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SNEAKING INTO THE ARBITRATION AWARD AND ESCORTING JUSTICE BY WAY OF CORRECTION AND INTERPRETATION OF THE AWARD

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ABSTRACT

"The universality of law declared must not collide with the cannons of Justice and what should be upheld is Equity and it must come to rescue wherever injustice sneaks in." One can very well apply this principle to the interpretation and correction of the award.

Section 33 is the governing provision where it has been expressly mentioned that a party may request the arbitral tribunal of competent jurisdiction to correct computation errors, any clerical or typographical errors or any other errors of similar nature occurring in the award. The error refers to an act involving an unintentional deviation from accuracy and the party has the option to request the arbitral tribunal to provide an interpretation of a specific point or part of the award, but such request can be made only if it was so agreed by the parties. It should be a mistake about an ancillary issue and not about the substance or content, merits of the case cannot be altered or amended per se. Every rule has an exception, and the amendment to an arbitral award is no exception to it. This section corresponds to Article 33 of UNCITRAL Model Law and also to Articles 35, 36 and 37 of the UNCITRAL Arbitration Rules. The concluding remark would be correct that the curve of the moral universe is long enough, but it tilts towards justice. One should get a fair share idea of the fact that justice must be imparted, and the parties must not be affected by the mere typographical errors sneaking in and affecting the core award. The author has relied upon the secondary sources available such as books and research articles, for the purpose of research.

Keywords: *Award, Clerical Error, Jurisdiction, Justice, and Typographical error.*

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1. INTRODUCTION

The nature of an award being final and binding is a 'grundnorm' of any arbitral proceeding. The parties involved in that process are legally obligated to adhere to the passed arbitral award. Every rule has an exception, and an arbitral award is no exception to it. In order to escort justice, 'Correction and Interpretation of Award' sneaks in, wherever any typographical or computational error arises. It is pertinent to note that there are fettered circumstances in which an arbitral award can be challenged or set aside; some instances include procedural irregularities in the arbitration process and evidence of corruption. The specific grounds for challenging an arbitral award vary pertaining to the applicable laws and arbitration rules. Correction of the award involves rectifying errors in the award that are considered to be clerical, typographical, or computational in nature. Such errors could be in the names of parties, dates, or simple mathematical miscalculations. The intent behind this is to corroborate the accuracy of the award.

Interpretation of the award permits to reduce the confusion among the parties, as sometimes the language or terms used in an arbitral award may be unclear. The process of interpretation involves seeking clarification from the arbitral tribunal regarding the meaning or intent of provisions in the award. It becomes requisite to be aware of the fact that interpretation does not open the gate to re-argue the merits of the case; rather, it's about resolving ambiguities or uncertainties in the existing award. Both correction and interpretation of an award are generally conducted by the same tribunal that issued the original award. The procedures and mechanisms for correction and interpretation can be governed by the arbitration rules adopted by the parties or by the applicable laws. The correction and interpretation of an arbitral award serve as pertinent mechanisms to maintain the integrity of the arbitration process. They assist in ensuring that the final award accurately reflects the parties' agreement, resolves disputes promptly, and is enforceable in the applicable jurisdictions.

2. ARBITRAL AWARD: AN ANALYSIS

Section 2(1)(c) only leads us to the notion that "arbitral award" includes an "interim award."[1] Procedural orders passed during the course of the arbitral proceedings are necessarily

[1] Arbitration and Conciliation Act, 1996, § 2(1)(c), No. 26, Acts of Parliament, 1996 (India)

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excluded from the concept of award[2]. The last task that has been enshrined in the arbitral tribunal is making an award, i.e., an arbitral award.

As enunciated by Kluwer, "*the making of an award refers to the tribunal's rendering of its decision in a manner satisfying the formal requirements of the arbitration legislation in the arbitral seat—typically, requiring completion of a written, signed, dated award and delivery of the award to the parties."*

If we go by the legal rules, the tribunal with the passing of the final award becomes *'functus officio'*, and its remaining responsibilities are highly fettered; the same has been expressly mentioned under Section 32(1) of the Arbitration and Conciliation Act[3]. Thereafter, compliance with and enforcement of the award become a matter for the parties and national courts[4].

It is generally perceived that the arbitration award is an instrument recording the tribunal's decision, provisionally or finally determining the claims of the parties. The award is made concerning the legal or factual disputes between the parties, and it will be based on the interpretation of the contractual terms and the determination of the rights and obligations of the parties under the contract.

If we look the other way around, the award may also deal with preliminary and substantive issues, such as the jurisdiction of the tribunal, applicable law, and limitations of actions.

