

# According one arbitrator and other party shall

[Economics](#), [Trade](#)



According to Section 2(1) (d) of the Arbitration & Conciliation Act, 1996 provides “ Arbitral Tribunal” means a sole arbitrator or panel of arbitrators. Arbitrators shall be appointed by the parties as per accordance with Section 11 of Arbitration & Conciliation Act, 1996. On other hand, party can appoint one arbitrator and other party shall also authorize to appoint an arbitrator. Third arbitrator shall be appointed by both parties with their mutual consent.

Qualification of an arbitrator: – There was silence on the subject of qualification of an arbitrator under Old Arbitration Act, 1940. But this new Act gave guidelines for the appointment and qualification of an arbitrator. That person should be appointed as an arbitrator who has special knowledge about the Arbitration. On other hand, that kind of person can also be appointed as an arbitrator who have expert in technical fields. Technical fields like such as trade, technology, commerce, industries etc. so in this way that kind of disputes shall only be adjudicated by the expert arbitrators. The appointment of an arbitrator can be challenged on the ground of non possessing qualification<sup>1</sup>.

There was no provision relating to jurisdiction of an arbitrator in earlier Arbitration Act, 1940. But new Arbitration & Conciliation Act, 1996 provides jurisdiction of arbitrator. Arbitrator can resolve the dispute within its jurisdiction. He cannot make any other decision in dispute beyond its jurisdiction. It can focus upon arbitration agreement between the parties<sup>2</sup>.

In some cases, Apex Court held that jurisdiction includes power to decide dispute within its own jurisdiction. Arbitrator is bound to rule under its boundary. It cannot take decisions out of his jurisdiction<sup>3</sup>. Tribunal is not a

Court: – Arbitral Tribunal is a body to make an adjudication of disputes. It can resolve the matters arose between the parties.

But they cannot decide matters in speedy as well as expeditious manner. It discharges functions of quasi – judicial nature on principle of natural justice and fair play. But it shall not be considered as a Court of law. It was held in Engineering Mazdoor Sabha vs. Hind Cycles Ltd. 4 in technical sense.

Court According to Arbitration & Conciliation Act, 1996 provides the definition of word "Court" means under Domestic Arbitration, Principal Civil Court who have jurisdiction to decide the subject matter of dispute.

High Courts can also be included for resolution of disputes arises between the parties. But it does not include civil court of inferior grade to such Principal Civil Court, or any other Court. On other hand, in Case of International Commercial Arbitration, High Court is entitled to take subject –matter of disputes between parties.

High Court has its own ordinary Original Civil Jurisdiction to deal with cases of disputes. It can also deal with cases such as appeals from decrees of Courts subordinate to High Courts. 5 Manohar Lal vs. Vinesh Anand 6 in this case Supreme Court declared that Arbitrator is not included in the definition of Court for Section 195 of Code of Criminal Procedure. So section 340 of Code of Criminal Procedure cannot be dealt with it. Executive Engineer, Road Development vs. Atlanta Limited 7 in this case Court observed that court includes only Principal Civil Court in district level who has its own ordinary original jurisdiction. It can also involve High Courts but it cannot include courts inferior than to Principal Civil Court.

If district judge assenting for matter then it would always be exclusion of High Courts from adjudication upon the matters. Legal Representative Arbitration & Conciliation Act, 1996 provides when a person represents himself on the behalf of deceased person. It also includes any person who has relation with the property of deceased person, such a person acts in representative character.

The estate devolves on that person on the death of party so doing<sup>8</sup>. No judicial authorities shall interfere in the matters of Arbitration process. This provision clearly indicates about the non intervention by the courts in arbitration clause.

Such matters are covered under part I of Arbitration & Conciliation Act, 1996 from section 1 to 43. But in certain cases, judicial courts can intervene in the matters of arbitration like under Sections 8, 9, 11, 14, 27, 34, 36 and 37 of this Act<sup>9</sup>. Interim measures by Court A party may before ordering arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36 apply to a court<sup>10</sup>: -1.

Appointment of a guardian for a minor or unsound mind person. 2. When the parties may feel the need for safeguarding interim custody, preservation, protection, sale, or disposal of the whole or part of subject matter of dispute. 3.

For the inspection of subject matter or samples is to be taken to the court under second schedule to the old Indian arbitration Act, 1940 the new arbitration and Conciliation Act, 1996 provide interim measures to the

arbitrator under section 9 or section 17 enables to the court. Arbitrator has empowered to make an interim arbitral award on any matter with respect to which the arbitrator may make a final award. 4. Interim injunction or the appointment of a receiver<sup>11</sup>. 5. The court shall have the same power for making orders similar to the arbitration proceedings. 6. Before the commencement of arbitral proceeding a court has a power to order an interim measure or protection, the arbitral proceeding shall be commenced within a period of 90 days from the date of such order<sup>12</sup>.

7. Once an arbitral tribunal has been constituted, court shall not entertain an application except the condition based upon circumstances. *Adhunik Steels Ltd. Vs. Orissa manganese and minerals (P.) Ltd*<sup>13</sup>.

It is a well known principle applicable to exercise of general power to grant interim reliefs. It also included specific injunctive relief under order 39 of the Code of civil procedure, 1908 and the Specific Relief Act, 1963 would be applicable during the exercise of power under Section 12 of Arbitration & Conciliation Act, 1996<sup>2</sup> Section 16 (1) of Arbitration & Conciliation Act, 1996<sup>3</sup> *Union of India vs. Kishori Lal* , AIR 1959 SC 13604 AIR 1963 SC 8745 Section 2 (1) (e) of Arbitration & Conciliation Act, 1996, also substituted by Act no. 3 of 2016. 6 AIR 2001 SC 18207 AIR 2014 SC 10938 Section 2 (1) (g) of Arbitration & Conciliation Act, 1996<sup>9</sup> Section 5 of Arbitration & Conciliation Act, 1996<sup>10</sup> Inserted by Act 3 of 2016. 11 Section 9 of arbitration and conciliation Act, 1996<sup>12</sup> Inserted by Act 3 of 2016. 13 AIR 2007 SC 2563