CHAPTER VII

CONCLUSION AND SUGGESTIONS

CONCLUSION

This Chapter is to evaluate, compare and critically analyse the essence of the arbitration functioning as an approach for speedy justice. Based upon the study made in the previous chapters, honest assessment has be done to see whether the deep and pervasive control of judicial intervention as contemplated in the arbitration legislation has been discharged as a functionary methodology so as to fine tune and lead the arbitration successfully complete and attain its objectivity. As far as this research work is concerned, it is probed to see the answer whether the functions discharged by the judiciary which are mandated under the Arbitration Legislation are done completely without leaving any explanation to render a proposition other than the one to result in speedy justice – both in the nature of quality and quantity.

Private negotiation and settlement of disputes is not a newly invented procedure culminating in the promulgation of arbitration legislation in the modern centuries. The law and practice of private and transactional commercial disputes without court intervention, is rooted in the haze of ancient history. Arbitration as an alternative to dispute – resolution has been prevalent in India from Vedic times in its own form. Equivalently it is much recognized practice of affording an opportunity to the aggrieved party to exhaust the appeal remedy against the decision of lower forum. Significantly the proceedings before panchayatdars were of informal nature, free from the cumbersome technicalities of the municipal law and their decisions were
reviewable by municipal courts. It is seen that the three concepts, in first, private negotiation and settlement, secondly, informal procedure, free from cumbersome technicalities and thirdly, appeal remedy that is in the form of judicial intervention have been well recognized practice from the time immemorial having strong roots in the soil of this earth. Therefore it seen that the concept of arbitration has been recognized from the time immemorial straight from the medieval, British, post and pre Independence period and after a long scroll by trial and error has been carved out suitably to meet the demands of the litigants both related to economic and commercial transactions ultimately to secure ends of justice. Thereby ultimately only upon the practical modalities adopted by respective countries in various spheres depending upon the commercial or civil transaction, laws governing the country, the Arbitration Legislation has been enacted accommodative to their nations. After the advent of globalization, Arbitration is a well recognized mode for resolving disputes equally arising out of International commercial transactions. The strange difficulty felt and crept in the International Commercial Transactions was that of the recognition and enforcement of an arbitral award made in one country by the Courts of other countries. Various International Conventions has adventured and sought to remove such difficulty. UNCITRAL is a specialized commission of the United Nations created by the General Assembly in 1966 in order to harmonize and unify International trade law. In order to achieve uniformity of the law of arbitral procedures and the specific needs of International commercial arbitration practice, The General Assembly of the United Nations has suggested that all countries to venture and adopt the said Model Law. The Model Law has been substantially adopted by a number of countries. In India, with the exception of a few significant variations, the Model Law has almost been taken into account in the enactment of
Arbitration and Conciliation Act 1996. Parliament enacted the present Act as a measure of fulfilling its obligations under the international treaties and conventions. The Act was drafted taking the UNCITRAL Model Law on International Commercial Arbitration and Conciliation Rules, as the basis. The emphasis under the Act has been to accord primacy to resolution of disputes through arbitration, and to reduce the intervention of the courts in such proceedings. The Act came into force on 25th January 1996 and one among its notable features is that it minimizes judicial intervention and reduces the grounds of challenge to the award. The object of the Act is to ensure speedy decision of the disputes between the parties. In other words, the main object is to drastically curtail supervisory role of the courts, demolish various stages and proceedings through which an award was required to pass through in the mechanism of old enactments so that the object of speedy resolution of dispute is achieved. Indian law on arbitration has evolved from indiscriminate judicial intervention, established in the Colonial Act and the successive 1961 legislation, to a more mature Act based on the Model Law; this signifies the importance of minimal judicial interference. The emphasis has been to accord primacy to resolution of disputes through arbitration and to reduce the intervention of the courts in such proceedings. The object of The Arbitration and Conciliation Act 1996 is expedition. This object would be defeated if the disputes remain pending in courts for months and years together, before even commencement of arbitration. It is for the arbitral tribunal to ensure that no party succeeds in creating stumbling blocks in the smooth execution of the arbitration proceedings.
One of the major defects of the 1940 Arbitration Act was that the party could access court almost at every stage of arbitration - right from appointment of arbitrator to implementation of final award. The New 1996 Act has drastically curtailed the right of appeal and such appeal to the court is now only on restricted grounds. In some cases, if an objection is raised by the party, that objection is decided upon by the Arbitral Tribunal itself, after which the arbitration proceedings are resumed and the aggrieved party can approach the Court only after the Arbitral Award is made.

As per settled law culled out from various decisions, arbitration as a mode for settlement of disputes between the parties has a tradition in this country. It has a social purpose to fulfill. The cumbersome procedure and protracted litigation becomes very costly in terms of money, time and energy. Modern era is now very much concerned with finality of the litigation to reach so that they know as to where they stand. Therefore the arbitral proceedings are intended to ensure fair, efficient and speedy trial giving finality to the decision. It is also intended to minimize the supervisory role of the courts and enhance the assistance. In other words, the main object is to drastically curtail supervisory role of the Courts, demolish various stages and proceedings through which an award was required to pass through in the mechanism of old enactments so that the object of speedy resolution of dispute is achieved.

Thereby it can be safely concluded without any hesitation that the legal rules and provisions of law in the arbitration legislation which are enacted for judicial intervention is a boon and edifice for making the arbitration mechanism as a speedy justice. However it cannot be stopped with that. The entire work rests upon the role
of judicial intervention. At the risk of repetition in this research work it has been analysed to see whether the role of judicial intervention as contemplated in the arbitration legislation has been played as a mechanism so as to lead the arbitration successfully complete and attain its objectivity. If the criteria as regards the functions discharged by the judiciary which are mandated under the Arbitration Legislation are done completely without leaving any explanation to render a proposition other than the one to result in speedy justice – both in the nature of quality and quantity, is answered in affirmative, then only, it can be a complete confirmatory answer, giving a practical implementation in letter and spirit, that the legal rules and provisions of law in the arbitration legislation which are enacted for judicial intervention is a boon and edifice for making the arbitration mechanism as a speedy justice. Therefore the significance rests upon the functions discharged by the judiciary. This is backdrop it is proceeded to analyse the role of judicial intervention.

