

Jammu And Kashmir Arbitration And Conciliation Act, 1997

35 of 1997

[14 November 1997]

CONTENTS

CHAPTER 1 :- Preliminary

1. Short Title, Extent, And Commencement

PART 1 :- ARBITRATION

2. Definitions
3. Receipt Of Written Communications
4. Waiver Of Right To Object
5. Extent Of Jurisdiction Intervention
6. Administrative Assistance

CHAPTER 2 :- Arbitration Agreement

7. Arbitration Agreement
- 8 . Power To Refer Parties To Arbitration Where There Is An Arbitration Agreement
9. Interim Measures Etc., By The Court
10. Number Of Arbitrators
11. Ground Of Challenge
12. Failure Or Impossibility To Act
13. Termination Of Mandate And Substitution Of An Arbitrator

CHAPTER 3 :- CHAPTER 3

CHAPTER 4 :- Conduct of Arbitral Proceedings

14. Equal Treatment Of Parties
15. Determination Of Rules Of Procedures
16. Places Of Arbitration
17. Commencement And Complrtion Of Arbitral Proceedings
18. Language
19. Hearings And Written Proceedings

CHAPTER 5 :- Finality and Enforcement of Arbitral Awards

20. Finality Of Arbitral Awards
21. Enforcement
22. Jurisdiction

PART 2 :- Conciliation

23. Application And Scope

24. Number Of Conciliators

25. Conciliator Not Bound By Certain Enactments

26. Repeal And Saving

Jammu And Kashmir Arbitration And Conciliation Act, 1997

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An Act to consolidate and amend the law relating to domestic arbitration to define the law relating to conciliation and for matters connected there with or incidental there to. Be it enacted by the Jammu and Kashmir State Legislature in the Forty-eighth year of the Republic of India as follows :-

CHAPTER 1 Preliminary

1. Short Title,Extent, And Commencement :-

- (1) This Act may be called the Jammu and Kashmir Conciliation & Arbitration Act.
- (2) It extends to the whole of Jammu and Kashmir.
- (3) It shall come into force on such date as the Government may , by notification in the Government Gazette,appoint.

PART 1 ARBITRATION

2. Definitions :-

(1) In this part, unless the context otherwise requires :-

- (a) " arbitration" means any arbitration whether or not administrated by permanent arbitral institution;
- (b) " arbitration agreement " means any agreement referred to the section 7;
- (c) "arbitral award " includes an interm award;
- (d) " arbitral tribunal" means a sole arbitors or a penal of arbitors;
- (e) "Court" means an original jurisdiction of any district and includes the High Court in exercise of the ordinary original jurisdiction , having jurisdiction which decides the question forming the subject matter of the arbitration if the same having the subject matter of a suspension;
- (f) "legal representative" means a person who in law represents the estate of the deceased person, and includes a person who intermeddles with the estate of the deceased and the person on

whom the estate devolves on the death of the party acting;

(g) "party" means a party to an arbitration agreement;

(2) This part shall not effect any other law for the time being in force by the virtue of which certain disputes may not be submitted by arbitration;

(3) This part except sub-section (1) of section 40, sections 41 and 43 shall apply to any arbitration under any other enactment for the time being in force as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement , except in so far as the provisions of this part are inconsistent with that other enactment, or with other rules made there under..

(4) Subject to the provisions of sub-section (2) and save in so far as is otherwise provided by any law for the time being in force, this part shall apply to all arbitrations and to all proceedings relating thereto;

(5) Where this part, except section 28, leaves the party free to determine certain issues, that freedom shall include the right of the parties to authorize any person including an institution to determine that issue;

(6) An arbitral award made under this part shall be considered as a domestic award;

(7) Where this part,

(a) refer to the fact that parties have agreed or they may agree; or

(b) in any other way refers to the agreement of the parties; that agreement shall include any other arbitration rules referred to in that agreement.

(8) where this part, any other clause (a) of section 25 and clause (a) of section 32 refers to a claim that it shall also apply to the defence to that counterclaim.

