

Dispute Resolution Hotline

June 28, 2018

INDIA: APPLICABILITY OF AMENDMENTS IN INDIAN ARBITRATION LAW TO ARBITRAL AND RELATED COURT PROCEEDINGS

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INTRODUCTION

With an arbitration-friendly ecosystem shaping up in India, the judiciary has consistently followed the footsteps of the legislature's pro-arbitration regime, introduced by the Arbitration and Conciliation (Amendment) Act 2015(Amendment Act).

The Amendment Act resolved the anomaly to effective enforcement of arbitral awards caused by applications filed by the judgment-debtors (i.e. parties against whom the award is passed) to set aside the awards. Prior to the Amendment Act, enforcement proceedings could begin only upon expiry of the time for making an application to set aside the arbitral award or upon refusal of such application having been made. Thus, an application to set aside an arbitral award would result in an automatic stay on the award, resulting in a party not being able to enjoy the fruits of litigation.

The Amendment Act sought to correct this anomaly. It introduced the requirement for a separate application requesting for a stay of the operation of the award. It would be at the court's discretion to allow such an application granting stay of the award, for which it may impose conditions as deemed appropriate under the given facts and circumstances. Thus, an application to set aside an arbitral award would not automatically result in a stay on operation of the award or stall the enforcement proceedings.

In light of the above, award-holders sought execution of the awards and several such execution petitions were filed in various courts notwithstanding the pendency of applications challenging the awards. Thus, the applicability of the Amendment Act to such execution proceedings where the set aside proceedings had been initiated prior to the Amendment Act drew immense attention.

India: applicability of amendments in Indian arbitration law to arbitral and related court proceedings

— Shweta Sahu & Ashish Kabra

You can direct your queries or comments to the authors

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