EXTENT OF JUDICIAL INTERVENTION

The general principle pertaining to the extent of judicial intervention is emphasized in Section 5 of the Arbitration and Conciliation Act 1996. In order to eliminate any possibility of intervention by courts, Section 5 of the Act begins with non obstante clause – ‘notwithstanding anything contained in any other law’. Now judicial intervention in the arbitral process is permissible only to the extent as permitted by Part I. This clearly indicates the legislative intent to minimize supervisory role of courts to ensure that the intervention of the court is minimal. It defines the extent of judicial intervention in arbitration proceedings. It clearly brings out the object of the Act viz. to minimize judicial intervention and to encourage speedy and economic resolution of disputes by the arbitral process in cases where
disputes are covered by an arbitration agreement. It is aimed at giving certainty to the arbitral proceedings and ensuring speedy and inexpensive justice between the parties. The question remains, to what extent should a court intervene in the arbitral proceedings. Judicial intervention is therefore drawn under three groups i.e. before, during and after arbitration and analysed stage by stage precisely. To put in other words to analyse whether the role of judicial intervention has been as an instrument to lead the arbitration successfully complete and attain its objectivity full-fledgedly whether before or during or after arbitration.

JUDICIAL INTERVENTION BEFORE ARBITRATION

Function of Judicial Authority begins with the application to stay court proceedings, which have been brought in contravention of the arbitration agreement. Interpreting the provision of the Act, Courts have consistently held that when there is an arbitration agreement, power to refer parties to arbitration emerges. In respect of a matter agreed to be referred to arbitration and there is a valid arbitration agreement, in which event a judicial authority has been invoked by commencing legal proceedings by one party to the agreement in respect of the very same matter agreed to be referred to arbitration, the other party can apply to the judicial authority for an order to refer the parties to arbitration. It is only under the old Act, the judicial authority had the discretion to make an order staying the proceedings before arbitrator. However under the New Act now once an application is properly made before the judicial authority, it is obligatory to refer the parties to arbitration. Once the parties have been referred to arbitration, the question of stay would not arise. Filing of an application and praying to refer parties to arbitration would not ipso fact stay the proceedings before the arbitrator. Despite an application has been made under Sub Section (1) of Section 8 of
the Arbitration and Conciliation Act 1996 and that the issue is pending before the judicial authority there is no sort of embargo for the arbitration proceedings to be commenced or continued and an award can also be passed. Sub-section (3) of Section 8 of the Arbitration and Conciliation Act 1996 empowers the arbitral tribunal to commence or continue the proceedings before it and even pass the award. The object of giving such powers to the Tribunal is to reduce the chances of dilatory tactics by a party with the intention to unnecessarily prolong the adjudication of the matter before the arbitral tribunal. If however, the party who wants the matter to be referred to arbitration applies to the court after submission of his statement and the other party who has brought the action does not object, there is no bar on the ‘judicial authority’ referring the parties to arbitration. By the consent of the parties, the matter may be referred to arbitration even after the submission of the first statement of the party before the judicial authority and conversely by implication, if a party objects to the application, such a reference cannot be made. Equally catena of decisions adverted in this research work has implemented the rigor and virus of the provisions of this section in its true colour.

It is a settled dictum of law that in an Application under Section 8 of the Arbitration and Conciliation Act 1996, judicial authority cannot go into the question as to whether an Agreement itself is vitiated by fraud, etc., since the said question can also be determined by the Arbitrator himself. This rests upon the doctrine of separability incorporated in Section 16 of the Arbitration and Conciliation Act 1996.
Following among other dictums which are in affirmative nature and an over view of arbitration law after the advent of the UNCITRAL Model Law, both in India and in the neighbouring countries as well as in England, Canada and U.S., shows— that the arbitration clause could be “broad” enough to cover disputes relating to the validity of the contract itself even on grounds of fraud, misrepresentation, etc., in which case the jurisdiction of the Arbitral Tribunal is not ousted; and that if the arbitration clause is not broad enough to cover those disputes, even then the ‘separability’ doctrine could be invoked to sustain an arbitration. It is on account this fundamental principle that the Supreme Court pointed out the possibility of a ‘broad arbitration clause’ in *ITC Ltd., V. G.J. Fernandes* AIR 1989 SC 839. Therefore, if by agreement, parties could have disputes where allegations of fraud, misrepresentation, etc., are made, referred to arbitration, it is certainly possible for the legislature to bring them within the purview of arbitration. This is what the 1996 Act has done by virtue of Section 16 of the Act. In so far as domestic arbitration is concerned, what a Court can do at the pre reference stage is restricted to what is prescribed under Sections 8, 9 and 11 of the Arbitration and Conciliation Act 1996. That it cannot traverse beyond what is provided therein is also stated in Section 5 of the Arbitration and Conciliation Act 1996. Similarly what an Arbitral Tribunal can do is spelt out in Section 16 of the Arbitration and Conciliation Act 1996. If the deletion in Section 8 of this Act of the rider contained in Section 45 of this Act is a case of omission, the insertion of a similar rider in Section 16 empowering the Arbitral Tribunal to go into the question, is a case of commission. This, therefore, is a clear signal to the fact that in so far as domestic arbitration is concerned, the question as to whether an Arbitration Agreement is vitiated by fraud, etc., are also to be determined only by the Arbitral Tribunal. It does not fall under the exception to the rule of casus omissus (an omitted
case) and hence the Court cannot supply the same by resorting to the maxim “Ex Nihilo Nihil Fit” (Nothing comes from nothing)

Overall, the role of judicial intervention before arbitration, as far as referring the parties to arbitration is concerned, the court upon satisfying the conditions contemplated under sub Section (1) and (2) of Section 8 of the Arbitration and Conciliation Act 1996, that is

1. There is an arbitration agreement
2. A party to the agreement brings an action in the Court against the other party
3. Subject matter of the action is same as the subject matter of the arbitration agreement
4. The other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute,

has in a positive way referred the parties to arbitration by implementing the inflexibility and virus of the provisions of this section in its accurate shade. In this scenery a thorough analysis of this research work would go to render the proposition that the role of the Court i.e. the Judicial intervention before arbitration is concerned, has been a boon and edifice to reach the real object of the arbitration legislation, so as to drastically curtail supervisory role of the Courts, demolish various stages and proceedings so that the object of speedy resolution of dispute is achieved to result in speedy justice – both in the nature of quality and quantity.
The role of the judicial intervention during arbitration has a sweep in Section 9 of the Arbitration and Conciliation Act 1996. This features out the nature of interim measures of protection that can be obtained as an order from the court. These orders are aimed at preserving assets, protecting the position of the parties, maintaining status quo, and procuring evidence. This power of the court is mandatory. It is not subject to party autonomy. That is, the parties cannot avoid the provisions of this Act by agreeing otherwise. These powers are to be exercised strictly in accordance with the provisions of the statute in respect of the matters listed in it. Party Autonomy and finality of award are two plinths of the arbitration law. If any one of these two plinths is distorted by judicial intervention, arbitration law will fail to realize its ultimate objective and will lose its essence. Furthermore, these powers are not available where the seat of arbitration is outside India or the place has not been designated or determined.