3. Receipt Of Written Communications :-

(1) Unless otherwise agreed by the parties -

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual resident or mailing address; and (b) if none of the places referred to the clause (a) can be found after making it a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee last known place of business, habitual resident or mailing address by registered letter or by any other means ;

- (2) The communication is deemed to have been received on the day it is received;
- (3) This section does not apply to written communications in respect of proceedings of any judicial authority;

4. Waiver Of Right To Object :-

A party who knows that -

- (a) any provision of this part from which a party may derogate ; or
(b) any requirement under the arbitration act, has not been complied with and yet proceeds the arbitration without stating his objection to such non-compliance without undue delay or if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to an object.

5. Extent Of Jurisdiction Intervention :-

Notwithstanding anything contained in any other law for the time being in force in matters governed by this part no judicial authority shall intervene except where so provided in this part;

6. Administrative Assistance :-

In order to facilitate the conduct of the arbitral proceedings, the parties or the arbitral tribunal with the consent of the parties may arrange for administrative assistance by a suitable authority or person.

CHAPTER 2 Arbitration Agreement

7. Arbitration Agreement :-

- (1) In this part arbitration agreement means the agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a legal relationship whether contractual or not.
- (2) An arbitration agreement may be in the form of an arbitration clause in the form of a contract or a separate agreement.
- (3) An arbitration agreement shall be in the writing.
- (4) An arbitration agreement is in writing if it is contained in -
- (a) a document signed by parties; or
(b) an exchange of letters ,telex, telegrams or other means of telecommunications which provide a record of agreement; or
(c) an exchange of agreements of claim and defense in which the existence of agreement is alleged by one party and not denied by other party
(d) The reference in contract to a document containing an

arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration part is clause of that agreement.

8. Power To Refer Parties To Arbitration Where There Is An Arbitration Agreement :-

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration shall, if a party so applies not later than when submitting his first statement in the substance of the dispute, refer the parties to arbitration.

(2) The application refer to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or duly certified copy thereof.

(3) Notwithstanding that an application has made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced and continued and an arbitral award made.

9. Interim Measures Etc., By The Court :-

A party may before or during arbitral proceedings or at any time after the making of the arbitral award, apply to a Court

(i) for the appointment of a guardian of a minor or person of unsound mind for the purpose of arbitral proceedings.

(ii) for an interim measure of protection for the following matters, namely - (a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitrable agreement;

(b) securing the amount in dispute of the arbitration agreement;

(c) the detention, preservation or inspection of any property or thing

(d) which is the subject matter of the dispute and arbitration, or as to which a question may arise thereof and authorizing for any of the aforesaid purposes and person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, or an observation to be made or experiment to be tried, while may be necessary or expedient for the purpose of obtaining full information or evidence;

(e) interim injunction or the appointment of a receiver;

(f) such other interim measure of protection as may appear to be court to be just, and convenient.

(g) and the Court shall have the same power for making orders as it has for the purpose of and in relation to any proceedings before it.

10. Number Of Arbitrators :-

- (1) The parties are free to determine the number of arbitrators , provided that such numbers may not be an even numbers.
- (2) Failing the determination referred to in sub-section (1) , the arbitral tribunal shall consist of a sole - arbitrator.

11. Ground Of Challenge :-

- (1) When a person is approached in connection with his appointment as an arbitrator, he shall disclose in writing any circumstances, that may give rise to justifiable doubts as to his impartiality.
- (2) Any arbitrator, from the time of his appointment, and through out the arbitral proceedings shall, without delay, disclose to the parties in writing any circumstances referred to in subsection (1) unless they have already been informed of them by him -
- (3) Any arbitrator may be challenge if -
 - (a) circumstances exist that give rise to justifiable doubts as to his independence of his impartiality; or
 - (c) he does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him , or in whose appointment he has participated, only for reasons of which he becomes aware after appointment has been made.

12. Failure Or Impossibility To Act :-

- (1) The mandate of an arbitrator shall terminate if -
 - (a) he becomes de jure or de facto, unable to performs its functions or for reasons fail to act without undue delays and
 - (b) he withdraws from his parties or office agree to the termination of his mandate.
- (2) If the controversy remain affecting any ground referred to in clause (a) of sub-section (1), a party may unless otherwise agreed by the parties, apply to the court to decide the termination of the mandate.
- (3) If under this section or sub-section (3) of section 13 , an arbitrator withdraws from his office or party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of validity of any ground , referred to in this section or subsection (3) of section 13.

