

Arbitration Act, 1940

Chapter 02 - CHAPTER 02: ARBITRATION WITHOUT INTERVENTION OF A COURT

SECTION 03: PROVISIONS IMPLIED IN ARBITRATION AGREEMENTAn arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

SECTION 04: AGREEMENT THAT ARBITRATORS BE APPOINTED BY THIRD PARTYThe parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

SECTION 05: AUTHORITY OF APPOINTED ARBITRATOR OR UMPIRE IRREVOCABLE EXCEPT BY LEAVE OF COURT- The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

SECTION 06: ARBITRATION AGREEMENT NOT TO BE DISCHARGED BY DEATH OF PARTY THERETO(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

SECTION 07: PROVISIONS IN CASE OF INSOLVENCY(1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising there out or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of the insolvency proceedings then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.(3) In this section the expression "receiver" includes an Official Assignee.

SECTION 08: POWER OF COURT TO APPOINT ARBITRATOR OR UMPIRE(1) In any of the following cases-(a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not after differences have arisen, concur in the appointment or appointments; or(b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties or the arbitrators, as the case may be, do not supply the vacancy; or(c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him; any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

SECTION 09: POWER TO PARTY TO APPOINT NEW ARBITRATOR OR IN CERTAIN CASES, A SOLE ARBITRATOR- Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,(a) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;(b) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days, after the service by the other party of a notice in writing to make the appointment such other party

having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent: Provided that the Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit. Explanation.- The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

SECTION 10: PROVISIONS AS TO APPOINTMENT OF THREE OR MORE

ARBITRATORS- (1) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties. (2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail. (3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

SECTION 11: POWER TO COURT TO REMOVE ARBITRATORS OR UMPIRE IN CERTAIN CIRCUMSTANCES

(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable despatch in entering on and proceeding with the reference and making an award. (2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings. (3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services. (4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

SECTION 12: POWER OF COURT WHERE ARBITRATOR IS REMOVED OR HIS AUTHORITY REVOKED

(1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies. (2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either-(a) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or (b) order that the arbitration agreement shall cease to have effect with respect to the difference referred. (3) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the arbitration agreement.

SECTION 13: POWERS OF ARBITRATOR

The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to-(a) administer oath to the parties and witnesses appearing; (b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court; (c) make the award conditional or in the alternative; (d) correct in an award any clerical mistake or error arising from any accidental slip or omission; (e) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

SECTION 14: AWARD TO BE SIGNED AND FILED

(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. (2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award. (3) Where the arbitrators or umpire state a special case under clause (b) of section 13-, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

SECTION 15: POWER OF COURT TO MODIFY AWARD

The Court may by order modify or correct an award-(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision

on the matter referred; or(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

SECTION 16: POWER TO REMIT AWARD(1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit-(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or(b) where the award is so indefinite as to be incapable of execution; or(c) where an objection to the legality of the award is apparent upon the face of it.(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court: Provided that any time so fixed may be extended by subsequent order of the Court.(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

SECTION 17: JUDGMENT IN TERMS OF AWARDWhere the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

SECTION 18: POWER OF COURT TO PASS INTERIM ORDERS(1) Notwithstanding anything contained in section 17-, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

SECTION 19: POWER TO SUPERSEDE ARBITRATION WHERE AWARD BECOMES VOID OR IS SET ASIDEWhere an award has become void under sub-section (3) of section 16- or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.