

Ordinance Summary

The Arbitration and Conciliation (Amendment) Ordinance, 2015

- The President promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2015 on October 23, 2015. The Ordinance amends the Arbitration and Conciliation Act, 1996.

- **Relevant court for domestic and international arbitration matters:** Under the Act, the relevant court for all arbitration matters would be a principal civil court or high court with original jurisdiction.

The Ordinance modifies this to state that in the case of international arbitration, the relevant court would only be the high court having original ordinary jurisdiction.

- **Applicability of certain provisions to international commercial arbitration:** Part I of the Act that included provisions related to interim orders by a court, order of the arbitral tribunal, appealable orders etc. only applied to matters where the place of arbitration was India.

Under the Ordinance, these provisions would also apply to international commercial arbitrations even if the place of arbitration is outside India. This would apply unless the parties agreed otherwise.

- **Powers of Court to refer a party to arbitration if agreement exists:** Under the Act, if any matter that is brought before a court is the subject of an arbitration agreement, parties will be referred to arbitration.

The Ordinance states that this power of referral is to be exercised by a court even if there is a previous court judgment to the contrary. The Court must refer the parties to arbitration unless it thinks that a valid arbitration agreement does not exist.

- **Interim order by a Court:** The Act states that a party to arbitration may apply to a court for interim relief before the arbitration is complete. For example, a party may seek interim protection of goods, amounts, property, etc. that is the subject matter of the arbitration before a court.

The Ordinance amends this provision to specify that if

the Court passes such an interim order before the commencement of arbitral proceedings, the proceedings must commence within 90 days from the making of the order, or within a time specified by the Court. Further, the Court must not accept such an application, unless it thinks that the arbitral tribunal will not be able to provide a similar remedy.

- **Public Policy as grounds for challenging an award:** The Act permits the court to set aside an arbitral award if it is in conflict with the public policy of India. This includes awards affected by (i) fraud or corruption, and (ii) those in violation of confidentiality and admissibility of evidence provisions in the Act.

The Ordinance modifies the ambit of violation of public policy to only include those awards that are: (i) affected by fraud or corruption, (ii) in contravention with the fundamental policy of Indian Law or (iii) conflict with the notions of morality or justice.

- **Appointment of arbitrators:** The Act permits parties to appoint arbitrators. If they are unable to appoint arbitrators within 30 days, the matter is referred to the court to make such appointments.

The Ordinance states that, at this stage, the Court must confine itself to the examination of the existence of a valid arbitration agreement.

- **Time period for arbitral awards:** The Ordinance introduces a provision that requires an arbitral tribunal to make its award within 12 months. This may be extended by a six month period.
- **Time period for disposal of cases by a Court:** The Ordinance states that any challenge to an arbitral award that is made before a Court, must be disposed of within a period of one year.
- **Fast track procedure for arbitration:** The Ordinance permits parties to choose to conduct arbitration proceedings in a fast track manner. The award would be granted within six months.

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