As per Paragraph 192 of the United Nations Doc, *"award means a final award that disposes of all issues submitted to the arbitral tribunal and any other decision of the arbitral tribunal that finally determines any question of substance, the question of its competence, or any other question of procedure, but, in the latter case, only if the arbitral tribunal terms its decision award. However, this definition was rejected mainly due to the inclusion of issues of procedure."*

After the final award is issued, the authority of the tribunal is terminated, and the award is generally final and binding. I want to draw attention to the term 'generally' which indicates

[2] Harinarauyan G. Bajaj v. Sharedeal Financial Consultants (P) Ltd, 2002 SCC OnLine
[3] Arbitration and Conciliation Act, 1996, § 32(1), No. 26, Acts of Parliament, 1996 (India)
[4] Arbitration and Conciliation Act, 1996, § 36, No. 26, Acts of Parliament, 1996 (India)

that in general terms it is final and binding in nature but has a scope available where correction and interpretation of the award could be done wherever requisite.

3. CORRECTION AND INTERPRETATION OF AWARD

When it comes to the correction and interpretation of the award, it has always been within the jurisdiction of an arbitrator, and if it seems imperative for that purpose, it is within his authority or power to amend his core award, and the same has been justified by virtue of Section 33 of the Arbitration and Conciliation Act, 1996[5].

3.1 Correction of Errors

In the absence of a provision in the repealed Arbitration Act, 1940[6], empowering the arbitrator to interpret his award or to give an additional award as contained in sub-sections (2) and (4) of Section 33 of the 1996 Act, provisions like Section 13(d) of the old Act[7], which empowered the arbitrator to "correct in any award any clerical mistake or error arising from any accidental slip or omission," acted as a shield to prevent miscarriage of justice through the accidental or clerical mistake.

With reference to this provision, it was held:

"Once an arbitrator has given his award, he becomes functus officio and cannot add to it or vary it in any way except to correct any clerical mistake or error arising from any accidental slip or omission[8]. Such mistakes may, however, be corrected at any time.

A deep insight into Section 152 of the Code of Civil Procedure[9] would lead us towards an understanding of the fact that somewhat similar power has been bestowed with the Court to the extent that there has been a mistake or error that could be witnessed in a judgement.

The purview of this power is fettered, which indicates that it only empowers the arbitrator to rectify a clerical error without the necessity of an application to the court or moving before a

[5] Arbitration and Conciliation Act, 1996, § 33, No. 26, Acts of Parliament, 1996 (India)
[6] The Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India)
[7] The Arbitration Act, 1940, § 13(d), No. 10, Acts of Parliament, 1940 (India)
[8] Chouthmal Jivraijee Poddar v. R.J. Poddar, 1954 SCC OnLine MP 20
[9] Code of Civil Procedure, 1908, § 152, No. 5, Acts of Parliament, 1908 (India)

court of law[10]. One should be clear about the fact that this power is, however, rigidly limited to mere clerical mistakes or errors that arise from an accidental slip or omission and not anything else[11].

In situations like these, if a mistake or error arises of any other sort, the jurisdiction of the arbitrator would be ousted, and he is not bestowed with such power so as to rectify it."[12]

Section 33(1)(a) permits a party to request the Arbitral Tribunal to correct:[13] [

(i) Any computational errors,

(ii) Any clerical or typographical errors, or

(iii) Any other errors of a similar nature occurring in the award.

This too has to be done after giving due notice to the other party; the request is to be made within the prescribed time.

3.2 Imperfect in form or contains obvious errors

Without affecting the core decision that has been passed, the tribunal may extract the imperfection or the error. What constitutes a valid award is that it should be certain, final, and possible. If it does not possess these virtues, it may be regarded as imperfect, or if it makes, to illustrate, a clerical or calculative error, it may be subjected to correction.

Similar was the case before the Supreme Court[14] where an arbitrator was appointed so as to decide what sum of amounts were due from the Union of India to a contractor, and, apart from doing the same, he also ordered the refund of the contractor's security deposit, whose amount, unknown to him, had already been refunded, and there was not any dispute before him about the deposit. The court held that due to some mistake, it was clearly separable from the rest of the award and was struck out.

