

Arbitration and Conciliation Bill an attempt to improve legal framework, says govt

The bill aims at making the country a hub of international commercial arbitration

By Apurva Vishwanath

New Delhi: The Union cabinet on 26 August cleared the Arbitration and Conciliation Bill, 2015, aiming to make the country a hub of international commercial arbitration.

Incorporating many of the recommendations made by the Law Commission of India, the bill is an attempt to improve the legal framework relating to arbitration, a government press statement said.

As a part of amendments suggested to the Arbitration and Conciliation Act, 1996, the bill seeks to set a 12-month time limit for arbitrators to rule on disputes being heard by them. The amendments also include a provision for disputing parties to opt for fast-track arbitration or dispute resolution within six months.

The bill also contains a provision under which courts hearing cases against arbitral awards will have to decide on the dispute within a year.

One of the changes that investors have been anticipating is the narrowing of the definition of 'public policy' in the statute. One of the grounds for an arbitral award to be challenged in court is if it is against public policy. Over the years, the apex court has widened the scope of 'public policy' and this, in turn, has increased the chances of arbitral awards being set aside by courts.

In 1993, the Supreme Court said 'public policy' includes 'fundamental policy of Indian law'. This position further needed interpretation of courts and did not help the cause of making Indian arbitration law investor friendly.

The Law Commission took note of subsequent decisions of the court and suggested a much narrower definition.

Naresh Thacker, partner-litigation and alternate dispute resolution, Economic Laws Practice, weighs in on the changes with caution. "It is the approach of the stakeholders, courts included, that will decide whether we achieve the desired goal—of being a sought after destination for arbitration. While there can be no single definition of the term 'public policy', a consideration of how other jurisdictions such as England or Singapore apply it shows that it is viewed in a very narrow and circumscribed spectrum. This ought to be the way forward in India as well," he said.

However, ruling out interference from courts may not be the best option as India is yet to evolve its laws on commercial arbitration.

Anirudh Krishnan, partner, A.K. Law Chambers, said the proposed amendment is as balanced as it can be when looked at in totality. "At some level we should have the judiciary apply its mind. If we completely narrow down the definition of public policy, what about awards that are horrendously wrong," he questions. Krishnan was part of the Law Commission expert panel that suggested the recommendations.

Vyapak Desai, partner-international litigation and dispute resolution at Nishith Desai Associates, termed the proposed amendment as a positive development for overseas investors. "Even if the courts interpret the scope of 'public policy' in some cases, they will have to look at the intention of the legislation which is much clearer and what we now need is a change in culture and mindset in the way we do arbitration" he said.

The 2015 Bill is likely to be introduced in the winter session of Parliament.