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ARBITRATION RESEARCH PAPER

(Arbitration Bill Proposed by Indian Society of Arbitrators
in its suggestions in March, 1994)

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Part I— Proposed Draft of new Indian Arbitration Act

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PROPOSED DRAFT OF ARBITRATION BILL

Introduction

It was observed during practice of law of arbitration and after detailed examinations of global national laws on arbitration that Indian Arbitration 1940 had inadequacies, disparities, lacunas and missing portions which have been explained in Part III. The purpose of arbitration was economic, speedy and final settlement of dispute. Arbitration Act, 1940 did not serve any of three purposes. The arbitration under the Act is neither economic nor speedy nor final settlement.

After detailed examination of following legislations/rules, this draft of the Bill has been proposed to be adopted in India as New Arbitration Act :-

1. English Arbitration Act, 1950
2. English Arbitration Act, 1979
3. Indian Arbitration Act, 1940
4. UNCITRAL Model Law on International Commercial Arbitration
5. Rules of American Arbitration Association
6. Rules of Association of Maritime Arbitrators of Canada
7. ICC Rules of Conciliation and Arbitration
8. Arbitration Rules of Sin-

gapore International Arbitration Centre

9. The arbitration Institute of the Stockholm Chamber of Commerce
10. Maritime Arbitration in New York.
11. Ceylon Chamber of Commerce
12. Suggestions made by Law Commission of India.
13. Suggestions made by Shri F.S. Nariman, Sr. Advocate, Supreme Court of India.

Detailed notes have been given in the Second Part. Some important provisions regarding appointment of arbitrator and award in comparison to existing Indian Arbitration Act are given in the end.

DRAFT OF PROPOSED THE ARBITRATION ACT 1994

CHAPTER I

GENERAL PROVISIONS

1. SHORT TITLE, EXTENT AND COMMENCEMENT
2. DEFINITIONS AND RULES OF INTERPRETATION

For the purpose of this Law :

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitration institution;

- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

- (c) "court" means the District Court, irrespective of the pecuniary valuation;

- (d) where a provision of this Law, except section 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

- (e) Where a provision of this law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in the agreement;

- (f) where a provision of this Law, other than in sections 25 (a) and 32((a) refers to a claim, it also applies to a counter-claim, and where it refers a defence, it also applies to a defence to such counter-claim.

- (g) "Award" means an arbitration award;

- (h) "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and where a party acts in representative character, the person on whom the estate devolves on the death of the parties so acting;

- (i) "Reference" means a reference to arbitration.

3. RECEIPT OF WRITTEN COMMUNICATION

- (1) Unless otherwise agreed by the parties;
- (a) any written communication is deemed to have been received if it is delivered to the address personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or other mean which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this section do not apply to communications in court proceedings.

4. WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or in, if a time-limit is provided therefore within such period of time, shall be deemed to have waived his right to object.

5. EXTENT OF COURT INTERVENTION

In matters governed by this Law, no court shall intervene except where so provided in this Law.

6. COURT OR OTHER AUTHORITY FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

The functions referred to in sections 11, 13, 14 shall be performed by ARBITRAL INSTITUTIONS to be notified by the Central Govt. and the functions referred in section 16(3) and 34(2) shall be performed by the court.

CHAPTER II

ARBITRATION AGREEMENT

7. DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (a) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect for a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (b) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, tele-ex, telegram or other means of telecommunication which provides a record of the agreement, or in an ex-

change of statements of claim and difference in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

8. ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in paragraph (1) of this section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made while the issue is pending before the court.

9. ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measures of protection and for a court to grant such measures.

CHAPTER III

COMPOSITION OF ARBITRAL TRIBUNAL

10. NUMBER OF ARBITRATOR

- (1) The parties are free to determine the number of the arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

11. APPOINTMENT OF ARBITRATORS

- (1) The parties are free to agree on a procedure of appointing the arbitrators or arbitrators, subject to the provisions of paragraph (3) and (4) of this section.
- (2) Failing such agreement,
 - (a) in an arbitration with TWO or three arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrators within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party by the court or other authority specified in section 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in section 6.
- (3) Where, under an appointment procedure agreed upon by the parties,

- (a) a party fails to act as required under such procedure, or
- (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
- (c) a third party, including an institution fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in section 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

- (4) A decision on a matter entrusted by paragraph (2) or (3) of this section to the court or other authority specified in section 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

12. GROUNDS FOR CHALLENGE

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circum-

stances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already be informed of them by him.

- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

13. CHALLENGE PROCEDURE

The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this section.

- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party may agree to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed by the parties or under the procedure of paragraph (2) of this section is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or the other authority specified in section 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

14. FAILURE OR IMPOSSIBILITY TO ACT

- (1) If arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise if a controversy remains concerning any of these grounds, any party to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (2) If under this section or section 13(2), an arbitrator withdraws from his office or a party agrees to the termination of mandate on an arbitrator, this does not imply acceptance of validity of any ground referred to in this section or section 12(2).

15. APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under section 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV

JURISDICTION OF ARBITRAL TRIBUNAL

16. COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. 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. A party is not precluded from raising such a

plea by the fact that he has appointed, or participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

- (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this section as a preliminary question or in award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling the court specified in section 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and may make an award.

17. POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measures.

CHAPTER V**CONDUCT OF ARBITRAL PROCEEDINGS****18. EQUAL TREATMENT OF PARTIES**

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

19. DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to the provisions of this law. The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may subject to the provisions of this law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal including the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. PLACE OF ARBITRATION

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this section the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for

consultation among its members, for hearings witnesses, experts or the parties or for inspections of good, other property of documents.

21. COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute, shall be deemed to be commenced when the party to the arbitration agreement serves on the other party there to a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement requiring that the difference be submitted to the person so named or designated.

22. LANGUAGE

- (1) The parties are free to agree on the language or the languages to be used in the arbitral proceedings. Failing such agreement the arbitral Tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

23. STATEMENT OF CLAIM AND DEFENCE

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or it introduces a new or inconsistent case.
- (3) Before proceedings with the preparation of the case, the arbitration tribunal shall draw up, on the basis of the documents or in the presence of the parties and in the light of their submission, a document defining his Terms of Reference. This document shall include the following particulars.
 - (a) the full names and description of the parties,
 - (b) the addresses of the parties to which notifications

or communications arising in the course of the arbitration may validly be made,

- (c) a summary of the parties respective claims,
- (d) definition of the issues to be determined.
- (e) the arbitrator's full name, description and address,
- (f) the place of arbitration,
- (g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitrator to act as a amiable compositor,
- (h) such other particulars as may be required to make the arbitral award enforceable in law.

24. HEARING AND WRITTEN PROCEEDINGS

- (1) Subject to any contrary agreement by the parties, 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. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for purposes of inspection of goods, other property or documents.

- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. DEFAULT OF PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with section 23(1), the tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with section 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

26. EXPERT APPOINTED BY ARBITRAL TRIBUNAL

- (1) Unless otherwise agreed by the parties, the arbitral tribunal
 - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery for his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

27. COURT ASSISTANCE IN TAKING EVIDENCE

- (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the court assistance in taking evidence.
- (2) The court shall issue the same process to the parties and witnesses whom the arbitrator desire to examine as the court may issue in suit tried before it.
- (3) Persons failing to attend in accordance with process, or making of any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offenses in suits tried before the Court.

- (4) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses and commissions for the examination of witnesses and summonses to produce documents.

CHAPTER VI

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

28. RULES APPLICABLE TO SUBSTANCE OF DISPUTE

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of law rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) the arbitral tribunal shall decide *ex aequo et bono* or as *amiabile compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with terms of the contract and shall take into account the usages of the trade applicable to the transaction.

29. DECISION MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, question of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the tribunal.

30. SETTLEMENT

- (1) If, during arbitral proceeding, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of section 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

31. FORM AND CONTENTS OF AWARD

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award on agreed terms under section 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with section 20(1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this section shall be delivered to each party.

32. TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of arbitral tribunal in accordance with paragraph (2) of this section.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claims, unless the respondent objects thereto and the arbitral tribunal recognizes legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any reason become unnecessary or impossible

- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of section 33 and 34 (4)

33. CORRECTION AND INTERPRETATION OF AWARD : ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties :
- (a) a party, with notice to other party, may request arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form the part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) of this section on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tri-

bunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this section.
- (5) The provisions of section 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII

RECOURSE AGAINST AWARD

34. A APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) (a) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this section.
- (b) The court shall decide the question on affidavits but where the court deems it just and expedient, it may set down application for hearing on other evidence also, after recording reasons therefore, and it may pass such orders or of discovery of particulars as it may do in a suit.
- (2) An award may be set aside by the court only if :

- (a) the party making the application furnishes proof that :
- (i) a party to the arbitration agreement referred to in section 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or failing any indication thereon, under the law of this state; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitrator can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this law from which the parties cannot derogate, or, failing such agreement was not in accordance with this law; or
- (v) where arbitration tribunal has misconducted himself

or the proceedings or an arbitration or award has been improperly procured. But the court shall not have jurisdiction to set aside an award on the ground of error of fact or law on the face of the award.

