**POWERS OF AN ARBITRATOR**

Section 2(d) of the Arbitration & Conciliation Act (herein after referred as ‘the Act’ defines an ‘Arbitral Tribunal’ as a sole arbitrator or a panel of arbitrators. Chapter III of the Act underlines the policy of Composition of the Tribunal. Arbitrators can be appointed either by the court or settlement by the parties.[[1]](#footnote-2)In case one party is unable to appoint an arbitrator, the other party can make an application to the civil court.

Arbitrator is the creation of a contract. He is the person who decides a dispute outside the court, with the agreement of the parties. The decision of the arbitrator i.e. the Award is treated as a ‘deemed decree of the court’, as pronounced by the Hon’ble Supreme Court in Afcons infrastructure and Ors. v. Cherian Verkay Construction and Ors.[[2]](#footnote-3)The Arbitrator is just like the judge of a civil court.

The power of an Arbitrator are discussed as below:-

1. **Provide Administrative Assistance(Section 6)[[3]](#footnote-4)**

With the consent of the parties, the arbitral tribunal may arrange for administrative assistance by an administrative institution like ICC, SIAC, HKIAC, SCC, MCIA etc.

1. **Power to rule on its own jurisdiction(Section 16)[[4]](#footnote-5)**

This principle is also known as Kompetenz-Kompetenz. It is the Tribunal’s power to rule whether it has jurisdiction in a particular matter. The arbitration tribunal shall decide any challenge to the very existence or validity of the arbitration agreement in question or decide any objection taken on the ground of lack of its jurisdiction. Any party, including even those who have participated in the appointment of the arbitrator, can take such objection or challenge latest with his defence statement.

Such interim order can be challenged before a court under Section 37

1. **Interim Measures(Section 17)**

Before the enforcement of the award under Section 36, the Arbitral Tribunal can issue an interim order for preservation, custody, interim injunction, and appointment of a receiver, etc. The Arbitral Tribunal has the same power as a civil court in passing such order. The power of the arbitrator is a limited one. It cannot issue any direction which would go beyond the reference or the arbitration agreement. According to M.D. Army Welfare Housing Organisation vs. Sumangal Services (P) Ltd.[[5]](#footnote-6), an interim order is just meant to protect the subject matter of the dispute.

1. **Determination of Rules of Procedure(Section 19)**

The Arbitrator is not bound by the Code of Civil Procedure or the Indian Evidence Act. Parties are free to agree on the procedure to be followed. Failing agreement, the arbitral tribunal can conduct the proceedings in the manner it considers appropriate. The Arbitrator has all the power to determine the admissibility, relevance, materiality, and weight of an evidence.

1. **Default of a party ( Section 25)**

On the default of the party to present statement of claim, the arbitrator can terminate the proceedings. Whereas if the Respondent fails to communicate his statement of defense, the arbitrator can move forward with the proceedings. If a party is unable to produce certain evidence, the arbitrator may continue the proceedings and make the award. According to Lovely Benefit Chit Fund & Finance Pvt. Ltd. v. Puran Dutt Sood[[6]](#footnote-7), even after notice if the defaulting party does not attend, the arbitrator may proceed in his absence.

1. **Appointment of an Expert (Section 26)**

In technical cases, an expert can be appointed to determine the issues. This is "expert determination" and not arbitration and the end result will be enforceable in accordance with the applicable national and international standards. An expert determination will not work if the underlying issues are mainly legal. "Split" clauses that provide for different types of dispute resolution according to the type of dispute should be carefully drafted to ensure that expert determination is used in the correct circumstances – and to ensure a suitable remedy is available.

1. **Power to deliver the award.**

An arbitration award (or arbitral award) is a determination on the merits by an arbitration tribunal in an arbitration, and is analogous to a judgment in a court of law. It is referred to as an 'award' even where all of the claimant's claims fail (and thus no money needs to be paid by either party), or the award is of a non-monetary nature.[[7]](#footnote-8)

The Arbitrator has the power to decide on the merits of the dispute and produce a binding award, unless the arbitration is non-binding.

If there is no agreement, in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator – Sec. 11(3). Presiding arbitrator’s role is a crucial one. In particular, he can influence the contribution of party-appointed arbitrators and, consequently, the ultimate decision making of a tribunal. It is the chair or presiding arbitrator who usually dictates the pace and tone of the arbitration, and conducts the hearings; the award will usually be in the words of the chair, and chairs are often given considerable discretion as to the drafting of the award; co-arbitrators may delegate day-to-day unimportant procedural decisions, such as short extensions of time, to the chair alone.

1. Section 11 [↑](#footnote-ref-2)
2. 2010 (8) SCC 24. [↑](#footnote-ref-3)
3. Administrative assistance. -In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person. [↑](#footnote-ref-4)
4. Competence of arbitral tribunal to rule on its jurisdictional. - (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, - (a) An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and (b) A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator. (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raise as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. (4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or subsection (3), admit a later plea if it considers the delay justified. (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award. (6) A party aggrieved by such an arbitral award may make an application forgetting aside such an arbitral award in accordance with section 34. [↑](#footnote-ref-5)
5. 2003 (11) ILD 799 (SC) [↑](#footnote-ref-6)
6. AIR 1983 Del 413 [↑](#footnote-ref-7)
7. https://en.wikipedia.org/wiki/Arbitration\_award [↑](#footnote-ref-8)