

DOMESTIC AND INTERNATIONAL ARBITRATION: PART I PRACTICAL ASPECTS OF DOMESTIC ARBITRATION

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

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Why arbitrate?

- Arbitration is a universal language
- Cost effective and time saving
- Party Autonomy
- Procedural relaxations
- Limited scope for judicial intervention

Breaking down the Arbitration law in India

- Primary legislation – The Arbitration & Conciliation Act, 1996
- Part I – Domestic Arbitrations
- Part II – Enforcement of foreign awards
- Part III – Conciliation
- Part IV – Supplementary Provisions

Basics of Arbitration Agreement –

What is it and where to find it

- Section 7 – An agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship whether contractual or not.
- It MUST be in writing
- It may be a part of the same contract or a separate agreement

The three stages of judicial intervention

Prior to
commencement of
arbitration proceedings

During arbitration
proceedings

After the conclusion of
arbitration proceedings

Judicial intervention before commencement of arbitration proceedings

- Most contentious area of litigation in arbitration advocacy
- Section 8 – whether the dispute is arbitrable
- Section 9 – whether interim measures ought to be granted prior to appointment of arbitrator
- Section 11 – appointment of arbitrator

Section 8 – Arbitrability

- Ambiguity based on circumstances
- Importance on drafting the petition
- Example – Disputes between shareholders where directors nominated by minority shareholders have been removed by majority shareholders. Is this an arbitrable dispute for breach of shareholder agreement or an oppression mismanagement dispute under Section 242 of the CA ‘ 13?

Section 9 – Interim relief

- Rules governing interim relief under Section 9 akin to Order XXXIX Rule 1 of CPC
- Very broad scope of powers vested with Section 9 court
- Applicable even in international commercial arbitrations placed outside India [Exception to Part I – S. 2(2)]
 - Restoring the Bhatia-Balco conflict

Section 11 – Appointment of Arbitrators

- Precondition of Section 21 notice
- Scope of judicial interference now made very narrow
 - Reintroducing the Konkan Railways principle after SBP & Co.
- Stamp duty issues on an agreement containing arbitration clause

Limited role of courts during arbitration process

- Terminating the mandate of arbitrator (as opposed to challenging the authority of arbitrator)
- Compelling evidence from recalcitrant witnesses

Role of courts after passing of award

- Terminating the mandate of arbitrator (as opposed to challenging the authority of arbitrator)
- Compelling evidence from recalcitrant witnesses

**Snippet of
complexity of
arbitration law**

SEAT v VENUE



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Case Study

- **PASL Wind Solutions Pvt Ltd v GE Power Conversion India Pvt Ltd**
- Seat / Venue – What is the big deal
- There is no better guide to resolve the dispute than a well drafted arbitration clause

Citations

- *Bhatia International v. Bulk Trading*, (2002) 4 SCC 105 – overruled by *Bharat Aluminium Co (BALCO) v Kaiser Aluminium Technical Service*, (2012) 9 SCC 552 – diluted by Section 2(2) of the Arbitration & Conciliation Act, 1996 amended in 2015
- *Konkan Railway Corporation Ltd v. Rani Construction Pvt Ltd*, 2000 (8) SCC 159 – overruled by *SBP & Co. v. Patel Engineering Limited*, (2005) 8 SCC 618 – diluted by Section 11(6A) of the A&C Act, 1996 after amendment in 2015
- *PASL Wind Solutions Pvt Ltd v GE Power Conversion India Pvt Ltd*, judgement delivered on 20.4.2021, in C.A. No. 1647 of 2021

Model Arbitration Clause as per UNCITRAL Model Law

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as present in force. Parties may wish to consider adding: (a) The appointing authority shall be _____ (name of institution or person); (b) The number of arbitrators shall be _____ (one or three); (c) The place of arbitration shall be _____ (town or country); (d) The language(s) to be used in the arbitral proceedings shall be _____.

The above clause is a sample arbitration clause as per the UNCITRAL Model Law. It can be used as is or tailored as per the needs of the party

THANK YOU

Study Circle Session arranged by V.P. Shintre & Associates, Advocates

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