EXTENT OF JUDICIAL INTERFERENCE IN THE ARBITRATION PROCEEDINGS

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Introduction

Arbitration is a type of Alternative Dispute Resolution in which the parties settle their dispute by appointing a third party, known as an Arbitrator, rather than going to court. The decision of the Arbitration Tribunal is final and binding unless and until it is overturned by the Court through intervention. An Arbitration Agreement is required to refer a dispute to an Arbitral Tribunal. There are millions of cases pending in Indian courts. Arbitration was implemented to relieve court pressure. Arbitration is a quick, cost-effective, and time-saving method of resolving a dispute. Although arbitration is a distinct process/method for resolving disputes, the Courts have the authority to intervene in the proceedings, as stated in the Act of 1996. According to Section 5 of the Act, 1996, the Courts have very limited authority to intervene in between arbitration proceedings in very limited circumstances, such as appointing an arbitrator, where the arbitration agreement is not legally binding; the arbitration procedure was not conducted in accordance with the agreement, and so on. Judicial intervention in arbitral proceedings is necessary to ensure fairness and protect the parties' rights.

The Arbitration and Conciliation Act, 2016 Act contains only a few sections in which the Court's reference or assistance is requested after the commencement of arbitration and the formation of the arbitral tribunal. Section 27**[1]** is one such provision, which requires the courts to assist in taking evidence by compelling the appearance of a witness, the production of a document, or access to a property for inspection before the arbitral tribunal. In order to expedite the arbitral proceedings, Section 27 of the Act has been enacted to: (a) seek the Court's assistance in taking evidence and carrying out requests made by either the arbitral tribunal or the parties with the tribunal's permission; and (b) assist the arbitral tribunal or a party in taking evidence. As an arbitral tribunal lacks the authority to compel the issuance of witness summonses, the attendance of witnesses, or the production of documents, such assistance, or as Section 27 of the Act refers to it, "execution," of the arbitral tribunal's request, is regarded

as helpful and required. Therefore, the parties shouldn't suffer as a result of the arbitral tribunal's lack of coercion powers.

In practice, a party will typically file an application with the arbitral tribunal under Section 27 of the Act to request permission to apply to the court explaining the admissibility, materiality, and weight of the evidence, which the Arbitral Tribunal is empowered to determine under Section 19(4) of the Act. After reviewing the application, the arbitral tribunal, which is a master of its own processes, issues a decision either, allowing the party to request the Court's assistance in gathering evidence or rejecting the application. After the arbitral tribunal has given permission, the party is obliged to file an application with the court pursuant to Section 27(1), asking for "implementation" of the decision made by the arbitral tribunal. However, if the application is denied, the aggrieved party's only option is to dispute the award in accordance with Section 34 of the Act **[2].**

Scope of Judicial Interference

Regarding the extent to which courts may intervene with an arbitral tribunal order that they are attempting to execute, there is still disagreement. The scope of judicial interference by courts is constrained in light of the design of the Act, particularly Sections 5, 19, 27, 34, and 37, for the reasons outlined in the following paragraphs, according to a number of High Courts**[3]** that have examined this dispute. Given that Section 5 of the Act limits the ability of any judicial authority to intervene in the arbitration proceedings and Section 19 of the Act grants the arbitral tribunal the authority to establish its own rules of procedure, including the authority to decide the admissibility, relevance, materiality, and weight of any evidence, the arbitral tribunal is permitted to do so. As a result, the Court lacks the authority to decide whether any evidence is admissible, relevant, important, or weighty. The Court's ability to intervene only extends to ensuring that it adheres to its standards for gathering evidence (which are rules framed by the Court on its administrative side or the provisions of the Civil Procedure Code, 1908 like Order 16 for issuance of summons etc.).

Additionally, the proceedings in front of the Court under Section 27 are not appeals, like those in front of the Act's Sections 34 or 37. According to Section 27 of the Act, the Court is not a venue for appeal with the authority to rule on an order of the Arbitral Tribunal. It is not possible to appeal a decision made by the Arbitral Tribunal under Section 27 of the Act under Section 37 of the Act. Only when the arbitral award is challenged under Section 34 of the Act, which

is a channel available to a party for airing its grievances against the award including any interim orders that may have been made by the Arbitral Tribunal, can the aggrieved party raise any issue regarding the relevance of the evidence sought or the legality of the direction of the Arbitral Tribunal to produce the same. Additionally, this restricts the Court's ability to interfere with proceedings under Section 27 of the Act.

A party cannot oppose an order of the Arbitral Tribunal issued under Section 27 of the Act in an indirect manner since, according to Section 37 of the Act; it is not subject to review or appeal. This is a well-established legal principle. It is also established law that neither Article 226 nor Article 227 of the Indian Constitution permit the annulment of an arbitral tribunal's orders made pursuant to Section 27 of the Arbitration Act. The current situation presents the courts with another issue, namely whether or not to take the arbitral tribunal's application of mind before making an order under Section 27 of the Act into consideration when making a decision on an application. On the one hand, it is indisputable that Section 27 of the Act's requirement to include the arbitral tribunal is not only a formality. Instead, the tribunal must use its judgment before filing or permitting the filing of an application before the Court. On the other hand, the Act's design forbids the Court from interfering with the execution of the aforementioned arbitral tribunal's order, even if it is not a verbal order.

