

The Foreign Awards (Recognition And Enforcement) Act, 1961

UNION OF INDIA

India

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Act 45 of 1961

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The Foreign Awards (Recognition And Enforcement) Act, 1961(45 OF 1961)

11.

/551Statement of Objects and Reasons.-The procedure for settlement, through arbitration, of disputes arising from international trade was first regulated by the Geneva Protocol of Arbitration Clauses, 1923, and the Geneva Convention of 1927 to which India was a party and which were given effect to in India by the Arbitration (Protocol and Convention) Act, 1937. This Act was, therefore, enacted to adopt the then prevailing practices of arbitration in India to the regulations of the Geneva Protocol on Arbitration Clauses of 1923 and Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.(2) It was, however, felt that the Geneva Convention hampered the speedy settlement of disputes through arbitration and hence no longer met the requirements of the international trade due to the following principal defects:- (a) it placed an undue emphasis on the law of the land, the selection of arbitrators, the procedure to be followed by these tribunals, etc., and (b) it laid too much emphasis on the remedies that were open to parties to invoke the law of the country for the purposes of setting aside the awards. Therefore, in order to remedy, inter alia, the above-mentioned defects, a draft Convention was prepared by the International Chambers of Commerce, which was considered by the United Nations Economic and Social Council in consultation with the Governments of various countries and non-Governmental organisations and finally a new International Convention on the Recognition and Enforcement of Arbitral Awards was adopted at New York on the 10th June 1958. This Convention was duly ratified by the Government of India and was deposited with the Secretary-General of the United Nations on the 13th July, 1960.(3) The Geneva Convention shall cease to have effect between the contracting States on their becoming bound by the New York Convention. It was, therefore, considered desirable to replace Act

6 of 1937 by a new piece of legislation. This Bill provides for the filing and enforcement of foreign awards in Courts in accordance with New York Convention.(4) The new Bill, when brought into operation, will apply only to foreign awards made on or after the 11th day of October, 1960, and the foreign awards made before that date will continue to be governed by the 1937 Act. Amendment Act 47 of 1973-Statement of Objects and Reasons.-The Foreign Awards (Recognition and Enforcement) Act, 1961 was enacted to give effect to the International Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th day of June, 1958. Article 11 of this Convention provides for recognition by contracting States of agreements, including arbitral clauses in writing, by which the parties to the agreement undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration. The article also provides that when the Court of a contracting State is seized of a matter in respect of which the parties have made an agreement to which the article applies, the Court shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. In such cases, according to the article, the mere existence of a valid arbitration agreement would render it mandatory for the Court to refer the parties to arbitration and stay the proceedings before it. In *V/O Tractors Export Moscow v. Tarapore & Co.* [(1970) 2 S.C.A. 316] the Supreme Court has, however, held, by a majority of 2 : 1, that section 3 of the Act does not give full effect to Article 11 of the Convention. According to the Court, the section is applicable only in a case where not only is there an arbitration agreement in force between the parties, but there has also been an actual reference to arbitration. It is, therefore, proposed to amend the section suitably to bring out the intention clearly.² The Bill seeks to achieve the above object.[30th November, 1961]An Act to enable effect to be given to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the tenth day of June, 1958, to which India is a party and for purposes connected therewith. Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:-

The Act has been extended to the Union territory of Pondicherry by Act 26 of 1968, Section 3 and Schedule (w.e.f. 18.12.1968).

1. Short title and extent .-(1) This Act may be called The Foreign Awards (Recognition and Enforcement) Act, 1961.

(2)It extends to the whole of India.

2. Definition .-In this Act, unless the context otherwise requires, "foreign award" means an award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960-

Convention set forth in the Schedule applies, and(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

3. [Stay of proceedings in respect of matters to be referred to arbitration

.-Notwithstanding anything contained in the Arbitration Act, 1940, or in the Code of Civil Procedure, 1908, if any party to an agreement to which Article II of the Convention set forth in the Schedule applies, or any person claiming through or under him commences any legal proceedings in any Court against any other party to the agreement or any person claiming through or under him in respect of any matter agreed to be referred to arbitration in such agreement, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other step in the proceedings, apply to the Court to stay the proceedings and the Court, unless satisfied that the agreement is null and void, inoperative or incapable of being performed or that there is not, in fact, any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.]

4. Effect of foreign awards .-(1) A foreign award shall, subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India.

(2)Any foreign award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Act to enforcing a foreign award shall be construed as including references to relying on an award.

5. Filing of foreign awards in Court .-(1) Any person interested in a foreign award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2)The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.(3)The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified why the award should not be filed.

6. Enforcement of foreign award .-(1) Where the Court is satisfied that the foreign award is enforceable under this Act, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2)Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

7. Conditions for enforcement of foreign awards .-(1) A foreign award may not be enforced under this Act-

(a) if the party against whom it is sought to enforce the award proves to the Court dealing with the case that-(i) the parties to the agreement were, under the law applicable to them, 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 the country where the award was made; or(ii) the party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or(iii) the award deals with questions not referred or contains decisions on matters beyond the scope of the agreement: Provided that if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or(iv) the composition of the arbitral authority 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 a competent authority of the country in which, or under the law of which, that award was made; or(b) if the Court dealing with the case is satisfied that-(i) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or(ii) the enforcement of the award will be contrary to public policy.(2) If the Court before which a foreign award is sought to be relied upon is satisfied that an application for the setting aside or suspension of the award has been made to a competent authority referred to in sub-clause (v) of clause (a) of sub-section (1), the Court may, if it deems proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to furnish suitable security.

8. Evidence .-(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce-

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made; (b) the original agreement for arbitration or a duly certified copy thereof; and(c) such evidence as may be necessary to prove that the award is a foreign award.(2) If the award or agreement requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

9. Saving .-Nothing in this Act shall-

(a) prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Act had not been passed; or(b) apply to any award made on an arbitration agreement governed by the law of India.

10. Repeal .-The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), shall cease to have effect in relation to foreign awards to which this Act applies.

11. Rule making power of the High Court .-The High Court may make rules consistent with this Act as to-

(a) the filing of foreign awards and all proceedings consequent thereon or incidental thereto;(b) the evidence which must be furnished by a party seeking to enforce a foreign award under this Act; and(c) generally, all proceedings in Court under this Act.**THE SCHEDULE(See sections 2 and 3)CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS**Article I

1. This convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards. Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply-

(a) the duly authenticated original award or a duly certified copy thereof ; (b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that-

(a) the parties to the agreement referred to in article II were, under the law applicable to them, 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 the country where the award was made ;

or(b)the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case ; or(c)the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or(d)the composition of the arbitral authority 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(e)the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may be refused if the competent authority in the country where recognition and enforcement is sought finds that-

(a)the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or(b)the recognition or enforcement of the award would be contrary to the public policy of that country. Article VIIf an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order other party to give suitable security. Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of

the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XII In the case of a federal or non-unitary State, the following provisions shall apply:-(a) with respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of

Contracting States which are not federal States ;(b)with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or Provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or Provinces at the earliest possible moment;(c)a federal State party to this Convention shall, at the request of any other contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-general of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIVA contracting State shall not be entitled to avail itself of the present Convention against other contracting States except to the extent that it is itself bound to apply the Convention.Article XVThe Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:-(a)Signatures and ratifications in accordance with article VIII ;(b)Accessions in accordance with article IX;(c)Declarations and notifications under articles I, X and XI;(d)The date upon which this Convention enters into force in accordance with article XII ;(e)Denunciations and

notifications in accordance with article XIII.Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article XIII.