LEGAL PROCESS FOR ARBITRATION

Following are the stages of arbitration or arbitration process as envisioned in the Arbitration and Conciliation Act, step by step:

**Arbitration Clause**

An agreement or the clause specifically stating that if the dispute arises between the parties they will resolve it through the process of arbitration.

If the contract does not contain an arbitration clause, unless otherwise agreed by the other party, the disputes cannot be referred to arbitration. The aggrieved party would have to file a civil suit before the appropriate forum to have its claim adjudicated.

In Kerala State Electricity Board and Anr. v. Kurien E. Kathilal[[1]](#footnote-0) The Supreme Court held that Referring the parties to arbitration has serious civil consequences procedurally and substantively. When there was no arbitration agreement between the parties, without a joint memo or a joint application of the parties, the High Court ought not to have referred the parties to arbitration.

In Oriental Insurance Company Limited v. M/s Narbheram Power and Steel Pvt. Ltd[[2]](#footnote-1). The Supreme Court held that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration.

**Arbitration notice**

In case a dispute has arisen and the party has opted to follow the procedure of arbitration then the party against whom the default has been committed will send an arbitration notice for invoking arbitration process steps between the parties.

Requirements:

* It must clearly and unambiguously evince the intention of the sender for appointment of an arbitrator.
* Should specify the contract under which the arbitration clause is being invoked.
* Should record compliance with pre-condition for invocation of the arbitration clause.
* If parties under the contract are required to resolve the disputes amicably after notice of invocation is given, party issuing the notice should call upon the other party for a meeting.
* If arbitration is to be referred to three arbitrators one to be appointed by each party and the third arbitrator by the nominated arbitrators, party invoking the arbitration clause should also nominate his arbitrator.

**Appointment of Arbitrator**

After receiving the notice by other parties both the parties will appoint the arbitrators in the manner as specified in the arbitration agreement or arbitration clause.

The agreement executed by the parties has to be given great importance. An agreed procedure for appointing the arbitrators has to be given preference to any other mode for securing appointment of an arbitrator.

**Statement of Claim**

The claimant have to state the facts supporting their claim, raise the points at issues and relief or remedy sought to the respondent within the time period stipulated by the parties or determined by the arbitral tribunal and the respondent replies filing an answer against the arbitration claim of claimant that specifies the relevant facts and available defenses to the statement of claim.

A party can amend or supplement his claim and defence throughout arbitral proceedings, unless the tribunal considers it unsuitable to allow the amendment or supplement in respect of the delay in making it.

In M/s. Cinevistaas Ltd. V. M/s. Prasar Bharti[[3]](#footnote-2), held that claims that have already been raised in the notice of arbitration are not barred by limitation even if they are not part of the statement of claim.

**Hearing of Parties**

Arbitral tribunal will hear both the parties and their evidence. The parties shall be given sufficient prior notice before any hearing and of any meeting of arbitral tribunal for the inspection and verification of documents, goods and property. The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Arbitration and Conciliation (Amendment) Act,2015 requires the arbitral tribunal at least, hold oral hearings for the presentation of evidences or for oral arguments on a day-to-day basis, and not grant adjournments unless reasonable cause is given.

All documents, statements and required information supplied, and application made to the arbitral tribunal by the one party shall be communicated to the other party and any evidentiary document or expert report on which an arbitral tribunal can rely in making it decision shall also be communicated to the parties.

**Award**

After hearing the parties, the arbitral tribunal will pass the decision. The decision of the tribunal is known as ‘Award’ and is binding on the parties. However, an appeal against the arbitral award can be filed before the High Court.

**Execution of Award**

Once the award has been passed by the tribunal it has to be executed. The party in whose favour the award has been passed has to file for execution or enforcement of award.

1. Civil Appeal Nos.3164-3165 of 2017 [↑](#footnote-ref-0)
2. Civil Appeal No. 2268 of 2018 [↑](#footnote-ref-1)
3. O.M.P. (COMM) 31/2017 [↑](#footnote-ref-2)