

Finality of Awards and Challenges Open

A presentation for CIAC's EDP at Bangalore

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Finality to the Award

- Purpose of seeking adjudication is to see a finality to the dispute.
- Award carries the decision of the arbitral tribunal.
- Whether that alone brings a finality to the dispute between the parties?

Finality to award under 1996 Act

Sec 36 Of 1996 Act

seeks to give a sort of finality

the award is accorded the status of a decree of the court

if the award is not challenged

the time for challenge has expired

the challenge is not upheld

Award could be treated as a decree and executed

basic theme of the 1996 Act

that the judicial intervention will be kept at the minimum.

The Statement of Objects and Reasons to the Act professes to minimise the supervisory role of courts in the arbitral process.

The main object being expedition, exposing the award to indiscriminate challenges would only negate the said objective.

on what grounds can an award be challenged

The unsuccessful party feeling aggrieved alone will not be a ground
the grounds provided under the Act for setting aside must exist
compared to 1940 Act , the grounds for setting aside is narrowed down in 1996 Act

What is the time within which the award should be challenged ?

Which is the court to be chosen for challenging the award ?

How and on what grounds can an award be challenged ?

The answer we find in Sec 36

Initial period of 3 months from the date the arbitral award is received by a party.

A further period of 30 days may be considered by the court on showing sufficient cause.

Challenge must be made before a court of competent jurisdiction

Grounds of challenge

- a. On furnishing of proof by the party challenging-
 - i. a party was under some incapacity
 - ii. arbitration agreement is not valid
 - iii. was not given proper notice of the proceedings / appointment of arbitrator
 - iv. award deals with disputes not contemplated by or not falling within the terms of submission to arbitration ,or it contains decisions on matters beyond the scope of the submission to arbitrations
 - v. composition of arbitral tribunal or the procedure was not in accordance with the agreement of the party

Further grounds

- b. the court may find that –
 - i. the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force
 - ii the arbitral award is in conflict with the public policy of India.

Wider meaning to public policy

ONGC Vs Saw Pipes 2003(5) SCC 705

Supreme Court sought to enlarge the public policy to include

1. Fundamental policy of Indian law
2. The interest of India
3. Justice or morality
4. If it is patently illegal

How to compute the limitation for a challenge

Initial 90 days runs

from the date of receipt of the award in compliance with Sec 31(5)

further 30 days in the discretion of the court on showing good cause

the purpose is that both the parties must have knowledge of the award to decide on the challenge as well as to seek enforcement

unsuccessful party sometimes avoids the service of the award in the wrong notion that the same will enlarge their time for challenge and to prevent early enforcement

2009(1) SCC 732

Kailash Rani Dang Vs Rakesh Bala Aneja

award sent by registered post

arbitrator's name was mentioned on the cover

still the unsuccessful party refused to receive

supreme court held

a presumption would arise that the document

had been delivered for the purpose of computing

If the award is so unfair and unreasonable
so as to shock the conscience of the court
it will be opposed to public policy

The illegality to make the award a nullity must
go to the root of the matter

Sec 28 of the Act stipulates
that the arbitral tribunal shall decide the
disputes
in accordance with the substantive laws of
the land
Any deviation of the tribunal from this
mandatory provision
provides an opportunity to the aggrieved
party to raise a challenge
at the time of invoking Sec 34 to set aside
the award .

award which is , on the face of it is
patently in violation of statutory provisions
cannot be said to be in public interest.

Sec 16 of the Act enables the parties to raise a
challenge on the competence or jurisdiction of the
tribunal before the Tribunal itself

Disqualification of the arbitrators or
the disputes being beyond the jurisdiction of the
tribunal etc may be raised

tribunal may uphold the objections or
decide to proceed with the case
the aggrieved party may include this objection
also at the time of challenge under Sec 34

1996 Act while has restricted the grounds for challenge
avowed object of keeping the intervention of the court at the minimum has been achieved.
but this has not completely shut the doors of the court
instances of awards being honoured without a challenge is almost nil.
The mind set of the parties remains the same
They attach more sanctity to the court's final decision rather than to an award

Thank You