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INVALIDITY IN THE APPOINTMENT OF SOLE ARBITRATOR

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ABSTRACT

This study aims to examine the validity of sole arbitrator appointments as per Indian Arbitration and Conciliation Act of 1996. While it provides a flexible framework for arbitration, it is critical that arbitrator appointments adhere to the statutory standards in order to maintain the integrity and fairness of the arbitration process. With a focus on Indian arbitration legislation and pertinent case law, this study critically examines the legal concepts and jurisprudence surrounding the selection of a lone arbitrator and investigates the ramifications of an erroneous appointment.

KEY WORDS: Arbitration, Sole Arbitrator, Appointment, Validity, Statutory Compliance.

1. INTRODUCTION

Arbitration under agreements is mentioned under Part I of the Arbitration and Conciliation Act, 1996.¹ Arbitration in court proceedings and arbitration involving a court is prohibited by the new Act. Arbitration under Agreement is the only kind of arbitration that is permitted. It is significant to remember that the Apex Court and other High Courts have issued multiple precedent-setting rulings concerning the choice of arbitrators, which include the appointment of a single arbitrator.²

Whether judges or arbitrators, any adjudicatory process must uphold the values of the adjudicators' independence and impartiality. A basic tenet of "*Nemo Judex in Causa Sua*," is that no one should adjudicate their own case, regardless of whether the processes are judicial or quasi-judicial in nature.

Under the Arbitration and Conciliation Act of 1996 ("Indian Arbitration Act"), up until recently, one of the arbitration's parties under the agreement might unilaterally select a single arbiter, who could even be its employee or his nomination. This frequently undercut the aforementioned key tenet of natural justice and raised severe concerns about skewed rewards in favour of the party making the appointment.

2. RELEVANT PROVISION AS PER THE ACT

Part 10 specifies the "Number of Arbitrators." The number of arbitrators will be finalised by the parties at their discretion; yet, the number of arbitrators cannot be even.³ Consequently, the liberty to select the quantity of arbitrators is bestowed upon the parties. The clause also specifies that there will be only one arbitrator on the Arbitral Tribunal. In the event that the number of arbitrators cannot be established.⁴ If the parties agree to have more than one arbitrator, this must be stated explicitly in the agreement; if not, the reference will refer to a single arbitrator that the parties have approved.

Section 10A of the Act relates to the selection of single arbitrator. It stipulates that parties are free to appoint a sole arbitrator by mutual agreement. However, it is essential to analyze whether such appointments can be invalidated on the grounds of non-compliance with statutory requirements.

¹ Available at: <https://ibclaw.in/an-analysis-on-the-emerging-scope-of-challenging-the-appointment-of-sole-arbitrator-vis-a-vis-judicial-interpretation-in-india-adv-k-senguttuvan-and-adv-kshithija-prakashan/>, [Last accessed on 29th August, 2023]

² Idbi 1

³ Idbi 1

⁴ Idbi 1

The Act's Section 11 explains the appointment of arbitrators. Despite the fact that this provision of the entire regulation is one of the most contentious and challenging, it is nonetheless important. It provides the court with the authority to take into account the existence of an arbitration agreement when determining whether to grant a request for the appointment of arbitrators with court involvement.

3. VALIDITY OF APPOINTMENT OF SOLE ARBITRATOR

The primary objective is to uphold party autonomy, allowing parties to choose their arbitrators freely. However, this freedom must coexist with statutory compliance, particularly regarding qualifications and procedures for arbitrator appointments.

Section 10A of the Act, plays a crucial role in affirming party autonomy in the appointment of a sole arbitrator.⁵ It provides a default provision for a sole arbitrator in case parties do not specify their preference. However, it also recognizes the authority of the Court to intervene in the appointment process if parties fail to agree or if the agreed procedure fails. This section is fundamental in ensuring a balanced and efficient arbitration process in India while safeguarding the integrity of arbitrator appointments.

A major decision issued by the Hon. Supreme Court in 2017 is significant to and has an impact on the judicial evolution of Section 11. In the well-known judgment⁶ the issue at hand was whether the Respondent's Managing Director's choice of arbitrator was considered legitimate.⁷ In this instance, there was disagreement about whether the bank guarantee should be upheld when the respondent sent the appellant a purchase order for several commodities in 2014. The petitioner had given a bank advance and a performance guarantee. The Supreme Court examined the arbitration provision and ruled that it was unlawful since it permitted the sole arbiter to be the Managing Director or one of his designees.⁸ It held that: "*When the person who was to serve the position of arbitrator under the terms of the provision for arbitration became legally incapable of doing so (by virtue of Section 12(5) of the Act), an individual was not qualified to nominate another arbitrator, even if it was expressly stated in the arbitration clause.*"

⁵ Available at: <https://www.mondaq.com/india/arbitration--dispute-resolution/1113080/interested-party-not-eligible-to-be-an-arbitrator-supreme-court-of-india>, [Last Accessed on 30th August, 2023]

⁶ *TRF Ltd. Vs. Energo Engineering Projects Ltd.*

⁷ Idbi 1

⁸ Idbi 1

Referring to another notable case⁹, the Petitioner and the respondents had a distribution agreement. The court highlighted the essential concept established in the Perkins Case claiming that the election of a single arbitrator by a party interested in the resolution of the conflict was, in fact, what was meant to be averted.¹⁰ This leads to the decision that the Respondent, in the capacity as Board of Directors, was ineligible to elect a single arbitrator.¹¹

Before the Act was amended in 2015, the Hon'ble Supreme Court through various cases extensively examined the issue of selecting a single arbiter who strikes a balance between party autonomy and independence/impartiality.

In its latest ruling,¹² the Hon. Supreme Court held that in May 2015, the respondent signed an agreement to act as a distributor for milk and buttermilk in specific Jaipur neighbourhoods.¹³ Disagreements between the parties emerged in line with the Agreement. As per the arbitration clause included in the Agreement, the exclusive arbiter for any disputes and disagreements originating from, connected to, or impacting the Agreement would be the Chairman of the Sahkari Sangh. The respondent addressed the issue and his complaint to the Sahkari Sangh in August of 2018.¹⁴

The petitioners disagreed with the relevant application. Ultimately, an arbitrator was appointed by the High Court after it granted the request made in compliance with the Arbitration Act.¹⁵

4. CONCLUSION

The appointment of sole arbitrators in India, in accordance with Section 12, 5th Schedule, and 7th Schedule, as elaborately discussed above, appear to have developed imperative challenges due to the change in the interpretations on Sections 11 & 12 of the said Law. By virtue of its interpretative judicial trends, every decision that has been issued has produced a completely distinct situation for delivering the law regarding the appointment of solo arbitrators. There is a glimmer of hope in anticipating a number of such substantial and well-known rulings involving the appointment of solo arbitrators in India, which will provide important interpretations on the subject. Every decision that has been made has established a completely different circumstance for delivering the

⁹ *Proddatur Cable TV Digi Services vs. SITI Cables Network Ltd.*, 2020 SCC Online Del 350

¹⁰ Idbi 1

¹¹ Idbi 1

¹² *Jaipur Zila Dugdha Utpadak Sahkari Sangh Limited and Ors. v. M/s Ajay Sales and Suppliers*; Special Leave Petition (Civil) No. 13250 of 2021.

¹³ Idbi 4

¹⁴ Idbi 4

¹⁵ Idbi 4

legislation regarding the appointment of solo arbitrators as a result of its interpretative judicial tendencies.