This Section is invoked only as an interim measures pending commencement in course of the arbitral proceedings. It is not a substantive relief. An application under section 9 of the Arbitration and Conciliation Act 1996 under the scheme of the Act is not a suit. The relief sought for in an application under section 9 of this Act is neither in a suit nor a right arising from a contract. The court under section 9 of this Act only formulates interim measures so as to protect rights under adjudication before the arbitral tribunal from being frustrated. Obviously it is not within the scope of this section to inquire into the claim and the counter claim made by both the parties in regard to the custody of the articles beyond what has been admitted by the respondent.
Landmark decision by Hon’ble Apex court in *Bharat Aluminum Company v. Kaiser Aluminium Technical Service, Inc.* needs a deep look. The conflict-ridden decision of the Indian Supreme Court in *Bhatia International v Bulk Trading SA* has been ruled out against by the Indian Supreme Court in the case of *Bharat Aluminum Company v. Kaiser Aluminum Technical Service, Inc.*, giving pavement and thereby putting an end to intrusion by the Indian courts where the place of arbitration is seated outside India. The said dictum of law has prospective effect and not retrospective. Therefore the complexity still remains for at least a moment in time in respect of contracts with arbitration clauses executed prior to the date of this decision.

The dictum of law laid down in *Bhatia International case* by the Supreme Court is that Part I of the Arbitration and Conciliation Act 1996 extends to and applies even in respect of proceedings where the seat of arbitration is outside India, unless the parties had expressly or impliedly agreed to exclude Part I of the Act. This verdict was a targeted endeavor to deal with apparent lacuna in the Act wherein the power for Indian courts to order interim relief in support of arbitration proceedings is contained section 9 of the Act coming under Part I of the Act. Since Part I of the Act is applicable only in respect of Indian seat arbitration, the consequent result would be that the India Court had no power to grant interim relief in respect of foreign seated arbitration for example, an injunction preserving property in India. Thereby by virtue of the decision, complexity came to arose in different quarters where the parties by relying upon *Bhatia International* perceived Indian Courts to apply other provisions of Part I of the Act 1996 to arbitrations commenced and awards rendered even in respect of foreign seated arbitration. This resulted in major effect in respect of arbitration where the place of seat is outside India and Part I of the Act was not
excluded, the Indian Courts were bound to award interim relief in support of the arbitration; appoint arbitrators in appropriate circumstances; and set aside arbitral awards. It is to be voiced with anguish over the impact of such an overarching interpretation. Of much realistic apprehension to commercial parties, given the delays typical of much of Indian court litigation, was that any case pending for decision before the Indian courts would delay the progression of arbitration, or the enforcement of the award, by months or years together. With an illustrative example, in the case of *White Industries V. Coal India* an award rendered in ICC arbitration seated in Paris was challenged in the Indian courts under Section 34 of the Arbitration and Conciliation Act 1996. A challenge to the jurisdiction of the Indian courts to entertain the setting aside application was made in 2002 which was long pending and the same was not resolved on appeal some 10 years later. As a resultant consequent a separate arbitration tribunal came to make a finding in the pending litigation.

In the wake of glow of contradictory and conflicting opinions on the precision of the verdict in *Bhatia International* case it was referred to a panel of five Judges of the Supreme Court for re-examination. Thereafter in the case of *Bharat Aluminum Company v. Kaiser Aluminum Technical Service, Inc*, a crucial issue whether Part I of the Act applied to arbitrations seated outside of India fell and came up for consideration. Much expected and anticipated decision in *Bharat Aluminum Company v. Kaiser Aluminum Technical Service, Inc* was delivered by the Supreme Court of India on 6 September 2012. The Supreme Court overruled the decision in the case of *Bhatia International* and laid the edifice which is considered as much improved arbitral jurisprudence in India: The decision in *Bharat Aluminum* overruled the approach adopted by the court in *Bhatia International* and affirmed with clarity
that Part I of the Act does not apply to foreign seat arbitration i.e. arbitrations seated outside India. In doing so, the Court adopted a 'seat-centric approach'. The Court ruled out only germane difference under the Act between 'domestic arbitrations' (i.e. arbitrations with a seat in India) and 'foreign arbitrations' (i.e. arbitrations with a seat outside India): Part I applies to domestic arbitrations – even if both parties involved are non-Indian; and Part I does not apply to foreign arbitrations – seemingly even if both parties involved are Indians.

The Court further made clear that awards rendered in foreign arbitrations are only subject to the jurisdiction of Indian courts when they are sought to be enforced in India under Part II of the Act – which part is totally separate and different from Part I of the Act.

_Bhatia International_ decision was 'party autonomy approach' whereas dictum of law laid down in _Bharat Aluminum_ is 'seat-centric approach'. Apex Court observed that the parties to the foreign arbitration cannot give an inconsistent interpretation to the language of arbitration law by agreeing to apply Part I of the Act and thereby vesting supervisory jurisdiction to the Indian Courts.

The seat-centric approach confirmed by the Court having two quite significant implications in practice which was to be adverted hereunder was also justified by the Apex Court. One such implication is that while setting-aside of Arbitral Awards, Indian courts will not be vested with jurisdiction or empowered to set aside foreign arbitral awards. The Court explicitly elucidated that this would be the case even if the law applicable to the substantive aspects of the dispute was Indian law. The court considered that such an approach was consistent with Article V(1)(e) of the New
York Convention. The court distinguished that under the New York Convention, the arbitral awards can be set aside only by the courts at the seat of the arbitration and, where these courts are not empowered, the courts of the country whose laws govern the procedure of the arbitration. The New York Convention does not empower courts of the country whose substantive laws apply to the arbitration to set aside arbitral awards on that basis.

