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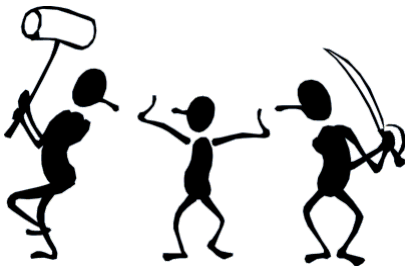
RECENT ARBITRATION CASES

Two-tier arbitration



In December 2016, a three judge bench of the Supreme Court decided that two-tier arbitrations (arbitrations with two rounds of arbitration proceedings) are permitted under the Indian Arbitration and Conciliation Act, 1996 (the "**A&C Act**"). This means that Indian courts will enforce clauses in contracts that provide that a decision in arbitration proceedings between the parties can be appealed in further arbitration proceedings and will enforce awards passed in such proceedings.

The Supreme Court came to this decision in *Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.* The court considered the facts in the case: An award was rendered in arbitration proceedings in India. Subsequently, in accordance with the contract between the parties, this award which was appealed in further arbitration proceedings in London. The London arbitration award was sought to be enforced in India.

"two-tier arbitration can ensure quick redressal for parties to an arbitration and protects parties' autonomy"

The court held that parties by contract can decide to have two-tier arbitration proceedings. The court held that there is no prohibition against such arbitrations in the A&C Act, and such a procedure does not violate the public policy of India. Therefore, two-round arbitration procedure is permissible under the laws of India. The court further stated that two-tier arbitration can ensure quick redressal for parties to an arbitration and protects parties' autonomy.

Disqualification of arbitrators

In March 2017, a single judge of the Bombay High Court was called upon to decide the circumstances in which arbitrators could be disqualified from hearing an arbitration for bias. Specifically, the court was asked to decide whether an arbitrator should stand disqualified or be removed from an arbitration if the arbitrator is or was a practicing counsel and is or has been briefed in other matters by the law firm engaged by one of the parties to the arbitration.

The petition in the matter of *Ms. Sheetal Kurundwade v. M/s. Metal Power Analytical (I) Pvt. Ltd. and Others* was filed seeking removal of the arbitrators under the newly

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introduced provisions of the A&C Act (the A&C Act was amended in 2015). The petitioner claimed that the arbitrators appointed by the respondent should be removed from the arbitration proceedings, because the respondent's lawyers had, in the past, engaged the arbitrators as counsel in matters for other clients.

The court dismissed the petition, holding that **the fact that an arbitrator has, as counsel, accepted unrelated briefs from a lawyer representing one of the parties to an arbitration does not disqualify the arbitrator or make him ineligible to decide the arbitration proceedings**. Under the A&C Act, an arbitrator will be disqualified from deciding an arbitration if he has a direct connection with one of the parties to the arbitration (i.e., he had advised or represented one of the parties to the arbitration etc.). An arbitrator will also be disqualified if he is representing a lawyer or law firm appearing for one of the parties to the arbitration in their own matter. But the fact that the arbitrator has been briefed in unrelated matters and for different clients by a law firm appearing for one of the parties is not enough to disqualify the arbitrator.

- By Krishna Hariani

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