(b) the court finds that :

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the state; or

(ii) the award is in conflict with the public policy of the state.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award, if a request had been made under section 33, from the date on which that request had been disposed off by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

5) Where an application is made to set aside an

award, the Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

CHAPTER VIII

RECOGNITION AND ENFORCEMENT OF AWARDS

35. RECOGNITION AND ENFORCEMENT

(1) An arbitral award, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this section and of section 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in section 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

36. GROUNDS FOR REFUSING

RECOGNITION OR ENFORCEMENT :

(1) Recognition or enforcement of an arbitral award, may be refused only;

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that :

(i) a party to the arbitration agreement referred to in section 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication there on, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decision on matters beyond the scope of the submission to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by the court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that :

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this state; or;

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this section, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide a appropriate security.

37. ARBITRATION AGREEMENT NOT TO BE DISCHARGED BY DEATH OF PARTY THERETO

(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall effect the operation of any law by virtue of which any right of actions extinguished by the death of any person.

38. PROVISIONS IN CASE OF INSOLVENCY

(1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver

adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings becomes a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purpose of the insolvency proceedings, then if the case is one to which sub-section (3) does apply any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement and the Court may if it is of opinion that having regard to all the circumstances of the case, the matter ought to be determined by the arbitration make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

39. INTEREST

The arbitral tribunal may award interest from the date of the breach or default until the date of the payment.

40. PERIOD OF TIME

(1) Time-limit within which the arbitration tribunal must render award is fixed at six months from the date of presentation of the claims before the arbitration tribunal.

(2) The arbitral tribunal may extend the time thrice by a period of not more than

two months each time after recording the reasons for delay.

(3) There after the court may, pursuant to a reasoned request from the arbitration tribunal or any party to dispute, extend the time limit for a period of not more than six months.

(4) The parties may modify any period of time by mutual agreement at any stage.

41. COSTS

(1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the cost of the reference and award shall be in the discretion of the arbitration tribunal who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the concerned Arbitration Institution.

(3) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this part of this Act shall in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein.

Provided that nothing in this sub-section shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before making the agreement.

42. TAXATION OF ARBITRAL TRIBUNAL'S FEES

- (1) If in any case an arbitration tribunal refuses to deliver his award except on payment of the fees demanded by him, the concerned Arbitration Institution may, order that the arbitration tribunal shall deliver the award to the applicant on payment into arbitration institution by the applicant the fees demanded, and further that the fees demanded shall be taxed by the arbitration tribunal and that out of the money paid into court there shall be paid out to the arbitrator by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.
- (2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitral tribunal.

43. ARBITRAL TRIBUNAL TO DECIDE ALL CIVIL DISPUTES

The arbitral tribunal shall (subject to the provisions herein contained) have jurisdiction to try all disputes of civil nature excepting those of which cognizance is either expressly or impliedly barred by law to be treated in arbitration.

44. POWER OF ARBITRAL TRIBUNAL TO EXTEND TIME FOR COMMENCING ARBITRAL PROCEEDINGS

Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement and difference arises to which the agreement applies the arbitral tribunal, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

45. JURISDICTION

Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, wherein any reference to any application under this Act has been made in a Court competent to entertain it that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that reference and the arbitral proceedings shall be made in the Court and in no other Court.

46. POWER TO HIGH COURT TO MAKE RULES

The High Court may make rules consistent with this Act as in :

- (a) the forms to be used for the purposes of this Act.
- (b) generally, all proceedings in Court under this Act.

47. GOVERNMENT TO BE BOUND

The provisions of this Act shall be binding on the Government.

48. APPLICATION OF ACT TO STATUTORY ARBITRATION

The provisions of this Act shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement, and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with the other enactment or with any rules and thereunder.

49. ACT TO APPLY TO ALL ARBITRATIONS

Subject to the provisions of section... and save in so far as is otherwise provided by any law, for the time being enforce, the provisions of this Act, shall apply to all arbitrations and to all proceedings thereunder :

Provided that an arbitration award otherwise obtained may with the consent of all parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

50. SAVING FOR PENDING REFERENCE

The provisions of this Act, shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act, shall notwithstanding any special repeal effected by this Act, continue to apply.

51. REPEAL AND AMENDMENTS