Accordingly even in respect of interim relief, Indian courts are no conferred with jurisdiction to order interim relief in support of foreign-seated arbitrations, notwithstanding the express or implied contrary intention or purported agreement of the parties. Apex Court equally was so conscious to close down the doors to resort to separate civil suit proceedings for obtaining interim relief in respect of foreign seated arbitration. Wherein a suit cannot be filed praying for interim relief under the General Civil Procedure Law in aid of foreign arbitration where the matter is one over which they do not have jurisdiction to grant final relief. The Apex Court made it clear that lack of jurisdiction of India Court over Foreign seated Arbitration in respect of Interim relief is foremost necessary and significant for those to choose a foreign seat for India related arbitrations. Adding a rider clause even if any lacuna or infirmity creeps in over the issue of lack of jurisdiction of Indian courts over foreign seated arbitration in respect of interim relief, it is only for the legislature to amend the law appropriately and the court cannot fill up the lacuna.

The term ‘venue’ and ‘seat’ of arbitration attract more significance in this 'seat-centric approach' which was also explained by the Court. It was clarified that also finalizing the seat of arbitration, it is always open for the parties and the tribunal to choose a venue or conduct of hearing different from the seat of arbitration for the
purpose of comfort. Such a choice of venue cannot in itself alter the seat of the arbitration or the law governing the arbitration. Therefore illustratively, in a foreign seated Arbitration, where the seat of arbitration is not in India, the holding of hearings in India for convenience would, in itself, be insufficient to attract Part I of the Act.

The law laid down by the Supreme Court in *Bharat Aluminum* case had only prospective effect and not retrospective effect for the purpose of rendering complete justice. The decision would only apply to arbitration agreements executed after the date of the judgment (6 September 2012). Decision of the Supreme Court in *Bhatia International* and its consequential developments will continue to apply in respect of arbitrations proceedings which have been initiated pursuant to arbitration agreements executed before this date.

This decision of Supreme Court has gaining much signification in the sphere of putting an end to judicial intervention in respect of arbitrations seated outside India. The decision is equally focused upon in the angle of conferring party autonomy in choosing their seat and in that score adopting the principle of UNCITRAL Model Law. Any small connection with India in respect of cause of action pertaining to subject matter of dispute fell inside India or parties reside in India or the mere fact that parties have chosen India Law will not ipso facto confer jurisdiction for Indian courts to exercise supervisory jurisdiction over foreign seated arbitration proceedings.

After the advent of *Bharat Aluminum* 'seat-centric approach' decision, now the drafters while drafting the of arbitration clause in respect of foreign seated arbitration relating to Indian contracts, where parties wish to avoid the jurisdiction of India Court, they are no longer to expressly or impliedly exclude the application of Part I of
The powerlessness to obtain interim orders from the Indian Courts goes deep root constraint more particularly if the dispute pertains to subject matter within India or when it becomes foremost significant to restrain a party inside India from altering the status quo during pendency of the arbitration proceedings. Keeping all in this advance look, it imposes greater responsibility upon the parties to appreciate how importance to obtain interim relief which occupies a significant role and then embark to choose the seat of arbitration. This has had the consequence of restricting judicial intervention in foreign-seated arbitrations to a great deal. It is expected that the Indian courts will continue to follow such an approach in those legacy cases that do come before them in the future, especially in light of the clear message of non-intervention sent out by the Supreme Court.

The verdict of the Supreme Court in *Bharat Aluminum* case emerges to turn a page in the approach taken by the Indian courts in relation to their supervisory role in international arbitration. However, the decision in *Bharat Aluminum* is only part of the landscape for arbitration in India. The Supreme Court's straight formula of the non-application of Part I of the Arbitration and Conciliation Act 1996 to foreign arbitrations has left parties with a stark choice between arbitrating inside India and thereby having access to the Indian courts to apply for interim relief, and arbitrating outside India but having no such access. This decision is made harder by the challenges that linger in performing domestic arbitration in India, including the risk of
delays, and the inflating costs and difficulty arising from parties making tactical applications to the Indian courts under Part I of this Act.

Parties who succeed in foreign arbitrations which need enforcement inside India will also have to contend with the challenges of enforcing their awards through the Indian courts which, can once again be subject to sizeable delays. Albeit the ultimate statistical record of the Indian courts in upholding foreign arbitration awards is well-built. Commercial community will be anxious at the time taken for challenges to enforcement to be decided and at the prospect of the Indian courts conducting effective re-hearings of the merits of decided cases in order to decide challenges brought under the stretched definition given to the term 'public policy' applied in the Indian courts.

