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COMPARISON BETWEEN ARBITRATION AND CONCILIATION ACT, 1996, ARBITRATION AND CONCILIATION AMENDMENT ACT, 2015 AND ARBITRATION AND CONCILIATION AMENDMENT ACT, 2019

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Section 2(1)(e)

Arbitration and Conciliation Act, 1996 (for short "1996 Act")

- In the 1996 Act, Court was defined as the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having, and jurisdiction to decide the questions forming the subject-matter of the arbitration but does not include a Court of Small Causes
- It was same for both domestic and international commercial arbitration.
- There was no distinction provided in the 1996 Act with regard to the definition of Court.

Arbitration and Conciliation Amendment Act, 2015 (for short "2015 Amendment")

- The 2015 amendment makes a clear distinction between an international commercial arbitration and domestic arbitration with regard to the definition of 'Court'
- In so far as domestic arbitration is concerned, the definition of 'Court' is the same as was in the 1996 Act.
- However, for the purpose of international commercial arbitration, 'Court' has been defined to mean only High Court of competent jurisdiction.
- As per the 2015 Amendment district court will have no jurisdiction.

Arbitration and Conciliation Amendment Act, 2019 (for short "2019 Amendment")

- Retains the 2015 amendment.

Section 1(ca)

1996 Act

- This section did not exist in the 1996 Act.

2015 Amendment

- This section did not exist in the 2015 Amendment.

2019 Amendment

- Section 1(ca) has been introduced by the 2019 Amendment to define an 'arbitral institution' as an arbitral institution designated by the Supreme Court or a High Court.

Section2(2)

1996 Act

- In the 1996 Act, the first part was applicable only where the place of arbitration is India.

2015 Amendment

- A proviso was added to Section 2(2) of the 1996 Act through which interim measures under Section 9, taking evidence under Section 27 and Section 37(1) (a) and 37(3) shall also apply to international commercial arbitrations even if the seat of arbitration is outside India.

2019 Amendment

- Retains the 2015 amendment.

Section 7

1996 Act

- The definition of Arbitration Agreement did not include communication through electronic means.

2015 Amendment

- In section 7(4)(b) the words 'including telecommunication through electronic means' has been added.
- An arbitration agreement can come into existence by communication through electronic means.

2019 Amendment

- Retains the 2015 amendment.

Section 8

1996 Act

<u>Power of the judicial authority to refer parties to arbitration</u>

- Any action which was brought before the judicial authority which was the subject matter of an arbitration agreement, the judicial authority had to refer the parties to arbitration immediately after submission of first statement regarding the dispute.
- Under the 1996 Act, the judicial authority only had to rely on the application by a party regarding the arbitration agreement and the parties were referred to arbitration.

2015 Amendment

Power of the judicial authority to refer parties to arbitration

Section 8(1) has been substituted wherein an additional requirement has been imposed on the judicial authority which is to assess whether prima facie a valid arbitration agreement exists or not.

- A proviso also has been added to Section 8(2) which provides that in case the original arbitration agreement or certified copy is not available and the said copy is available with the opposite party then an application may be made before the Court to produce the original.

2019 Amendment

- Retains the 2015 amendment

Section 9

1996 Act

Interim measures by the Court

- Under the 1996 Act, a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it was enforced in accordance with section 36 apply for interim measures.
- There was no such requirement in the 1996 Act to commence the arbitral proceedings within 90 days of measure of interim protection.

2015 Amendment

Interim measures by the Court

- A party may apply for an interim measure before or during arbitral proceedings or at any time after making of the arbitral award but before it was enforced in accordance with section 36 apply for interim measures.
- However Section 9(2) has been inserted which provides that if the Court passes an interim measure of protection under the section before commencement of arbitral proceedings, then the arbitral proceedings shall have to commence within a period of 90 days from the date of such order or within such time as the Court may determine.
- Once the arbitral tribunal is constituted, the Court shall not entertain an application for interim measures under Section 9 unless it finds that circumstances exist which may not render the remedy under Section 17 efficacious.

2019 Amendment

- Retains the 2015 amendment

Section 11

1996 Act

When parties have not agreed on an appointment procedure

- A request for appointment of arbitrator should be sent by one party to the other party.
- The other party who is in receipt of such request may appoint an arbitrator within 30 days from receipt of the request.
- However, if the other party fails to appoint an arbitrator within 30 days or if the two arbitrators appointed by the respective parties fail to appoint a third arbitrator, then Section 11(4) and 11(5) become applicable and the Chief Justice or any person designated by him may appoint an arbitrator.

