

AMENDMENTS TO INDIAN ARBITRATION ACT: “FINALITY IS GOOD BUT JUSTICE IS BETTER”

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The recent amendments to the Indian Arbitration Act 1996 seeks to address the problem of delay. “Justice delayed is Justice denied” is a well-recognised principle and the legislators seem to have embodied it in making this amendment. In the present context, the principle of “Finality is good but Justice is better” has equal significance. The author looks at the conflicting principles.

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One of the most criticised aspects of Indian arbitration is the slow pace with which arbitration proceedings are conducted. The recent amendments to the Indian Arbitration Act 1996 seeks to address this problem of delay. This is a very positive and encouraging development for promoting India as one of the leading centre for International Arbitrations.

The Indian Arbitration Act now contains a provision which provides that an award should be rendered by an arbitration tribunal within 12 months from the date the dispute is referred to arbitration. It provides that in the event, the arbitrator fails to make an award within 12 months or 18 months (in cases where the parties have agreed a 6 months extension) the mandate of the arbitrator terminates automatically unless the Courts grants an extension on such terms and conditions, as it deems fit.

“Justice delayed is Justice denied” is a well-recognised principle and the legislators seem to have embodied it in making this amendment. In the present context, the principle of “Finality is good

but Justice is better” has equal significance. There are likely to be occasions, such as in cases involving complex factual matrix, where an arbitration tribunal will need substantially more time, than provided by the Act, to carefully consider and render an award.

The principle “Finality is good but Justice is better” is commonly applied by the English Courts, in the context of English arbitrations, to determine when and to what extent the Courts should intervene in an arbitration proceeding.

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Indian Oil Corporation v Coastal (Bermuda) Ltd [1990] 2 Lloyd's Rep. 407 is a well-known cases in which my firm had acted and this principle was recognised and applied by the English Court. In that case, Indian Oil Corporation had made an application to the Court alleging that the arbitrators had misconducted themselves and therefore it requested the Court to remit the award back to the Tribunal for further adjudication. The Judge, Mr. Justice Evans, exercised his powers and remitted the award back to the Tribunal for further adjudication as he considered it was necessary to do Justice between the parties.

Recently, Mr. Justice Flaux of the English Commercial held in the case of *BV Scheepswerf Damen Gorinchen v The Marine Institute* [2015] EWHC 1810 (Comm) that delay in rendering an award could amount to a breach of the arbitrator's duty, under S.33 of English Arbitration Act, to avoid unnecessary delay. Hence, if a party could prove that the delay has caused it substantial injustice then a challenge to an award may well succeed on the grounds of serious irregularity.

The ICC International Court of Arbitration has also recently set-out a policy according to which it can penalise arbitrators if they are unjustifiably late in rendering their awards.

The Indian Arbitration Act gives the Indian Courts a wide discretion in the event the arbitrator are unable to conclude the arbitration proceedings within the statutory time-limits set-out in the Act. Even though each case would stand or fall on its own facts, the application of the principle "*Finality is good but Justice is better*" is likely to be central to any decision to be made by the Indian Courts while exercising their powers under the Act. An approach requiring strict adherence to the time limits set-out in the Act would be a wrong. Justice would demand a degree of flexibility to ensure that arbitration proceedings are conducted in a careful and considerate manner with a view to do Justice between the parties as opposed to under a pressure to meet with timelines.

Quotes of the month.....