Yet another ratio decidendi to be adverted at this juncture pertains to the order passed by the Hon’ble Chief Justice of respective States appointing Arbitrator is whether administrative or judicial in nature? The Supreme Court has held earlier that as the Chief Justice or his Designate under Section 11 of the Arbitration and Conciliation Act 1996 acts in the administrative capacity, the order passed by him cannot be termed to be an order passed by any Court exercising any judicial function. After referring to its earlier judgments in Sundaram Finance Ltd., V. NEPC India Ltd., Ador Samia (A) Ltd., V. Peeday Holdings Ltd., Supreme Court held that it is a settled legal position that the order passed by the Hon’ble Chief Justice under Section 11(6) of the Arbitration and Conciliation Act 1996 cannot be subject matter of challenge directly under Article 136 of the Constitution of India since powers discharged by the Hon’ble Chief Justice under Section 11(6) of the Act is administrative in nature.
This position of law was again reiterated by the Apex Court in *Konkan Railway Corporation Ltd., V. Mehul Construction Co.*, where the Court observed that if the order under Section 11(6) of the Arbitration and Conciliation Act 1996 is to be treated as judicial or quasi judicial order then the consequential flow would be nothing but the order will be made amenable to judicial intervention. In which event there would be all possibility to defeat the purpose of the Act by adopting dilatory tactics by the reluctant party by approaching the court of law by challenging the order of appointment of an arbitrator. Therefore such an interpretation to treat the order under Section 11(6) of the Act as judicial or quasi judicial has been answered in negative, only for the purpose to achieve the basic objective of the 1996 Act by adopting UNCITRAL Model. On the other hand, it was observed that that if the order passed by the Hon’ble Chief Justice under Section 11(6) of the Arbitration and Conciliation Act 1996 is treated as administrative in nature, then in such an event, in a case where the learned Chief Justice or his nominee refuses erroneously to make an appointment then an intervention could be possible by a Court in the same way as an intervention is possible against an administrative order of the executive. In other words, it would be the case of failure to perform the duty by the Chief Justice or his nominee, and therefore, a Writ of Mandamus would lie. If such an explanation is given with regard to the nature of the order that has been passed under Section 11(6) of the Act, then in the event an order of refusal is passed under Section 11(6) of the Act it could be cured by issuance of Writ of Mandamus.
The latter decision was referred to a Larger Bench and this is how the matter came before the Constitution Bench of the Supreme Court in *Konkan Railway Corporation V. Rani Construction (P) Ltd.* On a review of its earlier decisions, the Constitution Bench contended itself by saying that the order of the Chief Justice or his Designate under Section 11 of the Act, nominating an arbitrator is not an adjudicatory order, and the Chief Justice or his Designate is not a Tribunal, therefore, such an order cannot properly be made the subject of a petition under Article 136 of the Constitution of India. While affirming the decision in Mehul Construction to the extent that such an order is not an adjudicatory order, it stopped short of saying that such an order is not an administrative order either. The court said that the only function of the Chief Justice or his Designate under Section 11 of the Act is to fill the gap left by the parties to the Arbitration Agreement or by the two ‘party-appointed’ Arbitrators and appoint an Arbitrator, so that the Arbitral Tribunal is expeditiously constituted and the arbitration proceedings are commenced. This function has been advisedly left to the Chief Justice or his Designate with a view to ensure that the appointment of the Arbitrator is made by a person occupying a high judicial office to instill confidence in the appointment process, who would take due care to see that a competent, independent, and impartial Arbitrator is appointed. No doubt, in *Konkan Railway Corporation Ltd., V. Rani Construction Pvt. Ltd.*, the Constitution Bench did not specifically hold that the order of the Chief Justice, or his Designate, is not an administrative order. After referring to various judgments of the Supreme Court of India and Courts of the foreign Countries, reference was made to a Larger Bench. However while making a reference to the Larger Bench, the Bench explicitly made clear that the reference does not change the position that the order of the Chief Justice of his nominee is administrative in character and not the judicial determination of the
rights of the parties. Till the pronouncement of the Larger Bench to the contrary the law laid down in *Konkan Railway Corporation V. Mehul Construction Company* is the law binding upon the Courts in the Country in terms of Article 141 of the Constitution of India.

Subsequently, a majority of six out of seven Judge Constitution Bench of the Supreme Court in *SBP & Co., V. Patel Engineering Ltd.*, has specifically stated that the default power of the Chief Justice or his Designate to appoint an Arbitrator/s under section 11 of the Act is ‘is not an administrative power’. It is a judicial power’ and this power in its entirety could be delegated by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court. On the other hand, the dissenting Judge has held that this power ‘is administrative, pure and simple, and neither judicial nor quasi judicial’. This function may be performed by the Chief Justice or by any Person or Institution designated by him. However, the learned Judge has not spelt out as to what is the scope of the expression ‘administrative power’ and how this default power of the Chief Justice is administrative. In any case, this being a minority view does not prevail.

The challenge to the very appointment of the Arbitrator is dealt with under Section 13(2) of the Arbitration and Conciliation Act 1996. But Section 14(2) of this Act deals with a challenge to the continuance of a person as an Arbitrator. While Section 13(2) of this Act stands at the threshold, Section 14(2) of this Act stands after the entry point. But the exercise of one option or the other depends upon whether the remedy available under Section 13(2) excludes the one under Section 14(2) or
whether the remedy under Section 14(2) is wide enough to allow a party to circumvent Section 13(2) or not. As per the express language of Section 13(2), a challenge to an Arbitrator, on the grounds specified in Section 12(3) has to be made only before the Arbitral Tribunal. Similarly, a controversy concerning the de jure or de facto inability of the Arbitrator to perform his functions or a controversy concerning the failure of the Arbitrator to act without undue delay in terms of Section 14(1)(a), can be agitated only before Court under Section 14(2).

While adapting the UNICITRAL Model Law, our Parliament made certain additions, alterations, modifications and even deletions. Therefore, wherever the 1996 Act deviated from the UNICITRAL Model Law, it is an indication that the lawmakers applied their mind and intended to adopt a modified version. Articles 12 to 14 of the UNICITRAL Model Law correspond to Sections 12 to 14 of the Arbitration and Conciliation Act 1996. It is clear that Articles 13 and 14 of the Model Law provided two independent tracks, one relating to the very appointment and another relating to the continuation. Hence, there is no scope for holding that Section 14 of this Act is wide enough to include a challenge to an Arbitrator even on the grounds specified in Section 12(3) of this Act. After all, a party whose challenge to an Arbitrator is rejected by the Arbitral Tribunal under Section 13(4) of this Act is not left without a remedy. A remedy is specifically provided under Section 13(5) of Arbitration and Conciliation Act 1996. In view of the above, the only remedy available to the petitioner is to challenge the Arbitrator in a manner prescribed by Section 13(2) Arbitration and Conciliation Act 1996 before the Arbitral Tribunal itself. If the petitioner's challenge is accepted, then the petitioner can nominate its own Arbitrator and together with the Arbitrator of the first respondent, they can nominate the third
Arbitrator. If the petitioner's challenge is rejected, then the only remedy open to the petitioner is to participate in the proceedings and defend itself. If an award is passed against the petitioner and the petitioner chooses to challenge the same under Section 34 Arbitration and Conciliation Act 1996, it would then be open to them to include a challenge to the constitution of the Tribunal also as one of the grounds, by falling back upon Section 13(5) of the Arbitration and Conciliation Act 1996.

Catena of decisions adverted in this research work goes to affirm that the provisions of Act 1996 contemplated for the role of judicial intervention during arbitration has been implemented by the court firmly and in its accurate glow without any distortion. In this background, a meticulous study of this research work would go to provide the proposition that the role of the Court i.e. the Judicial intervention during arbitration is concerned, has been a support to structure the shape of the arbitration award to reach- both in the nature of quality and quantity.

JUDICIAL INTERVENTION AFTER ARBITRATION

Finally the role of the Judicial Intervention after arbitration is to be examined. Major focus has been made upon the role of the judicial intervention while setting aside the award in embedded in Section 34 of the *Arbitration and Conciliation Act 1996*. Proceedings under Section 34 of the Act are summary in nature. It provides for objections by respondent, followed by opportunity to applicant to prove existence of any ground under Section 34(2) of the Act. A proceeding under Section 34 is different from regular civil suits. In regular civil suit, on failure to file defence it will be lawful for court to pronounce judgment on basis of facts contained in plaint. In application
under Section 34 of the *Arbitration and Conciliation Act 1996*, even if there is no contest, court cannot set aside award on basis of averments contained in application. Whether there is contest or not, applicant has to prove one of the grounds set out in Section 34 (2) (a) and (b) of the Act. Even if applicant does not rely upon grounds under Clause (b), Court, on its own initiative, may examine award to find out whether it is liable to be set aside.

