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**INDEPENDANT ARBITRATOR**

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The roots of Arbitration are in the confidence of parties to dispute the judgment of third person as impartial judge to dispense equal justice to all parties and to decide the law and facts involved in the matter submitted with a view to determine and finally end the controversy. The arbitrator has not been defined any where in the Act. The arbitration law requires the minimum qualification of the arbitrator to be an impartial, independent and disinterested person. UNCITRAL MODEL LAW OF INTERNATIONAL COMMERCIAL ARBITRATION vide article no. 11 (5) and 12 has provided for the qualification of independence and impartiality of arbitrator. In terms de La Ley (cited in Wharton's Law Lexicon) an arbitrator has been defined as a disinterested person to whose judgment and decision matters in dispute are referred. The concept of arbitration is based on the principle that, parties have chosen their arbitrator, hence his decision should be binding and be enforced. But this choice is snatched by stronger party and arbitrator is imposed hence the machinery and process of arbitration is misused. The arbitration can be as good or as bad as the arbitrator. The independence and impartiality of the courts are not subject matter of contract between the parties. Section 9 of Civil Procedure give right to file a suit which can be waived by the parties by entering into arbitration agreement. But this waiver should not mean the waiver of right to get an independent and impartial person not connected with any party as an arbitrator. The suit can be filed in the court without any discrimination and dominance of party does not affect the impartiality of the courts. Arbitration is mere substitution of courts. The arbitrator should have essential quality of independence as courts from the parties. The independence and impartiality of arbitrator should also not be subject matter of the contract between parties. In the Arbitration Act there is a missing portion/lacunas and it does not define the arbitrator. Usually, arbitrators are imposed by stronger party of contract as a part of bargain which results in injustice and also causes litigation for change of arbitrator, stay of arbitration proceedings, objections to award etc. It has been experienced that, many a times, in-competent and partial persons even employees of a party to

dispute having doubtful integrity are imposed as arbitrators on the party/parties, due to one sided provisions of agreement and their proceedings as well as awards are challenged tooth and nail. The role of arbitrator is very important and success of arbitration i.e., satisfaction of parties depends to a considerable extent on the impartiality and independence of the arbitrator. An arbitrator agreed by parties with free consent is far better than an imposed arbitrator. The arbitrator can be a lay man but justice and equity requires that he should be an independent and impartial person. He should not be a person connected with one of the parties nor should be an employee of the party.

**Appointment is more important than appointer :** It should not be important that which party has appointed arbitrator but it should be made important that who is appointed as arbitrator.

Appointment of independent person as arbitrator should be ensured instead of ensuring appointment of arbitrator by independent person or by court or by institution. The appointment can be made by any party or named person as per agreement but the power has to be exercised by appointing only independent person as arbitrator. Many lacunas of the law of arbitration shall be removed by prescribing qualification of impartiality and independence of arbitrator. Applying the same principle Supreme Court of India in S.L.P. (CIVIL) No 12320 of 1986 in V.K. CONSTRUCTION Works Pvt. Ltd. Vs. F.C.I. and another has directed as under :

“..... In the facts appearing in this case, we leave it open to the Managing Director to make his choice of the arbitrator, but that choice should be of any retired High Court Judge who will act as an arbitrator to dispose of the dispute in this case.....”

Supreme Court has held in A.I.R. 1987 S C 1359/Arbitration Law Reporter, 1987 [2] 144 [State of Karnataka Vs Shree Rameswara Rice Mills] that a party to the agreement cannot be arbiter in his own cause and has held in para 7 as under :

“.....We do not think that adjudication by the Officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract....”

It has been held by Calcutta High Court in A.I.R. 1954, Calcutta .

462 that it is duty of court to select an impartial person as arbitrator and an employee of one of parties to dispute should not be appointed as an arbitrator.

Punjab and Haryana High Court, in Arbitration Law Reporter 1989 [10] page 304 in State of Haryana Vs. Banarsi Das has held in PARA 5 & 7 as under :

“...trial court was obliged in law to appoint another arbitrator and did well in appointing the retired Superintending Engineer, Shri M R Verma, who would be able to devote greater time and dispose of the reference expeditiously ....The appointment of employee/dependent person as arbitrator cannot be approved by equity and good conscience.”

The appointment of independent and impartial persons, not connected with any party should be made a condition for arbitration and it will simplify many complications and avoid litigation. Institutions should be encouraged to keep and maintain panel of independent and competent persons for appointment of arbitrators and services of retired judges, eminent advocates, engineers, administrators etc. as arbitrators should be more and more encouraged. The law should ensure the independence and impartiality of arbitrator as impartiality of law Courts. It should not be left to be decided by the dominance of appointer/the party appointing arbitrator, to the duress of the other party who must willy-nilly accept such imposed arbitrator even if such an arbitrator does not command confidence of the party who is not in a position to name his arbitrator as such by contract.

**PROCEDURE FOR APPOINTMENT OF ARBITRATOR BE MADE SIMPLE AND CONCLUSIVE :** It has been experienced that there is much litigation regarding appointment of arbitrator, removal of arbitrator, stay of arbitration proceedings etc. If the basic qualification of arbitrator has been provided as an impartial independent person such type of litigation shall definitely decline. The appointer is not very important because his discretion can not be misused. A simple procedure be developed/provided for the appointment of arbitration from the panel maintained by institutions. The real object of arbitration is speedy and amicable settlement and appointment of independent and competent person as arbitrator is the first step to achieve the goal and every effort should be made in this direction.

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