

**Introduction of New Section 29B- Fast Track Procedure under the Arbitration and Conciliation (Amendment) Ordinance, 2015**

**I. Section 29B – Bare Text under the Arbitration and Conciliation (Amendment) Ordinance, 2015:**

*(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).*

*(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.*

*(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):*

*(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;*

*(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;*

*(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;*

*(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.*

*(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.*

*(5) If the award is not made within the period specified in sub-section (4), the provisions of subsections (3) to (9) of section 29A shall apply to the proceedings.*

*(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.*

**II. Introduction**

There is no clear definition of fast track arbitration. Arbitral proceedings with strict time limit are generally categorized as fast track arbitration. It is important to understand that fast track arbitration is not a distinct system of arbitration. The difference between ordinary arbitral proceedings and fast track arbitration lies in the different combination of expedited procedures adopted in fast track arbitration proceedings. Strict time limits and limited procedural steps form the essence of

fast track arbitration.<sup>1</sup> All the participants and parties to the arbitral proceeding are bound by the time limit. The parties, on one hand, have limited time to appoint an arbitrator or arbitrators, as the case may be, to make their submissions and to prepare for the oral hearings. Similarly, the arbitrators, on the other hand, are time bound to pass an award.

Another key element of fast track arbitration is the use of modern means of communications like the email, fax among such other means. They help in facilitating fast and convenient communications between all the participants and the parties.<sup>2</sup>

The concept of fast track arbitration has been introduced into the Arbitration and Conciliation Act, 1996 (For short “**the Act**”) by virtue of the Arbitration and Conciliation (Amendment) Ordinance, 2015 (For short “**the Ordinance**”). Section 29B of the Ordinance now deals with the concept of fast track arbitration and the manner in which it should be carried out.

### **III. What is the procedure to be followed for conducting the arbitral proceedings under this section?**

Under Section 29B of the Ordinance, the parties if they so desire to invoke fast track arbitration have to express the desire in writing either before or at the time of constitution of the arbitral tribunal.<sup>3</sup> The arbitral tribunal is to pass an award solely based on written pleadings, documents and submissions without oral hearings. Oral hearings are held in fast track arbitration only when all the parties request the arbitral tribunal for the same or if and when the arbitral tribunal thinks it is necessary to hold oral hearings.<sup>4</sup> Further, the arbitral tribunal is at liberty to dispense with any technical formalities if and when oral hearings are held keeping in mind the object of quick settlement of the dispute.<sup>5</sup>

### **IV. What is the time period in which the award shall be made once the arbitral proceedings are commenced?**

Once the dispute is referred to a fast track arbitral tribunal, the tribunal is obligated to pass an award within six (6) months from the date of reference.<sup>6</sup> In case the arbitral proceedings aren't complete within the six (6) months, then the parties by consent can extend the time period to a maximum period of six additional months.<sup>7</sup> If the proceedings are still not complete then the time period can be extended before or after the lapse of time with the permission of the court, else the arbitral proceedings comes to an end.<sup>8</sup> The court can grant extension of time only if the parties establish a sufficient cause as to why the court should grant additional time.<sup>9</sup> While doing so, the court can substitute one or all the arbitrators and in such a case, the proceedings shall continue from the stage already reached.<sup>10</sup> Further, the court can impose exemplary costs on the

<sup>1</sup> Research Paper on “Fast Track Arbitration: Just fast or something different?” authored by Irene Welser/Christian Klausegger available at [http://www.chsh.com/fileadmin/docs/publications/Welser/Beitrag\\_Welser\\_2009.pdf](http://www.chsh.com/fileadmin/docs/publications/Welser/Beitrag_Welser_2009.pdf)

<sup>2</sup> Ibid.

<sup>3</sup> Section 29B(1) of Ordinance

<sup>4</sup> Section 29B(3)(c) of Ordinance

<sup>5</sup> Section 29B(3)(d) of Ordinance

<sup>6</sup> Section 29B(5) of Ordinance

<sup>7</sup> Section 29A(3) of Ordinance

<sup>8</sup> Section 29A(4) of Ordinance

<sup>9</sup> Section 29A(5) of Ordinance

<sup>10</sup> Section 29A(6) of Ordinance

parties in case the application was made to delay the proceedings.<sup>11</sup> It is also important to note that the application made under this section is to be disposed off within sixty days (60) from service of notice on the opposite party.<sup>12</sup>

**V. How is the fees payable to the arbitrator under this section decided by the parties?**

The concerned party is liable to pay fees to the arbitrator or arbitrators, as the case may be, after completion of the arbitral proceedings. The quantum of fee and the mode of payment of the fee are to be in accordance with the agreement reached between the parties and the arbitrator.<sup>13</sup> The court if it is convinced that the delay was caused in the arbitral proceedings for reasons attributable to the arbitrator then it can order for reduction of fees payable to the arbitrator upto five percent for each month of delay.<sup>14</sup>

**VI. Conclusion**

The success of fast track arbitration depends on the cooperation between all the participants and the parties. Without the cooperation of all the involved persons, successful completion of the proceedings is a farfetched notion. Fast track arbitration though is helpful to all genre of cases is more specifically needed in cases relating to infringement of patents/trademarks, construction disputes in time-bound projects, licensing contracts and the like as time is essence of such disputes.

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<sup>11</sup> Section 29A(8) of Ordinance

<sup>12</sup> Section 29A(9) of Ordinance

<sup>13</sup> Section 29B(6) of Ordinance

<sup>14</sup> Section 29A(4) of Ordinance