“Public policy” has become a new dimensional ground for challenge to award. In furtherance to the interpretation given to the words used in Section 34 of the 1996 Act, a new "judge made" ground came about in the Supreme Court decision, wherein in this context the three decisions of this Court *Renusagar, Saw Pipes and Phulchand Exports* cases need a careful and close examination. The facts suffice to deal with *Renusagar* case is that an award was passed by the Arbitral Tribunal, GAFTA in favour of General Electric Company (GEC) against Renusagar. The award was sought to be enforced by GEC passed in its favour by filing an arbitration petition under Section 5 of the Foreign Awards Act in the Bombay High Court. On very many diverse grounds the application for enforcement was contested by Renusagar. Inter alia, one of the main objections on the ground of public policy was raised by Renusagar and contended that the enforcement of the award was contrary to the public policy of India. The objection was overruled by the Single Judge of the Bombay High. Thereby it was held that the award was enforceable and on that basis a decree in terms of the award was drawn. Renusagar filed an intra-court appeal but that was dismissed on the ground of maintainability. Thereafter the matter reached Hon’ble Apex Court. On behalf of the parties, multiple arguments were made. A three-Judge Bench of the Hon’ble Supreme Court noticed diverse provisions, one
among which is Section 7(1)(b)(ii) of the Foreign Awards Act which provided that a foreign award may not be enforced if the court dealing with the case was satisfied that the enforcement of the award would be contrary to public policy. The Court held that the words “public policy” used in Section 7(1) (b) (ii) of the Foreign Awards Act meant public policy of India. An apparently clear and understandable fine distinction was drawn by the Court while applying the rule of public policy between a matter governed by domestic laws and a matter involving conflict of laws. It has been held in explicit terms that the application of the doctrine of “public policy” in the field of conflict of laws is more limited than that in the domestic law. In cases concerning a foreign element than when purely municipal legal issues are involved in such situations the courts are slower to invoke public policy. Explaining the concept of “public policy” vis-à-vis the enforcement of foreign awards in Renusagar, Hon’ble Apex Court stated “This would mean that Section 7(1)(b)(ii) of the Foreign Awards Act which permits to raise the defense of public policy should be read in a narrow scope. Identically and correspondingly it is pertinent to mention at this juncture that under Article I(e) of the Geneva Convention Act of 1927 provides to raise an objection to the enforcement of arbitral award on the ground that the recognition or enforcement of the award is contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon. Respectively Section 7(1) of the Protocol & Convention Act of 1937 which necessitates that the enforcement of the foreign award must not be contrary to the public policy or the law of India. Therefore so as to attract the expression “public policy” contravention of law alone is not sufficient. Section 7(1)(b)(ii) of the Foreign Awards Act which deals with “public policy” has been used in narrow sense. In order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law
of India. The expression “public policy” in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy is applied in the field of private international law. This is for the reason that since the Foreign Awards Act is concerned with recognition and enforcement of foreign awards which are governed by the principles of private international law. Applying the said criteria it must be held foreign award may not be enforced if the court dealing with the case was satisfied that the enforcement of the award would be contrary to

(i) Fundamental policy of Indian law; or

(ii) The interests of India; or

(iii) Justice or morality.

Further, in *Renusagar Power Co. Ltd. V. General Electric Co.* this Court considered Section 7(1) of the Arbitration (Protocol and Convention) Act, 1937 which inter alia provided that a foreign award may not be enforced under the said Act, if the court dealing with the case is satisfied that the enforcement of the award will be contrary to the public policy. After elaborate discussion, the Court arrived at the conclusion that public policy comprehended in Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961 is the “public policy of India” and does not cover the public policy of any other country.

While adverting to *Oil & Natural Gas Corporation Ltd. V. Saw Pipes* case, the scope and extent of the court’s jurisdiction under Section 34 of the Arbitration and Conciliation Act 1996 was under consideration. The law of liquidated damages has been incorrectly applied by the arbitral tribunal whether can be raised as one of the ground for setting aside the award was an issue which fell for consideration in this
case. This is not an apparent ground to challenge on merits on the plain reading of Section 34 of the Act. The Supreme Court in Saw Pipes came to the conclusion that the impugned award was legally flawed in so far as it allowed liquidated damages on an incorrect view of the law. In the process it held, that an award can also be challenged on the ground that it contravenes "the provisions of the Act (i.e. Arbitration Act) or any other substantive law governing the parties or is against the terms of the contract." Further, the judgment expanded the concept of public policy to add that the award would be contrary to public policy if it is "patently illegal."

Apex Court held in Saw Pipes said that the expression “public policy of India” was required to be given a wider meaning. Accordingly, for the purposes of Section 34 of this Act, Apex Court added a new category – patent illegality – for setting aside the award. Adding together to the narrower meaning given to the term “public policy” in Renusagar case it was held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:

(i) Fundamental policy of Indian law; or
(ii) The interests of India; or
(iv) Justice or morality, or
(v) In addition, if it is patently illegal.

For that purpose illegality must go to the root of the matter and if the illegality is of small in nature it cannot be held that award is against the public policy. If the award is unfair and unreasonable then it would be set aside and also if the award shocks to the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.
Following *Renusagar and Saw pipes*, Supreme Court of India in *Shri Lal Mahal Ltd. V. Progetto Grano Spa* applied that for purposes of Section 48(2)(b) of the this Act, the expression “public policy of India” must be given narrow meaning and the enforcement of foreign award would be refused on the ground that it is contrary to

(i) Fundamental policy of Indian law; or

(ii) The interests of India; or

(iii) Justice or morality

as enumerated in *Renusagar*. Although both the Sections 34(2)(b)(ii) and Section 48(2)(b) of the Act uses the same expression ‘public policy of India’ wherein the concept is also same in nature in both the Sections, Hon’ble Apex Court in its view observed that the application differs in degree of level insofar as these two Sections are concerned. The application of the expression ‘public policy of India’ for the purposes of Section 48(2)(b) of the Act is more limited than the application of the same expression in respect of the domestic arbitral award. Therefore dictum laid down by the Apex Court *Renusagar* applied only for the purposes of Section 48(2)(b) of the 1996 Act. On the other hand the principles laid down in Saw Pipes would govern the scope of such proceedings for setting aside an award under Section 34 of the Arbitration and Conciliation Act 1996 is concerned. Accordingly Apex Court held that enforcement of foreign award would be refused under Section 48(2)(b) only if such enforcement would be contrary to

(i) Fundamental policy of Indian law; or

(ii) The interests of India or

(iii) Justice or morality.
The wider meaning given to the expression “public policy of India” occurring in Section 34(2)(b)(ii) of the 1996 Act in Saw Pipes is not applicable where objection is raised to the enforcement of the foreign award under Section 48(2)(b) of the 1996 Act.

