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ARBITRATION & CONCILIATION (AMENDMENT) BILL, 2021

The Lok Sabha on February 12, 2021 by a voice vote passed the Arbitration & Conciliation (Amendment) Bill, 2021 (“Bill”). This Bill replaces the Ordinance which was promulgated by the Hon’ble President on 4th November, 2020.

The Bill passed by the lower house of the parliament amends the following two provisions of the Arbitration and Conciliation Act, 1996 (“Principal Act”):

- i) Section 36 falling under Chapter VIII: A proviso has now been inserted in sub-section (3) of the aforesaid section, which states that, where the Court is *prima facie* satisfied that the underlying arbitration agreement, contract or the award itself is induced by fraud or corruption, it shall stay the award unconditionally pending the disposal of the application made for challenging the award under Section 34 of the Principal Act. The Bill proposes that this amendment shall be deemed to be in effect from 23rd October, 2015 and would apply to all court cases arising out of arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the notification of the Arbitration and Conciliation (Amendment) Act, 2015.

The reason for introducing this proviso, as given in the Statement of Objects and Reasons, is that “*in order to address the issue of corrupt practices in securing contracts or arbitral awards, a need was felt to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award is induced by fraud or corruption.*”

- ii) Section 43J falling under Part IA: The Bill provides that the qualifications, experience and norms for accreditation of arbitrators shall now be specified by regulations which will be issued separately and not as per the Eighth Schedule currently present in the Principal Act. Accordingly, the Bill omits the Eighth Schedule to the Principal Act.

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As per the Statement of Objects and Reasons, the omission of the said schedule was necessitated to promote India as a hub of international commercial arbitration by attracting eminent foreign arbitrators to the country. The Bill proposes that this amendment shall be deemed to be in effect from 4th November, 2020.

In pursuance of the present Bill, a stay of the award may be granted by the Court, even during the pendency of an application filed under Section 34 of the Principal Act challenging the award, if it is prima facie satisfied that the arbitration agreement/contract/making of the Award was induced by fraud or corruption. This stay, if granted, would operate till the challenge to the award is finally decided.

Further, as per the Bill, the Arbitration Council of India can decide issues relating to arbitrators' qualifications. The qualifications of the arbitrators will now be as per the rules set out by the Arbitration Council of India and not as per the earlier Eighth Schedule contained in the Principal Act.

For any queries or details, contact us at legal@mumbai.kochhar.com

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