When parties have agreed on an appointment procedure

The Chief Justice or any person designated by him may appoint an arbitrator, when:

- The parties fail to act as required under the agreed procedure; or
- The parties, or the two appointed arbitrators, fail to reach an agreement expected of them under the procedure; or
- A person, including an institution, fails to perform any function entrusted to him or it under the agreed procedure.

Scope of interference by the Court while deciding on a request for appointment of arbitrator under sub-section (4) or (5) or (6) of Section 11

- The Courts ventured into issues of (i) arbitrability, (ii) jurisdiction, (iii) limitation, (iv) joinder of parties/non-signatory parties while deciding a request for appointment of an arbitrator.

Appeal

- A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or any person or institution designated by him is final [Section 11(7)].

Court should have due regard to the following considerations before appointing an arbitrator

The unamended sub-section (8) of Section 11 reads as follows:

"(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to-

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator."

Multiple requests for appointment of an arbitrator

- Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice of different High Courts or their designates, the Chief Justice of India or the person or institution designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request [Section 11(11)].

2015 Amendment

When parties have not agreed on an appointment procedure

- The power to appoint an arbitrator is now vested with the Supreme Court or the High Court or any institution designated by such Courts [Section 11(4) and 11 (5)].
- As per sub-section 6B of Section 11, the designation of any person or institution by the Supreme Court or, as the case may be High Court, for the purposes of Section 11 shall not be regarded as delegation of judicial powers of the Supreme Court or the High Court.

When parties have agreed on an appointment procedure

- The power to appoint an arbitrator under Section 11(6) is now vested with the Supreme Court or the High Court or any institution designated by such Courts.
- As per sub-section 6B of Section 11, the designation of any person or institution by the Supreme Court or, as the case may be High Court, for the purposes of Section 11 shall not be regarded as delegation of judicial powers of the Supreme Court or the High Court.

Scope of interference by the Court while deciding on a request for appointment of arbitrator under sub-section (4) or (5) or (6) of Section 11

- While considering an application under Section 11(4), (5) and (6), the Court would confine itself only to the examination of the existence of an arbitration agreement (Section 6A).

Appeal

- A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision [Section 11(7)].

Court to have due regard to the following considerations before appointing an arbitrator

The amended sub-section (8) of Section 11 reads as follows:

> "The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to--
> (a) any qualifications required for the arbitrator by the agreement of the parties; and
> (b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator."

Multiple requests for appointment of an arbitrator

- In sub-section (11) of Section 11, for the words "the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made," the words "different High Courts or their designates, the High Court or its designate to whom the request has been first made" shall be substituted.

2019 Amendment

When parties have not agreed on an appointment procedure

- Sub-Section 3A has been added which provides that the Supreme Court and the High Court will have the power to designate arbitral institutions from time to time which have been graded by the Arbitral Council [read with Section 11(12)].
- In case of jurisdiction of the High Court, when no arbitral institutions are available; the Chief Justice of High Court may maintain a panel of arbitrators for discharging the functions of the arbitral institution.

When parties have agreed on an appointment procedure

- The appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be [Section 11(4) read with Section 11(5) and 11(6)].
- An application made under Section 11 shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party [Section 11(13)].

Scope of interference by the Court while deciding on a request for appointment of arbitrator under sub-section (4) or (5) or (6) of Section 11

- Section 6A was omitted. The effect of which appears to be that the position under the unamended 1996 Act is brought back.

Appeal

- Sub-section (7) of Section 11 is omitted. The effect of which appears that a decision of an institution or High Court is appealable.

Court to have due regard to the following considerations before appointing an arbitrator

- The words "The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court" in sub-section (8) of Section 11 are now replaced with the words, "The arbitral institution referred to in sub-section (4), (5) and (6)"

Multiple requests for appointment of an arbitrator

Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint [Section 11(11)].

Section 11A

1996 Act

Prior to the 2015 Amendment, Section 31(8) of the 1996 Act provided that fees of the arbitrators would be fixed by the arbitral tribunal if it has not been already agreed upon by the parties.

2015 Amendment

Power of the Central Government to amend the fourth schedule

- The fourth schedule provides a model fees chart for an arbitrator.
- By virtue of this provision the legislators have tried to regularize the fees of arbitrators in domestic arbitration as opposed to leaving it to the discretion of arbitral tribunal or the parties.

