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Topic- Explain 'Settlement' and 'Award' under the Industrial Disputes Act 1947. When does an award become enforceable? Who are the persons on whom 'Settlement' and 'Awards' are binding?

Awards and Settlement:

The Industrial Dispute Act, 1947 which extends to the whole of India came into operation on the first day of April 1947. As per Preamble of the said Act, it is enacted to make a provision for the investigation and settlement of the dispute and certain other purposes such as recovery of money from the employer in terms of Settlement or Award by making an application to the appropriate government. The purpose and aim of the Industrial Disputes Act 1947 is to minimize the conflict between labour and management and to ensure, as far as possible, Economic and Social Justice. The act has made comprehensive provisions both for this settlement of disputes and prevention of disputes in certain Industries.

What is award?

The judgment of an arbitrator is called his Award. Award (Judgement) of Arbitrators under section 10A is an Award.

Definition of Award

Section 2(b) of the Industrial Dispute Act, 1947 defines Award as follows - According to Section 2(b) of the Industrial Disputes Act, 1947 â€˜Awardâ€™ means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A.

What is Settlement?

According to Section 2 (p) of the Industrial Dispute Act, 1947 â€œSettlementâ€• means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may

be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

Enforceability of awards in India

In India, arbitration proceedings are regulated as per the Arbitration and Conciliation Act of 1996 (as amended in the year 2015). The Act provides that when the time for making an application to set aside the arbitral award has expired, or when such application has been made and rejected, the award would be enforced under the Code of Civil Procedure, 1908 as if it were a decree of the civil court.

The Act also declares that all arbitral awards shall be final and binding on the parties and those claiming under them.

The important point to be noted is that the award becomes enforceable under the Act only if the time for making an application to the court to set aside the award has expired, or if such application has been made and rejected by the court. Therefore, it is important to examine the provision regarding application to set aside the award i.e. Section 34 of the Act.

Section 34 provides that no application can be made after the expiry of 3 months from the date of receipt of award by the party, subject to a 30-day relief period that may be granted by the court at its discretion. The Act also provides that the application may be made by a party only if he furnishes proof of the grounds specified in Section 34(2)(a) of the Act or if the court finds that the subject-matter of the dispute is not arbitrable or if the award was against the public policy of India.

At this juncture, it is crucial to examine how courts have interpreted the provision and the powers it has granted them, in order to see if the courts of India have taken a pro-arbitration stance or have engaged in unnecessary interference which renders the enforcement of such awards difficult.

Perhaps the most controversial decision on this aspect would be the Supreme Court's decision in ONGC v. Saw Pipes Ltd. (Saw Pipes judgment), where the Court held that in addition to the grounds mentioned in Section 34, an award could also be challenged if it contravenes the provisions of the Arbitration Act, or "any other substantive law governing the parties". It also expanded the scope of "public policy" to state that an award could be set aside if it was "patently illegal".

In our view, the decision in this case is incorrect as the Supreme Court through its judgment in this case, allows a court to sit on appeal on the merits of the award, thereby going against the very principle and object of arbitration. Fortunately, in subsequent cases like McDermott International Inc. v. Burn Standard Co. Ltd., the Supreme Court tried to limit the effect of its previous decision by explicitly holding that the intervention of courts is envisaged only in few circumstances and stating that "the Court cannot correct the errors of the arbitrators. It can only quash the award leaving parties free to begin arbitration again, if required". The Bombay High Court went one step further and held that a literal interpretation of the Saw Pipes judgment "would be to radically alter the statutorily and judicially circumscribed limits to the court's jurisdiction to interfere with arbitration awards. It would indeed confer a first appellate court's power on a court exercising jurisdiction under Section 34 of the 1996 Act. There is nothing in the 1996 Act which indicates such an intention on the part of the legislature."

Therefore, it is evident that courts have tried to reverse the effect of the Saw Pipes judgment and move towards a more arbitration-friendly approach. It is the hope of the authors that the Supreme Court expressly overrules the Saw Pipes judgment at the earliest opportunity.

However, the judgment that truly cemented India's position as an arbitration-friendly nation was the judgment of the Supreme Court in Enercon (India) Ltd. v. Enercon GmbH (Enercon judgment) in 2014, where the Court answered multiple important questions with regard to arbitration and applicable law.

Firstly, the Court held that an arbitration agreement could not be avoided on the ground that the substantial contract was not concluded. Simply put, the Court held that the arbitration clause in a contract is severable from the underlying contract and held that the arbitration agreement and the substantive agreement formed two separate contracts, and that the invalidity of one would not affect the other. The Court held that the distinction between the two could be found in the Arbitration Act itself, making it clear that as long as there was a clear intention to arbitrate by both parties, arbitration proceedings could not be avoided on such grounds. In fact, whether the substantive contract was concluded or not in itself would have to be determined by the Arbitral Tribunal as per the Court.

Secondly, the Court held that when an arbitration agreement is seemingly unworkable, the courts must adopt a pragmatic, reasonable business person's approach and seek to overcome the lacunae by constructing the agreement in such a manner that arbitration becomes workable. The Court held that it must play a supportive role in encouraging arbitration and not allow the proceedings to come to a halt. In case there existed an omission in the agreement that would be obvious to the bystander, the Court has the power to make good the omission to give force to the agreement.

Finally, the Court also relied upon its judgment in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc. and applied the "closest connection test" to decide on the seat of arbitration. In the case, even though the venue was decided as London, the Court held that since the law governing the arbitration agreement was agreed to be Indian law, the law governing the substantive contract and the conduct of the arbitration was also Indian, the Court held that the applicable law would be Indian law and hence, seat of arbitration would be India.

The authors feel that the approach taken by the Supreme Court in the instant case has been extremely pragmatic and is appreciable. The Court has clearly expressed the viewpoint that the court's role must be one of minimal interference and support to arbitration so that the awards of Arbitral Tribunals may be enforced without any undue delay.

Though the Enercon judgment positions India as arbitration friendly, the authors feel that there is more to be done in emerging areas such as two-tier arbitrations and multiparty arbitrations and would discuss this in the coming chapters of this paper.

Further, it is pertinent to note the limitation period within which an arbitral award can be enforced:

(i) Domestic awards.— Since arbitral awards are deemed as decrees for the purposes of enforcement and the Limitation Act, 1963 applies to arbitrations, the limitation period for enforcement of such an award is twelve years.

(ii) Foreign awards.— Various High Courts have given varying interpretations on the limitation period within which a party may enforce an award. However, the Supreme Court in Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., held that under the Act a foreign award is already stamped as the decree. It observed that,

31. … In one proceeding there may be different stages. In the first stage the court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that the foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award a rule of court/decree again.

On whom Awards and Settlements are binding-

According to Section 18 of the Industrial Disputes Act, 1947 Awards and Settlements are binding on the following persons -

A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

A settlement arrived at in the course of conciliation proceedings and an award of a Labour Court, Tribunal or National Tribunal shall be binding on-
All parties to the industrial dispute;

All other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

All persons who were employed in the establishment or part of the establishment on the date of the dispute and all persons who subsequently become employed in that establishment or part.

The End