It is true that in Phulchand Exports, a two-Judge Bench of the Apex Court accepted that the meaning given to the expression “public policy of India” in Section 34 of this Act in Saw Pipes must be applied to the same expression occurring in Section 48(2)(b) of the 1996 Act. Moreover, Section 48 of the 1996 Act does not give an opportunity to have a ‘second look’ at the foreign award in the award-enforcement stage. The scope of inquiry under Section 48 of the Act does not permit review of the foreign award on merits. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy. In this aspect, Apex Court observed that such errors would not bar the enforceability of the appeal awards. While considering the enforceability of foreign awards, the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed. Under Section 48(2)(b) of this Act, the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to

(i) Fundamental policy of Indian law; or

(ii) The interests of India; or

(iii) Justice or morality.
Since the objections raised by the appellant in that case did not fall in any of these categories, therefore, the foreign awards were not held to be contrary to public policy of India as contemplated under Section 48(2)(b) of the Act and therefore dismissed the appeal.

The *Saw Pipes* Judgment is subject to thorny condemnation. Study of the judgment accurately sets the clock back to the old position where an award could be challenged on merits and without a doubt renders the court (testing enforceability of an award) as a court of appeal. Some judicial decisions have tried to reign in the effect of *Saw Pipes*. One instance of this is the Supreme Court decision in the case of *McDermott International Inc. v. Burn Standard Co. Ltd.* where the Court somewhat read down *Saw Pipes and held that* the supervisory role of the court by reviewing the arbitral award is only to ensure fairness as per the provision of 1996 Act. Only under few circumstances envisaged there under judicial intervention is permitted. Situations like fraud or bias by the arbitrators, violation of natural justice are such instances. The court can only quash the award leaving the parties free to begin the arbitration again if it is desired. The Court cannot correct the errors of arbitrators. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

Commenting on *ONGC v. Saw pipes* the court held: Since it is only for a large Bench to decide as to the correctness or otherwise of the said decision, till then the said decision has the binding effect and the same has been followed in large number
of cases despite the decision of ONGC had invited unfavourable remarks from different quarters practically.

A few decisions of the High Court have also endeavoured to narrowly read *Saw Pipes* upon the reasonable apprehension that literary interpreting the dictum laid down in the judgment would only have an impact of the possibility of expanding judicial review beyond all limitations contained not only under the Arbitration Act but even under the old regime. These High Court decisions have concurrently observed that a single Judgment of the Apex Court cannot put a naught upon the entire law on the subject and set the clock anti. The High Court of Bombay in the case of *Indian Oil Corporation Ltd. V. Langkawi Shipping Ltd.* observed that to accept a literal construction on *Saw Pipes would have the consequence to the effect as hereunder.*

The object of the 1996 Act itself is to radically curtail the judicial intervention in arbitration awards except in the circumstances as contemplated in the provisions of the Act. While that being the legislative intent, the effect of the Judgment would only widen the scope of court’s jurisdiction to intervene under Section 34 of the 1996 Act. This is absolutely not the intention of the legislature. It is noteworthy to recollect that the need to minimize the supervisory role of Courts in the Arbitral process is the main objective of the Arbitration and Conciliation Bill 1996 which preceded the 1996 Act.

The *Saw Pipes* Judgment rather need be criticized. Out the outset, the dictum of the judgment is very much contrary to the apparent language of the Arbitration Act and the spirit of the law. While there exists already a backlog of cases, this has in addition rooted a way to expand the doors of judicial review more particularly when the same is unsuitable in the Indian context. That apart the enforcement proceedings
would equally be delayed when the award is made subject matter of challenge on merits. A majority of parties opting for arbitrations do so to avoid court delays and legal niceties. To embroil them back into the same system at the enforcement stage would be ironic. An adverse side effect of this decision is that it has become a reason for the parties to shift the venue of arbitration outside India (in case arbitration in India renders the award more helpless or judicial review hinders the enforcement).

In this score, an in depth study of the judicial intervention after arbitration is concerned, poses dimensional questions. Although the scope of judicial intervention under the 1996 Act has been curtailed to a great extent, courts have ventured and endeavour through judicial interpretation and thereby widened the scope of judicial review, which in turn had resulted in the admission of large number of cases that ought to be dismissed at the first instance. From the research analysis done on the various aspects of the research problem it is foremost significant to advert that the notable features of The Arbitration and Conciliation Act 1996 are that it is to minimize judicial intervention and reduces the grounds of challenge to the award. The object of the Act is to ensure speedy decision of the disputes between the parties, which has been well settled in very many case laws in India and foreign Countries. The emphasis has been to accord primacy to resolution of disputes through arbitration and to reduce the intervention of the courts in such proceedings. The object of The Arbitration and Conciliation Act 1996 is expedition.

Besides so, landmark judgments one amongst others in *Saw Pipes case*, the width of public policy was broadened to include challenge of award when such an award is patently illegal. The main attack on the judgment is that it sets the clock back
to the same position that existed before the 1996 Act, and it increases the scope of judicial intervention in challenging arbitral awards. It is also criticized on the grounds that it confers a broader meaning to the term ‘public policy’ which is incorrect, most particular while the trend in international arbitrations is to reduce the scope and extent of ‘public policy’. Unless the courts themselves decide not to interfere, Act 1996 would be made a replica of the 1940 Act.

The Parliament, when enacting the 1996 Act did not introduce ‘patent illegality’ as a one of the circumstance under Section 34 of the 1996 Act. The Supreme Court cannot introduce the same through the concept of ‘public policy of India.’ After the *Saw Pipes* case, a few judgments have made an endeavor to interpret the effect of *Saw Pipes*. One instance of this is the Supreme Court decision in the case of *McDermott International Inc. V. Burn Standard Co. Ltd* where the court somewhat read down *Saw Pipes*. In the case of *Indian Oil Corporation Ltd. V. Langkawi Shipping Ltd.*, the court held that giving a plain meaning to the dictum of the law laid down in *Saw Pipes* would result in nothing but to take away and abridge the enactment conferred limited jurisdiction of the court to interfere in the awards made in the arbitration proceedings.