2019 Amendment

Judicial interpretation with regard to the Fourth Schedule

- Post the 2015 Amendment, the Supreme Court decided in the case of National Highway Authority of India v. Gayatri Jhansi Roadways Limited and Ors. 2019 SCC Online SC 906, that the Fourth Schedule is not

mandatory in determining the fees where the fees has been fixed by agreement between the parties.

Section 12

1996 Act

Mandatory disclosure by the arbitrator

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. [Section 12(1)].

2015 Amendment

Mandatory disclosure by the arbitrator

- When a person is approached in connection with his appointment as an arbitrator, he shall disclose in writing any circumstances:
- Existence of any either direct or indirect, of any past or present relationship which is likely to give rise to justifiable doubts as to his independence or impartiality;
- Affecting the ability to devote sufficient time to the arbitration and to complete the entire arbitration within a period of twelve months.[Section 12(1)].
- The grounds specified in the fifth schedule shall guide in determining whether justifiable doubts regarding independence or impartiality exists or not.[Explanation 1 to Section 12(1)].
- The existence of any relationship with the party shall be a ground for challenge the appointment of an arbitrator under the seventh schedule.[Section 12(5)].
- However, the parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.[Proviso to Section 12(5)].

2019 Amendment

- Retains the 2015 amendment

Section 14

1996 Act

- This section specifies the circumstances under which the mandate of an arbitrator shall terminate.

2015 Amendment

- The 2015 Amendment not only provide the circumstances when the mandate of an arbitrator shall terminate but also provides that in a situation when the mandate of an arbitrator terminates he shall be substituted by another arbitrator.

2019 Amendment

- Retains the 2015 amendment

Section 17

1996 Act

Interim measures by the Arbitral Tribunal

- The arbitral tribunal on the request of a party may order a party to take an interim measure of protection as required by the parties.
- The arbitral tribunal may also require a party to provide security for the same.

2015 Amendment

Interim measures by the Arbitral Tribunal

- A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal for an interim measure of protection.
- An order passed under Section 17 shall be deemed to be an order of the Court and is an appealable order under Section 17.

2019 Amendment

Interim measures by the Arbitral Tribunal

- In the 2019 Amendment the words "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" has been omitted.
- This means an interim measure of protection can be granted by the arbitral tribunal either during the arbitral proceedings only.

Section 29A

1996 Act

This section did not exist in the 1996 Act

2015 Amendment

Time limit for arbitral award

- The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.[Section 29A (1)].

  An arbitral tribunal shall be deemed to be entered upon reference as soon as the arbitral tribunal receives the notice of appointment.[Explanation to Section 29A (1)].
- Additional fees may be provided to the arbitral tribunal if the award is made within a period of 6 months of constitution of the arbitral tribunal.[Section 29A (2)].
- The period of 12 months for an award can be further extended for 6 months with the consent of both the parties.[Section 29A (3)].
- If the award is not made within 12 months or the extended period of 6 months, the mandate of the arbitrator(s) shall terminate unless the Court has, before or after the expiry of the period extended the period.[Section 29A (4)].
- If the delay has been due to the arbitral tribunal the Court may order reduction of the arbitrator's fees not more than 5 percent for each month.[Proviso to Section 29A (4)].
- The further extension after 6 months may only be may be on the application of any of the parties and may be granted only for sufficient cause and on terms and conditions as may be imposed by the Court.[Section 29A (5)].
- While granting an extension for a further period after 6 months it shall be open to the Court to substitute one or all the arbitrators. [Section 29A (6)].
- In case the arbitral tribunal has been reconstituted it shall be deemed to be in continuation of the previously appointed arbitral tribunal. [Section 29A (7)].
- It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.[Section 29A (8)].

- An application filed for a further extension shall be disposed of as expeditiously as possible by the Court and an endeavor shall be made to dispose it off within a period of 60 days. [Section 29A (9)].

2019 Amendment

Section 29A (1) has been substituted to state that:

- The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings(6 months under Section 23(4)
- A proviso has been added which provides that in matters of international commercial arbitration an endeavor shall be made to dispose of the matter within a period of 12 months from the date of completion of proceedings.
- A proviso has been added to sub-section 5 of Section 29 which states that when application for further extension of time is pending the mandate of the arbitrator shall continue.

Section 29B

1996 Act

This section did not exist in the 1996 Act.