[10] Sutherland and Co. v. Hannevig Bros, (1921) 1 K.B. 336.
[11] *Id.*
[12] In Re An Arbitration between Stringler and Riley Brothers, [1901] 1 Q.B. 105.
[13] Arbitration and Conciliation Act, 1996, § 33(1)(a), No. 26, Acts of Parliament, 1996 (India)
[14] Union of India v. J. Narayan Mishra, (1969) 2 SCR 588

The court pointed out that the award relating to the refund of the security was in favour of the contractor. It is within the authority of the court to delete the sum of the amount so awarded in instances where the arbitrator awarded interest from the date of the award to the date of the time on which the award would be converted into a decree, something that was not permissible and which the arbitrator was not entitled to do.

3.3 Omission in departing Justice: Accidental or Clerical Slip or Omission

An award may be subject to modification if it suffers from a clerical mistake or an error from an accidental slip or omission. The arbitrator himself or through the intervention of the court could make rectification possible in such cases[15]. Even in the absence of these grounds, the court may modify the award in accordance with the compromise made between the parties.

This remark was pointed out by the Supreme Court in the case of *Munshi Ram v. Banwari Lal*[16], an award that required payment of a certain sum of money by one party to another, also provided that the parties shall be liable to pay in equal shares the income tax to be assessed. An application to set aside the award was filed by one of the parties, but ultimately the parties compromised by reducing the liability in respect of income tax and spreading further the instalments. The court modified the award accordingly.

The question was as to the validity of such a modification. Hidayatullah J. (afterwards CJ) held that the modification was valid and cited the following passage from the decision of the Calcutta High Court[17]:

"It would seem strange if the law were also that once a reference has been made to arbitration, the parties can no longer even settle their disputes or bring the settlement before the court but must continue the strife till a decree on the basis of the award is made and compromise, if at all, thereafter. A suit is but a dispute; the function of the court is to decide it, and arbitration is but an alternative machinery of decision. That a statute should, because a reference has been made to arbitration, forbid the parties to terminate the dispute by mutual agreement and to obtain from the court an agreed decree, would certainly seem extraordinary."

[15] Bjorn-Jensen and Co. Lysaght (Australia) Ltd, (1979) 1 Lloyd's Rep 494.
[16] Munshi Ram v. Banwari Lal, AIR 1962 SC 903
[17] Prafulla Chandra Karmakar v. Panchaman Karmakar, 1945 SCC OnLine Cal 37

Hence, it would be no wrong to conclude that it is within the purview of the court's jurisdiction to pass a decree in terms of modification that has been mutually accepted by the parties.

4. THE EXISTING ARBITRATION LAW AS A CONSOCIATE TO THE MODEL LAW

The exigency of the arbitration laws in India was a historical need. With the liberalisation of the economy in 1991, the requirement of an anchored business, as due to the participation of foreign investors, a structured procedural mechanism for the resolution of disputes was a much-needed phenomenon, and it was during this period that certain alternative dispute resolution systems like arbitration were considered a rudiment to attract those investments.

It was very much evident by the published 246th Law Commission report[25], which stated the relatedness between the Arbitration and Conciliation Act, 1996, and the UNCITRAL model of law. The Indian government passed the Arbitration and Conciliation Act, 1996, on the lines of the UNCITRAL model and made it applicable to domestic arbitrations with minor modifications. The law commission report deliberated its idea of acknowledging the rules of UNCITRAL as the key source of India's A&C, 1996's act. It was largely based on the UNCITRAL model law on international commercial arbitration and its rules, with several deep linkages.

An exemplar[18] in the context of comparing the UNCITRAL rules and the Arbitration and Conciliation Act, 1996, with reference to the correction and interpretation of awards is that they are two different sets of rules, but they are actually Pari Materia to each other, as there hardly exists any difference between the two. Since then, it has been aforementioned that India has highly relied on the rules of UNICTRAL and has incorporated them into its own system, which makes it obvious that both of them are interlinked.

5. CONCLUSION

[18] A person or thing serving as a typical example or appropriate model.

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In conclusion, the correction and interpretation of arbitral awards play a crucial role in upholding the principles of justice and ensuring the integrity of the arbitration process. Section 33 of the Arbitration and Conciliation Act, 1996, provides a mechanism for parties to rectify computational, clerical, or typographical errors in the award, ensuring that inadvertent mistakes do not compromise the essence of the decision. As this article highlights, the Indian Arbitration and Conciliation Act, 1996, draws inspiration from the UNCITRAL Model Law, emphasizing the global convergence of arbitration practices. The incorporation of provisions mirroring those in the Model Law demonstrates India's commitment to providing a robust framework for alternative dispute resolution. The symbiotic relationship between the Indian legal framework and international arbitration norms reflects a concerted effort to create a fair and effective system for dispute resolution, ultimately fostering confidence in the arbitral process.