

CLUSTER 14

The Arbitration and Conciliation Act, 1996

1. On 1st day of April, 2016, Arnold Food Processors limited, a company engaged in food processor manufacturing unit entered into a joint venture agreement with Ronnie and Coleman Company Limited, the largest manufacturer of Food processors for supply of parts of mixer and grinder for manufacturing its latest model. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Delhi. In the light of The Arbitration and Conciliation Act, 1996, discuss:
- The type of arbitration agreement made between them.
 - Examine what will happen if the agreement does not have any clause relating to arbitration where disputes arose between them concerning quality of material supplied in 2017 [RTP Nov 2018, RTP Nov 2019, ICAI Mock Exam March 2019]

Ans:

There are two basic types of arbitration agreement:

- Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.
- Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Delhi at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Arnold Food Processors Limited shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

2. In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between them. [RTP May 2019]

Ans:

There are two basic types of arbitration agreement:

- Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.
- Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In this case, the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise

3. Ms. Rajkumari launch her boutique. She contacted with M/s Shyam Lal merchants for supply of dress materials. The communication between the parties were over email. There was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Clothes Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." Ms. Rajkumari placed an order. Comment on the validity of the such arbitration agreement according to the Arbitration and Conciliation Act, 1996 [ICAI Mock Exam Oct 2019]

Ans:

As per the Arbitration and Conciliation Act, 1996 an agreement must be in writing There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

4. Examine the validity of the following statement with reference to the Arbitration and Conciliation Act, 1996:
Every Court would be a Judicial Authority but every Judicial Authority would not be a Court. [CA Final Nov 2018]

Ans.

1. The function of any judicial authority is to perform the judicial functions, like determining disputes by applying the provisions of law and interpreting the Statutes.
2. Courts are judicial bodies set up by the Government to perform the judicial functions.
3. However, the judicial functions are also performed by Tribunals and arbitrators.
4. Thus, the term 'judicial authority' is wider than the term 'court'.
5. Accordingly, the statement 'Every Court would be a Judicial Authority but every Judicial Authority would not be a Court' is correct.

5. Examine the validity of the following statement with reference to the Arbitration and Conciliation Act, 1996: The disputes submitted to arbitration must be arbitrable. [CA Final Nov 2018]

Ans. Generally, any dispute involving private rights, which may be submitted to a civil court for resolution, can be submitted to arbitration. However, Certain disputes cannot be referred to arbitration, like matrimonial disputes, disputes with respect to criminal matters, disputes with respect to testamentary matters (e.g. a dispute with respect to validity of will of a deceased), industrial disputes, disputes relating to revenue matters (e.g. payment of taxes, duties and cesses), in over words, these disputes are not arbitrable.

Thus, the statement "The disputes submitted to arbitration must be arbitrable is correct.

6. Ram and Shyam entered into an agreement to refer a dispute relating to genuineness of a will to arbitrator. In spite of this Shyam commenced proceedings relating to the dispute in the district court of competent jurisdiction. Ram, therefore, submits an application for stay of legal proceedings under the Arbitration and Conciliation Act, 1996. Will he succeed? [CS (Executive) June 2008, June 2011]

Ans. Generally, an dispute involving private rights, which may be submitted to a civil court for resolution, can be submitted to arbitration, However, certain disputes cannot be referred to arbitration, like matrimonial disputes, disputes with respect to criminal matters, disputes with respect to testamentary matter (e.g. a dispute with respect to validity of will of a deceased), etc.

In the given case, the dispute is with respect to genuineness of a will. This dispute falls under 'testamentary matters', and so such dispute cannot be referred to arbitration. Accordingly, commencement of legal proceedings in the Court by Shyam is valid. Therefore, Ram's application to the Court for stay of legal proceedings is not tenable.