2015 Amendment

<u>Application for a Fast track procedure to be followed in arbitration</u>

- The parties to an arbitration agreement may apply for a fastrack procedure either before or during the appointment of arbitral tribunal by the parties.
- The procedure under this section shall be as follows:
- The dispute shall be decided on the basis of written pleading, with the use of documents, submissions provided by the parties and there shall be a sole arbitrator depending on the interest of the parties and relying on his skill and efficiency.
- There shall be no oral hearing.
- The tribunal can ask the parties for any other information or any kind of clarification to be provided to help in the matter of resolving the issue.
- There is a provision for an oral hearing if the parties request the tribunal or if the tribunal considers it necessary to resolve the issues.
- With the use of technical formalities, the tribunal shall resolve such issues and do whatsoever required for a speedy disposal of the case.
- The award shall be given within six months from the date the tribunal starts taking notice of the case and if such award is not passed within the time prescribed then the procedure for extension of time provided under 29A is followed.
- If the award could not be given in the prescribed time period for fast track arbitration which is six months, an extension period of six months is provided.
- This extension period is provided under Section 29A of the Act as ordinarily provided for normal arbitral proceedings.
- The authority of the arbitrator shall terminate if before the lapsing of the six month time period the Court has not extended the period.
- If the proceedings have been delayed due to the error of the arbitral tribunal and thereby an extension is required the Court can order for the reduction of fees to be given to the arbitrator.

2019 Amendment

- Retains the 2015 amendment.

Section 34 Grounds for challenge for setting aside an Arbitral Award

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34(2)(b)(ii)

1996 Act

- The arbitral award is in conflict with the public policy of India

  Explanation – Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

2015 Amendment

- The explanation to Section 34(2)(b)(ii) has been substituted by the Arbitration and Conciliation (Amendment) Act, 2015 as follows:

  "Explanation.--Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced of affected by fraud or corruption or was in violation of section 75 or section 81."

- Further, the following explanation was inserted by the Arbitration and Conciliation (Amendment) Act, 2015:

  [(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

  Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]

2019 Amendment

<u>Applicability of 2015 Amendment</u>

- In the case of Ssangyong Engineering & Construction Co. Ltd v. National Highway Authority of India 2019 SCC Online SC 677 para 15 it was held that the above amendments brought about by the 2015 Amendment will apply to only to Section 34 applications that have been made to the Court on or after 23.10.2015, irrespective of the fact that the arbitration proceedings may have commenced prior to that date.

Section 34(2)(b)(ii)

1996 Act

<u>How Courts interpreted Section 34(2)(b)(ii) of 1996 Act</u>

<u>Fundamental Policy of Indian law</u>

- In the case of ONGC v. Western Geco International Ltd (2014) 9 SCC 263 Fundamental policy was interpreted as follows:

- Arbitrator should adopt a 'judicial approach'. This means that arbitrator should act bona fide and deal with the subject in a fair, reasonable and objective manner and that his/her decision is not actuated by any extraneous considerations.(Para 34)
- Wednesbury principle of reasonableness should be followed.(Para 39)This principle was explained further by the Court as follows:
- A finding based on no evidence, or
- An arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or
- Ignore vital evidence in arriving at its decision.

Interest of India

- In the case of Associate Builders v. DDA (2015) 3 SCC 49 para 35 it was held this ground concerns itself with India as a member of the world community in its relations with foreign powers

2015 Amendment

How Courts interpreted Section 34(2)(b)(ii) of 1996 Act as amended by the 2015 Amendment

Fundamental Policy of Indian law

- Fundamental policy as contained in the amended Section 34(2)(b)(ii) would now mean the "fundamental policy of Indian law" as explained in paragraphs 18 and 27 of Associate Builders v. DDA (2015) 3 SCC 49 (hereafter "Associate Builders") and the meaning ascribed to this phrase by the judgment of ONGC Ltd v. Western Geco International Ltd (2014) 9 SCC 263 has been done away with.
- The net effect is that an arbitral award can be interfered on the ground of 'fundamental policy' only if:
- Para 18 of Associate Builders – Cites Renusagar Power Co Ltd v. General Electric Co 1994 Supp (1) SCC 644 which states that fundamental policy would be violated if award disregards orders passed by superior courts in India, but being contrary to statute only, would not contravene any fundamental policy of Indian law.
- Similarly, at Para 27 of Associate Builders v. DDA it is stated that binding effect of the judgment of a superior court cannot be disregarded by the award.

Interest of India

In the case Ssangyong Engineering & Construction Co. Ltd v. National Highway Authority of India 2019 SCC Online SC 677 para 36 this ground was deleted.

2019 Amendment

Fundamental Policy of Indian law

- Retains 2015 Amendment

Interest of India

Deleted.

