

LAW & POLICY UPDATE

DISPUTE RESOLUTION & ARBITRATION



Arbitration and Conciliation (Amendment) Ordinance, 2020

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The President of India has promulgated Arbitration and Conciliation (Amendment) Ordinance, 2020 (**Ordinance**) to further amend the Arbitration and Conciliation Act, 1996 (**Act**). The ordinance ensures that all the stakeholders get an opportunity to seek unconditional stay of enforcement of arbitral awards where the underlying arbitration agreement or making of the arbitral award is induced by fraud or corruption.

Through the Ordinance, changes have been made to the following parts of the Arbitration and Conciliation Act, 1996 (**Act**):

▪ Section 36

- A Proviso to Section 36 of the Act has been added which states that a Court must grant an unconditional stay where a prima-facie case of fraud or corruption has been made out.
- An unconditional stay would be granted on an award if the agreement or award is challenged and proved to be induced by fraud or corruption. The opportunity to exercise such unconditional stay will be available to all the stakeholders.
- It will apply to all arbitration proceedings, irrespective of whether arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

▪ Section 43J

- The Ordinance also substitutes Section 43J of the Act to state that *'the qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.'*
- Consequently, Eighth Schedule of the Act, which deals with qualifications and experience of an arbitrator, has been omitted.
- The Ordinance is, however, silent on the name of the regulations which would regulate the qualifications, norms for accreditation of arbitrators.

The Ordinance will prove quite helpful in cases where inherent illegality by fraud or corruption has been *'prima-facie'* shown in court. However, it will be interesting to see how courts interpret the burden of proving a *'prima-facie'* case of fraud or corruption.

The Ordinance will also be tested in instances where parties use it to stall the operation of an Award by filing a Section 36 application and waste precious court time. Courts will have to be cautious in formulating a test for granting an unconditional stay on the operation of the award.