7. Ajoy and Bijoy make an agreement in writing to refer a dispute between them to an arbitrator for determination. In spite of this agreement, Ajoy files a suit against Bijoy relating to the dispute in a Court, Advise Bijoy. [CS (Executive) June 2001]

Ans. The given problem relates to section 8 of the Arbitration and Conciliation Act, 1996, as discussed below:

Provisions

1. As per Section 8, if there is an arbitration agreement between the parties, the dispute shall not be submitted to the court, but instead, shall be submitted to arbitration. Thus, no party can initiate the litigation through the court if there is an arbitration agreement between the parties.

2. Section 8 further provides that if, despite an arbitration agreement, one of the parties approaches the court, but the other party requests the court not to entertain the dispute, and instead refer it to arbitration, the court shall refer the parties to arbitration.

Analysis

3. There is a valid arbitration agreement between Ajoy and Bijoy.

4. So, neither Ajoy nor Bijoy is entitled to file a suit in the Court with respect to any dispute which is Subject matter of the arbitration agreement between them.

5. The suit filed in the court by Ajoy against Bijoy is not maintainable.

Conclusion

6. **Advice to Bijoy:** Bijoy should request the court not to entertain the suit filed by Ajoy. On receiving such request, the Court shall pass an order dismissing the suit and to resolve the dispute by arbitration.

8. Smart Automobiles Limited and Apex Four wheelers Limited entered into an agreement regarding annual maintenance service to be provided by Smart Automobiles for all vehicles within the state of Uttar Pradesh for five years. The agreement was containing a clause that in the event of a dispute between the parties the matter would be submitted to arbitration. At the end of the fifth year the service agreement was not renewed. Decide whether the arbitration agreement should not be treated as terminated. [CA Final May 2018]

Ans. The given problem relates to section 16 of the Arbitration and Conciliation Act, 1996. as discussed below:

Provisions

As per section 16, the arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. Accordingly, the arbitration clause shall survive even after the term of the principal contract has come to an end. This is termed as doctrine of separability.

Analysis

a) The principal contract between Smart Automobiles Limited and Apex Four Wheelers Limited has come to an end. The issue raised is as to whether the arbitration clause contained in such principal contract shall be treated to have been terminated or not.

b) The dispute between the parties relates to the relationship created by way of the principal contract and so the arbitration agreement contained in the principal contract would bind the parties. The parties had agreed to subject all disputes, arising out of and in connection with the principal contract, to arbitration. So, the arbitration clause

constitutes a separate and independent agreement in itself (**Ashapura Mine-Chem Ltd. v Gujarat Mineral Development Corporation.**)

Conclusion

As per Section 16 and the judgement given in Ashapura Mine-Chem Ltd. v Gujarat Mineral Development Corporation, the arbitration clause shall survive, i.e., it shall not terminate even though the principal contract has been terminated.

9. Rahul moves an application for setting aside the arbitral award on the ground that he was not given a proper notice of the arbitral proceedings and thereby not being able to present his case. He furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back. Decide with reasons-

(i) Whether Rahul will succeed in his prayer; and

(ii) Whether the law of limitation will be a bar in his case.

Ans. The given problem relates to section 34 of the Arbitration and Conciliation Act, 1996.

Section 34 contains the ground on the basis of which an arbitral award can be challenged in the Court and then, the Court is empowered to pass an order setting aside the arbitral award.

One of the grounds contained in section 34 is "Where the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case".

In the given case, Rahul has challenged the arbitral award on the ground that he was not given proper notice of the arbitral proceedings. This ground, as explained above, is one of the grounds on which an arbitral award can be challenged in the Court.

The questions asked in the given problem are answered as under:

(i) Rahul will succeed in his prayer since he has challenged the arbitral award on such ground as is covered under section 34.

(ii) As per section 34, an application for setting aside the arbitral award may be made by a party within 3 months from the date such party had received the arbitral award.

In the given case, Rahul has made the application within 15 days of receipt of the arbitral award. Thus, Rahul has made the application well in time. Accordingly, the application made by Rahul is not time-barred. In other words, the law of limitation shall not be a bar in his case.