**COMPOSITION OF TRIBUNAL**

A dispute can go to arbitration on the basis of an agreement between the disputing parties to submit the dispute to resolution by arbitration, where an arbitrator or a tribunal of arbitrators is appointed and has been given the legal authority to act by the parties. The composition of the arbitral tribunal or the appointing of the sole arbitrator is a characteristic and crucial issue in arbitration.

***The Arbitration & Conciliation Act, 1996*** (herein after called the Act) has discussed the concept of ‘Composition of the Tribunal’ in ***Sections 10 to 15*** of the Act i.e. the Chapter III of Part I of the Act.

1. **Number of Arbitrators (Section 10)**

The Number of Arbitrators have been specified in Section 10 of the act. The parties are free to choose an odd number of arbitrators. Usually in practice, both of the parties appoint one arbitrator each and that arbitrator chooses a ‘Presiding Arbitrator’. Failing such agreement, the arbitral tribunal consists of a sole arbitrator.

MMTC v. Sterlite Industries Ltd[[1]](#footnote-2) is an important case law in this matter. The point of law questioned in the case was as to the effect of the new Indian Act that an arbitration agreement providing for appointment of an even number of arbitrators was no longer valid and could not be enforced because of section 10(1) of the new Act.[[2]](#footnote-3)

A debate was sparked that if number of arbitrators can be even. The Hon’ble Supreme Court answered this question in Narayan Prasad Lohia vs Nikunj Kumar Lohia & Ors[[3]](#footnote-4). According to the court, the parties are free to choose the number of arbitrators in a given case. And further if the parties don’t raise an objection in front of the tribunal under Section 16(2), Section 4(2) of the Act will come into play which prescribes a waiver of right to object if the parties proceed with the proceedings without raising an objection to the derogation of a provision.

1. **Appointment of the Arbitrator (Section 11)**

A person of any nationality can be chosen as an arbitrator by the agreement by the paties by whatever procedure they want. If a party fails to appoint an arbitrator within 30 days of notice, the appointment is bound to be made by the Chief Justice or an institution on request of the parties. Further, in cases of arbitration involving sole arbitrator, the same shall apply. Such appointment is deemed to be final. The Chief Justice while doing this will consider qualifications required, independence, and impartiality of the arbitrator.

The power exercised by the Chief Justice here is administrative, and not judicial as pointed out in Ador Samia( P) Ltd. vs. Peekay Holding Ltd.[[4]](#footnote-5)The party who has not appointed the arbitrator within 30 days loses its right to appoint the arbitrator after the first party makes an application to the court.[[5]](#footnote-6)

As regards the nationality of the arbitrator, it has been pronounced by the Hon’ble Supreme Court in Malaysia Airlines system BHD (II)Vs Stic Travels (P)Ltd[[6]](#footnote-7) held that while nationality of the arbitrator is a matter to be kept in view while appointing the arbitrator but, it is not necessary that the proposed arbitrator is necessarily disqualified because he belongs to the nationality of one of the parties. The provision is not mandatory.

1. **Challenge to the Arbitrator (Section 12, 13, 14)**

The Arbitrator is the impartial judge chosen by the parties. Thus, an impartial and independent judge is a prerequisite for a just arbitration. The appointment of arbitrator generally involves getting an undertaking from the appointed arbitrator with the conditions that he will act as an independent person. The Arbitrator, even after the start of the proceedings shall disclose any circumstances which can affect his impartiality and independence in written form. An arbitrator may be challenged on the following grounds:-

* Justifiable doubts
* Lack of qualifications

The procedure for challenging the arbitrator has been specified under Section 13 of the Act. Section 13 of the Act provides that the parties can agree upon a procedure for challenging an Arbitrator and in case of failure to agree upon a procedure the Party aggrieved is to intimate the Arbitral Tribunal in writing of the challenge of his veracity. In case the Arbitrator does not withdraw, the Arbitral Tribunal has the power to decide the challenge.

The scope of challenge has been pronounced by the Hon’ble Supreme Court in various cases including Jabalpur Cable Network Pvt. Ltd. vs E.S.P.N. Software India Pvt. Ltd[[7]](#footnote-8) and West Bengal State Electricity vs Calcutta Electric Supply Corpn..

The Hon’ble Supreme Court of India in recent judgement in the case of TRF Ltd. vs. Energo Engineering Projects Ltd.[[8]](#footnote-9), has held that if a person is ineligible to be appointed as an Arbitrator, he is also debarred from being the Appointing Authority to appoint an Arbitrator. The Hon’ble Delhi High Court in West Haryana vs. National Highway Authority of India, O.M.P. (T) (COMM.) 28/2017, has held that a person who has advised the Respondent or acted as its Consultant cannot be an Arbitrator on behalf of such party.

The various classes of people barred from becoming the arbitrator in a given case has been specified under Schedule V & VII of the Act.

1. **Substitution of the Arbitrator**

In view of section 14 and 15 of the Arbitration and Conciliation Act, 1996, the Hon’ble Court has the power to terminate the mandate of an Arbitrator if such Arbitrator becomes de-jure or de-facto unable to perform his duty and substitute the arbitrator. The new arbitrator can be selected by the same procedure as selection/appointment of the old arbitrator.

1. 2003 (1) BomCR 615 [↑](#footnote-ref-2)
2. Arbitration International, Volume 15, Issue 4, 1 December 1999, Pages 405, https://doi.org/10.1093/arbitration/15.4.405. [↑](#footnote-ref-3)
3. (2002) 3 SCC 572 [↑](#footnote-ref-4)
4. AIR 1999 SC 3246 [↑](#footnote-ref-5)
5. Datar Switchgears Ltd Vs Tata Finance Ltd [↑](#footnote-ref-6)
6. 2000 (7) SCALE 670 [↑](#footnote-ref-7)
7. AIR 1999 MP 271 [↑](#footnote-ref-8)
8. 2017 SCC OnLine SC 692 [↑](#footnote-ref-9)