Opposing parties frequently rely on certain judicial precedents **[4]** that state that even though the Court is not hearing an appeal while deciding an application under Section 27 of the Act, it is still empowered to investigate whether the arbitral tribunal's order was based on an incorrect interpretation of the law. In Bharat Heavy Electricals Limited vs. Silor Associates S.A **[5],** the Division Bench of the Delhi High Court held that the Courts are obligated to correct the Arbitral Tribunal's order if it is based on a complete lack of application of mind, a misconception of law, or an erroneous legal premise. In response to this challenge, it is worth noting that such a finding was made under unusual facts and circumstances, in which the arbitral tribunal sought the Court's assistance based on an incorrect legal belief. In other words, the arbitral tribunal had the authority/jurisdiction to order direct production of documents. Furthermore, the Honorable Bombay High Court **[6]** distinguishes these precedents as cases that did not consider the effect of Section 5 of the Act (minimal judicial interference).

Is Judicial Intervention in the Arbitration Proceedings Justified?

In India, domestic arbitrations are the most frequent. Any foreign element is therefore in short

supply. Government agencies and comparable organizations merely turn into antagonistic parties. Government employees who have been chosen as arbitrators by the center may have biases in favor of one party or the other for a variety of reasons. Justice can be obtained by politics, power, and money. It is also less complicated in arbitration processes since they are less formal and because arbitrators frequently lack experience with how to conduct them effectively. The concept of arbitration law is not consistent with the functioning of the legal system. As a result, it fails to accomplish its goal.

Many times, the representatives of the parties are unfamiliar with the procedure of the arbitration proceedings and conduct it in the same manner as litigation, which defeats the purpose and object of the Act. The majority of Arbitrators appointed by Courts under Section 11 of the Act are retired judges who rely on long-standing procedures and submissions based on their experience behind the bench, resulting in a lengthy and arduous process similar to court proceedings. As a result, arbitration entails issues, oral and documentary evidence, chief and cross-examination, and so on. Thus, if the purpose and object of the Act are not protected or followed by its supporters, injustice will befall the common man, prompting him to seek justice in court. As a result, the intervention of Courts in protecting a party's rights, delivering justice, and achieving the aim or object of the Act is JUSTIFIED.

Final Thoughts

Alternative Dispute Resolution is a brand-new concept in the Indian legal system, and it is quickly gaining traction in order to alleviate the burden of pending cases in Indian courts. The Arbitration method allows the parties to select an arbitrator of their choice to resolve the dispute. Although arbitration is a completely independent dispute resolution system, courts can intervene in arbitration proceedings, but only in very limited circumstances, as stated in the Arbitration Act of 1996. The courts regulate a fair and equitable method of providing justice to aggrieved parties. The court's intervention can be justified by claiming that it protects the parties' rights or that it keeps an eye on the arbitration proceedings to prevent injustice.

In reality, given the current situation in India, judicial intervention is necessary. Where the arbitrators appointed by the center are government employees who are likely to be biased for one reason or another, and where retired judges are frequently appointed as arbitrators who have become accustomed to onerous procedural and evidence standards due to extended tenures on the Bench. However, judicial intervention dilutes the core goal and objective of

arbitration, necessitating a middle-ground approach that is achievable with a sufficient number of qualified, trained, and honest arbitrators as well as well-equipped arbitral institutions. The availability of qualified, trained, and honest arbitrators, as well as well-equipped arbitral institutions, is critical for the future success of arbitration in India. If there is a growing belief that choosing arbitration over litigation reduces parties' chances of receiving high-quality justice, arbitration's future is doomed.

In light of the foregoing, it is possible to conclude that the proceedings before the Court under Section 27 of the Act are merely executory rather than adjudicatory in nature, with the Courts unable to consider the validity and correctness of the order passed by the Arbitral Tribunal, whether reasoned or unreasoned. The scheme of Section 27 of the Act does not provide for any procedure to provide a hearing to the opposing party, a witness, or a party against whom the Courts wishes to issue directions, and instead only provides for a mechanism to ensure that material evidence is brought before the arbitral tribunal for effective adjudication of disputes.

Bibliography

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4. *National Insurance Company Limited v. S.A. Enterprises – 2015 SCC Online Bom 5063 [Paragraphs – 36, 40]*
5. *Montana Developers Private Limited v. Aditya Developers and Ors. – 2016 (6) MhLj 660 [Paragraphs – 9, 16, 17, 18, 19, 20, 21]*
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9. *Bharat Heavy Electricals Limited vs. Silor Associates S.A. – (2014) SCC Online Delhi 4442 [Paragraphs 2, 16 and 19]*
10. *(2014) SCC Online Delhi 4442*
11. *Montana Developers Private Limited v. Aditya Developers and Ors. – 2016 (6) MhLj 660*