Section 36

1996 Act

Automatic stay

- The pre-amendment scenario was that as soon as a Petition under Section 34 of the Act was filed, an automatic stay would operate on the award.
- This was the case owing to Section 36 of the Act, which read as under:-

  "36. Enforcement.-Where the time for making an application to set aside the arbitration award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court."
- A plain reading of this section made it evident that until the application under Section 34 had been disposed off as being refused, the award would not have become enforceable.

2015 Amendment

Automatic stay

- Section 36 under the 2015 Amendment does not make the stay on the impugned award automatic upon filing of Petition under Section 34.
- Section 36(2) clearly specifies that filing of Section 34 application shall not by itself render the award unenforceable unless the Court grants a stay on a separate application made.
- Upon filing of the application, the stay is not to be granted as a matter of right, but the Court "may" in its discretion grant such a stay, subject to such conditions, and on recording of specific reasons.
- While granting such a stay provisions of the Civil Procedure Code, 1908, regarding stay of money decree need to be followed.

2019 Amendment

2015 amendment no more retrospective in nature

- The retrospective nature of the far-ranging 2015 Amendment inasmuch as it related to Court proceedings has been conclusively determined by the Supreme Court in Board of Control for Cricket in India v. Kochi Cricket (P.) Ltd. [(2018) 6 SCC 287] in the context of Section 36 of the 1996 Act.
- In Board of Control for Cricket in India v. Kochi Cricket (P.) Ltd. , the Supreme Court had expressed its displeasure with the pending proposal to render the 2015 Amendment prospective in nature. The Supreme Court had urged a re-think in this regard.
- However, Parliament has specifically disregarded the advice of the Supreme Court, and through the 2019 Amendment expressly made the 2015 Amendment prospective in nature i.e. the provisions of the 2015 Amendment would only apply to cases where the arbitration was invoked post October 23, 2015.

Section 42A and 42B

1996 Act

There was no provision in 1996 Act

2015 Amendment

There was no provision in the 2015 Amendment

2019 Amendment

Confidentiality

- Section 42A has been inserted which explicitly provides a requirement for the arbitrator(s), the arbitral institution concerned and the parties themselves to maintain the

confidentiality of all arbitration proceedings, except where disclosure of the award is necessary for the purpose of its implementation and enforcement.

Protection of action taken in good faith.

- There will be no suit or other legal proceedings shall lie against the arbitrator for anything which is done in good faith.

Section 43A

1996 Act

- There was no provision in 1996 Act

2015 Amendment

- There was no provision in the 2015 Amendment

2019 Amendment

- Part 1A has been inserted by virtue of the 2019 amendment which discusses in detail about the Arbitral Council of India.
- The Arbitration Council of India (for short "Council") has been established as an independent body to promote arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.
- The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.
- The main functions of the Council shall include:
- Framing policies for grading arbitral institutions and accrediting arbitrators.
- Making policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters.

Introduction of Eighth Schedule

1996 Act

- There was no provision for in 1996 Act

2015 Amendment

- There was no provision in the 2015 Amendment

2019 Amendment

- The 2019 Amendment has introduced the Eighth Schedule which specifically provides that only a certain specific class of persons holding certain qualifications would be eligible to be accredited as an arbitrator including advocates, chartered accountants, cost accountants and company secretaries [all with 10 years of experience] or officers of the Indian legal service, or officers with a law degree or an engineering degree etc.

Section 87

1996 Act

- There was no provision in 1996 Act

2015 Amendment

- There was no provision in the 2015 Amendment

2019 Amendment

- Through the 2019 Amendment, the legislature introduced Section 87 which ensured that the amendments made by 2015 Amendment shall not apply to any:
- arbitral proceedings commenced before the commencement of 2015 Arbitration Act,
- court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the 2015 Amendment Act.
- Section 87 made it clear that the 2015 Amendment Act would only apply to arbitral proceedings commenced on or after the commencement of the 2015 Amendment Act and to court proceedings arising out of or in relation to such arbitral proceedings.

<u>Section 87 struck down</u>

- In the case of Hindustan Construction Company v. Union of India, 2019 SCC Online 1520, the Court noticed that the introduction of Section 87 would result in a delay of disposal of arbitration proceedings, and an increase in the interference of courts in arbitration matters, which defeats the very object of the 1996 Act which was strengthened by the 2015 Amendment
- Section 87 was introduced after deleting Section 26 of the 2015 Amendment which stated that the 2015 Amendment Act will not apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the 1996 Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.
- The Court, hence, held that the deletion of Section 26 of the 2015 Amendment, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, should be struck down as being manifestly arbitrary under Article 14 of the Constitution of India.