**SUGGESTIONS**

Judicial Intervention in arbitration proceedings plays a very imperative function as the rear of the arbitration legislation. There cannot be any wavering to the statement that the legal rules and provisions of law in the arbitration legislation which are enacted for judicial intervention is a boon and edifice for making the arbitration mechanism as a speedy justice. Its distinctive functionary role to come and play where
ever it has been vested with jurisdiction with limitations, applying with concrete interpretation of the provisions of the statute will streamline the entire arbitration proceedings to attain its objectivity. In my research work, it is not out of point to highlight few of the suggestions to be incorporated in the arbitrary legislation subject to trial to guarantee speedy justice both in the nature of quality and quantity.

1. Award shall be enforced under the Code of Civil Procedure in the same manner as if it were a decree of a civil court as contemplated under Section 36 of the Arbitration and Conciliation Act 1996. This section cautions that enforcement is available only after the expiry of the time for making an application to set aside the arbitration award under section 34 of the Arbitration and Conciliation Act 1996 has expired or when such application having been made stands refused. In case amendment of award is called for in a given case three months is provided from the date on which the application prescribed under section 33 of this Act has been made and further discretion has been given to the court to extend the time under section 33 of this Act for correction. This is an enabling provision. Section 34 of the Arbitration and Conciliation Act 1996 provides for setting aside by court in certain contingencies. To take out an application to set aside, sub section 3 of section 34 of this Act prescribes three months from the date on which the party making the application had received the arbitral award. The competent court if satisfied with the cause shown as sufficient, may extend the period for another thirty days, provided if an application is made within 90 days. Such arbitral award which has become final can be enforced in accordance with Section 141 read with
Order 21 of the Civil Procedure Code. The court which executes the decree has to satisfy itself before issuing the process of execution that no proceedings are pending to set aside the award, be it contested or exparte. At this stage the proposal – would be that the enforcement of the decree shall be only before the court which could maintain application for setting aside.

2. Another suggestion requires to be considered being, at any rate resorting to Execution in terms of Order 21 of the Code of Civil Procedure commencing from Rule 1 to Rule 106 renders the award futile or in-executable which is normal in almost all the execution of a civil court decree, a fertile ground to avoid enforcement or defeat a decree. The alternative suggestion would be to adopt the provisions as provided for in the Income Tax Rules for Recovery of arrears of Tax by appointing one of more recovery officer under the control of the High Court of a particular cadres and making the provisions of the Income Tax Recovery Rules applicable for enforcement of the award. This will simplify. This is successful in respect of recovery proceedings under the Recovery of debts due to Banks and Financial Institutions Act.

3. One other problem that may arise is the issue relating to Limitation to enforce the award. Section 36 of the Arbitration and Conciliation Act 1996 merely says that award shall be enforced in the same manner as if it were a decree of a court. Limitation to execute the decree of a civil court is prescribed for in Article 136 of the Limitation Act, which is Twelve
years from the date of decree. What is the date of decree is respect of award? Is it the date of signing or filing an execution petition. Till execution is levied, award shall not be deemed as a decree. The said period of limitation has to be reckoned from the date of decree excluding the time taken to get certified copy or excluding the time during which the matter was pending at the stage of setting aside application or appeal as the case may be. Assuming that even in respect of awards pendency of application to set aside or appeal even in the absence of any orders of stay could be excluded, even so, in the absence of any indication in the enactment that the date of the decree shall be the date of the award or the date on which it came to be communicated to the successful party, or the date on which it is filed before a civil court for execution, the difficulties are bound to crop up. Therefore under Section 36 of this Act, a proviso has to be incorporated indicating that date of the award shall be the date on which the arbitral tribunal affixed its signature and seal and the time taken to communicate the award and the time during which the application under section 34 of this Act, or the appeal thereof was pending shall be excluded and part II of the Limitation Act shall apply mutatis mutadis viz sections 12 to 24 of the Act to such executions.

4. Though the 1996 Act confers greater autonomy on arbitrators and insulates them from judicial interferences, it does not fix any time period for completion of proceedings. Fixing of time period for completion of proceedings would really be much more productive.
5. Under Section 16(1) of the Arbitration Act, 1940, the Court had the power to remit the Award for reconsideration, under three contingencies listed therein. But there is no corresponding provision in the Arbitration and Conciliation Act 1996. The parties, under the 1996 Act, can take recourse either to Section 33(4) or the Court should act in terms of Section 34 (4) of this Act. But there is no specific provision for an order of remand. The Supreme Court did not specifically recognize such a power in *Mc Dermott International Inc. v. Burn Standard Co. Ltd*. The Delhi High Court in *Hindustan Fertilizer V. J.M.Boxi and Co* and the Madras High Court in *Central Warehousing Corporation V. A.S.A.Transport* have taken the view that the Court has no power to remit the matter back to the Arbitrator. Therefore, in such circumstances even if the application for setting aside arbitration award is allowed, the Court cannot remit the matter back to Arbitrator and the only option to the court is to leave it open to the parties to workout their remedies in a manner known to law. Therefore an eye opener is required to scrutinize such a scenario to adopt the provision thereby enabling the power of the court to remit the award for reconsideration since the same would be vital in appropriate and genuine cases.

6. Yet another feature pertaining to the existing provision that allows “automatic stay” of the execution of the awards on mere filing of an application for challenge of the awards deserved to be relooked so that the objective of arbitration as a mechanism for speedy justice would be fruitful.
Judicial Intervention in arbitration proceedings plays a very vital and predominate role in the arbitration proceedings as the back bone of the arbitration legislation. Its unique and distinct functionary role to come and play where ever it has been vested with jurisdiction with limitations, applying with concrete interpretation of the provisions of the statute will streamline the entire arbitration proceedings to attain its objectivity. The above suggestions to play in the law of arbitration by suitable amendments are under the domain of the legislators. It is needless to mention that the judicial intervention will certainly cater the needs of exploding population to have their redressal before the arbitration proceedings in the day to day affairs efficaciously, economically and expeditiously resulting in speedy justice – both in the nature of quality and quantity.

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