

Dispute Resolution Hotline

April 23, 2010

CHEER FOR ARBITRATION: CONSULTATION PAPER RELEASED

The Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") was enacted to provide a pro arbitration regime with minimal judicial intervention. However, certain decisions of courts in India interpreted provisions of the Arbitration Act in a manner that led to an increase in judicial intervention and curtailment of party autonomy. These decisions, which have been discussed later, resulted in considerable public debate and were widely criticized by jurists and practitioners.

Litigation in India is known to be a much prolonged process and arbitration offers an efficacious alternative for resolving disputes expeditiously. Owing to the complexities of the existing arbitration regime in India, a need was felt to introduce amendments in the Arbitration Act to bring it in conformity with international best practices.

Based on the recommendations of the 176th Report of the Law Commission of India, The Arbitration Amendment and Conciliation (Amendment) Bill, 2003 ("**Bill**") was introduced in Parliament in December, 2003. In July, 2004 the Bill was referred for in-depth study to a committee chaired by Justice Dr. B.P. Saraf and later the Bill was referred for examination to the Departmental Relating Standing Committee on Personnel, Public Grievances, Law and Justice ("**Standing Committee**"). The Standing Committee was of the view that the provisions of the Bill still contained room for excessive intervention by Courts in arbitration proceedings. The Standing Committee further expressed the view that since many provisions of the Bill were contentious, the Bill may be withdrawn and a fresh legislation may be brought into effect after considering the recommendations of the Standing Committee. Accordingly, the bill was withdrawn from Parliament.

The Union Ministry of Law and Justice ("**Ministry**") has now released a **consultation paper** proposing key amendments in the Arbitration Act. Though a much belated move, it is nevertheless a step in the right direction and provides hope that India would soon become an arbitration friendly jurisdiction. Please click **here** for our analysis of the consultation paper.

Please write to us should you have any comments or suggestions on the consultation paper. We will consider them while forwarding our recommendations to the Ministry.

- Gautam Dembla & Shafaq Uraizee-Sapre

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