fees of an Arbitrator (S.11A r/w Fourth Schedule); Rules to be made by High Court (including the aspect whether Arbitrators can revise/ increase their fees during Arbitration proceedings, once they have commenced?); and
7. Advances and deposits towards Arbitrator's fees and administrative costs, security for costs, and accounts during and after arbitral proceedings & refusal of party to deposit or pay advances (Sec. 31(8), 31A, 38 & 39).

SESSION XI

Practical Aspects of conducting Arbitration – (Part IV)

1. Whether it is mandatory to have formal evidence in an Arbitration; if not, what are the alternative methods of proceeding without formal evidence;
2. Documentary evidence and oral evidence (Sections 24 & 25);
3. Disclosure and Discovery of documents – (Importance and necessity);
4. Affidavit of documents, Compilation of documents, inspection and copies - how far necessary;
5. Admission and denial of documents;
6. Assistance of an expert (Sec. 26) (delegation of authority) (Domain expert);
7. Evidence - Affidavits of Evidence, oral evidence, cross examination, re-examination etc. - Practical hints on how to prepare affidavit of evidence, how to cross-examine and re-examine;
8. Recording of Evidence/Suggestions;
9. Court Assistance in arbitral proceedings - (recording of evidence, summons etc.,) u/sec. 27 (Montana vs Aditya Developers (BHC 2016); and
10. How can and should the Arbitral Tribunal expedite procedures (Sections 29A and 29B).

SESSION XII

Awards (Final & Interim)

1. Closure of Hearings;
2. Interim and Final Award (Interim Award and Section 34, as amended);
3. Award of Interest, period of interest and rate of interest (u/s. 31 & section 2 (b) of Interest Act, 1978)
4. Determination, provision of Costs, charges and expenses and on the aspect of interest in Awards; Principle of 'Costs follow the Event' – Costs on Awards (S.31(7), 31A);
5. Hearing for costs & fees;
6. Termination of Proceedings (Section 32);
7. Contents of Award, (Amendments to Sec. 31) how to make and publish an Award, stamping and registration; and

8. What to be done with the records of Arbitration proceedings. (Copies & original documents. The possible grounds of challenge now available; Suggestions on how wide should be the powers of interference with an Award).

SESSION XIII

Post Award matters

1. Effect of an Award on the Mandate of Arbitrators (Sec. 32);
2. Powers of an Arbitral Tribunal after making an Award (Sec.33, 34 (4));
3. Setting aside of an Award (Sec. 34); (Old Section 34 and as amended in 2015);
4. Position prior to ONGC vs. Saw Pipes; Position after ONGC vs. Saw Pipes
Conflict with Public Policy;
5. Finality and enforcement of an Award (Sec. 35 & 36, as amended) (discuss the current position on stay of the operation of the said arbitral award in S.36(2));
6. Sec. 37 – Appeals u/s. 34 (as amended);
7. Effect on the rights of parties if an Award is set aside [Sec.43 (4)]; and
8. Remand to Arbitral Tribunal - Effect.

Points:

- No automatic stay on filing Petition/ Application u/s 34 (Amended Act)
- Retrospective/ Prospective effect of Amendment.
- Patheja Forging Judgment (SC) words “as if”.
- Dirk India Judgment - Interpretation of Sec. 36.

SESSION XIV

Foreign Awards

1. New York Convention (including amendments to S.48);
2. Geneva Convention;
3. Reference to Arbitration;
4. Evidence;
5. Enforcement;
6. Appeal

Note: Including Amendments to Sections 47, 48 & 56, 57.

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