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असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in the Lok Sabha on the 4th February, 2021:—

BILL NO. 16 OF 2021

A Bill further to amend the Arbitration and Conciliation Act, 1996.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows.—

1. (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2021.

Short title and commencement.

(2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 4th day of November, 2020.

26 of 1996.

2. In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 36, in sub-section (3), after the proviso, the following shall be inserted and shall be deemed to have been inserted with effect from the 23rd day of October, 2015, namely:—

Amendment of section 36.

“Provided further that where the Court is satisfied that a *prima facie* case is made out that, —

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.”

3 of 2016.

Substitution of new section for section 43J.

3. For section 43J of the principal Act, the following section shall be substituted, namely:—

Norms for accreditation of arbitrators.

“43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.”

Omission of Eighth Schedule.

4. The Eighth Schedule to the principal Act shall be omitted.

Repeal and savings.

5. (1) The Arbitration and Conciliation (Amendment) Ordinance, 2020 is hereby repealed.

Ord. 14 of 2020.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The Arbitration and Conciliation Act, 1996 (the Act) was enacted with a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and the law relating to conciliation.

2. The Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015 (2015 Act), *inter alia*, to make arbitration process user friendly, cost effective and ensure speedy disposal and neutrality of arbitrators.

3. Subsequently, to address the practical difficulties arising in implementing the amendments carried out through 2015 Act, and to promote institutional arbitration in the country, the Act was again amended by the Arbitration and Conciliation (Amendment) Act, 2019.

4. In order to address the issue of corrupt practices in securing contracts or arbitral awards, a need was felt to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award is induced by fraud or corruption. Also to promote India as a hub of international commercial arbitration by attracting eminent arbitrators to the country, it was also felt necessary to omit the Eighth Schedule of the Act.

5. In the light of above circumstances, it has become necessary further to amend the Arbitration and Conciliation Act, 1996. However, as Parliament was not in session and immediate steps were required to make further amendments in the Act, the Arbitration and Conciliation (Amendment) Ordinance, 2020 (Ord. 14 of 2020) was promulgated by the President on 4th November, 2020 under clause (1) of article 123 of the Constitution.

6. The Arbitration and Conciliation (Amendment) Bill, 2021 which seeks to replace the aforesaid Ordinance, *inter alia*, provides for the following, namely:—

(i) to grant unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement, contracts or arbitral award is induced by fraud or corruption;

(ii) to omit Eighth Schedule of the Act which laid down the qualifications, experience and norms for accreditation of arbitrators; and

(iii) to specify by regulations the qualifications, experience and norms for accreditation of arbitrators and the said amendment is consequential in nature.

7. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 29th January, 2021.

RAVI SHANKAR PRASAD.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill proposes to substitute section 43J in the Arbitration and Conciliation Act, 1996.

2. The proposed section 43J provides that the Arbitration Council of India may by regulations specify the qualifications, experience and norms for accreditation of arbitrators.

3. The matters in respect of which the regulations may be made are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is therefore, of a normal character.

UTPAL KUMAR SINGH,
Secretary-General.