13. Termination Of Mandate And Substitution Of An Arbitrator :-

(1) In addition to circumstances referred to in section 13 or section 14 , the mandate of an arbitrator shall terminate -

(a) Where he draws from office any reason; or

(b) By or pursuant to agreement to any parties.

(2) where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applied to the appointment of the arbitrator being placed.

(3) Unless otherwise agreed by the parties, where an arbitrator is placed under sub-section (2) , any hearing previously held may be repeated at the decision of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal Made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER 3 CHAPTER 3

CHAPTER 4 Conduct of Arbitral Proceedings

14. Equal Treatment Of Parties :-

The parties shall be treated with equality and each party shall be given full opportunity to represent his case.

15. Determination Of Rules Of Procedures :-

(1) The Arbitral Tribunal shall not be bound by the Code of Civil procedure, Samvat 1977, or the Evidence Act , 1977.

(2) Subject to this part, the parties are free to agreeable on the procedure to be followed by the arbitral tribunal in conducting his procedures.

(3) Failing an agreement referred to in sub-section (2) , the arbitral tribunal may, subject to this part, conduct the proceedings in the manner it consider appropriate.

(4) The power of the arbitral under sub -section (3) includes the power to determine the admissibility, relevance, materiality and wweight of any evidence.

16. Places Of Arbitration :-

(1) The parties are free to agree on the place of Arbitration.

(2) Failing an agreement referred to in subsection (1), any place of agreement shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the

circumstances of the parties.

(3) Notwithstanding the sub- section (1) or sub-section (2) , the arbitral tribunal may unless otherwise agreed by the parties, ,meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties , or for inspection of documents, goods or other party.

17. Commencement And Complrtion Of Arbitral Proceedings

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Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute - (1) shall commence on the date in which the request for that dispute for the arbitration is received by the respondent; and

(2) shall be completed within a period of four months from the date of its commencement under clause (a).

18. Language :-

(1) The parties are free to agree upon the language or languages to be used in arbitral proceedings;

(2) Failing any agreement referred to in sub-section (1) , the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings .

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision other communication by the arbitral tribunal.

(4) The arbitral Tribunal may order that any documentary evidence shall be accompanied by the translation into any language or languages agreed upon by the parties or determined by the arbitral tribunal.

19. Hearings And Written Proceedings :-

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral proceedings for the presentation of evidence or for oral arguments or for whether the proceedings shall be conducted on the basis of documents and other materials; Provided that the arbitral tribunal shall hold oral hearings at any appropriate stage of the proceedings, on a request by a party, unless The parties have agreed that no oral hearings shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of the meetings of arbitral tribunal for the purposes of

inspection of documents, goods or other property.

CHAPTER 5 Finality and Enforcement of Arbitral Awards

20. Finality Of Arbitral Awards :-

Subject to this part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

21. Enforcement :-

Where the time for making an application to set aside arbitral awards under section 34 have been expired or under such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure under Samvat 1977 in the same manner as it were decree by the Court.

22. Jurisdiction :-

Notwithstanding anything Contained anywhere in this part or in any other law, for the time being in force , where with respect to any arbitration agreement any application under this part has been made under this Court, the Court shall alone have the jurisdiction over the arbitral proceedings and all the subsequent applications shall be arising out of that agreement.

PART 2 Conciliation

23. Application And Scope :-

(1) Save as otherwise provided by any other law for the time being in force and unless the parties have otherwise agreed , this part shall apply to the conciliation of disputes arising out of the legal relationship whether contractual or not and to all proceedings relating thereto.

(2) This part shall not apply where by virtue of any law for the time being in force and certain disputes may not be submitted to conciliation.

24. Number Of Conciliators :-

(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

25. Conciliator Not Bound By Certain Enactments :-

The Conciliator is not bound by the Code of Civil Procedure, 1977 or

The Evidence Act Samvat 1977.

26. Repeal And Saving :-

(1) The Arbitration act, samvat 2002 is repealed.

(2) Not with standing such repeal -

(a) the provision of the said enactment shall apply in relation to the arbitral proceedings which commencement before this Act came into force unless otherwise agreed by the parties but the Act shall apply in relation to the arbitral proceedings;

(b) All rules made and published under the said enactment shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.