

PART XXV-ARBITRATION.

THE ARBITRATION (PROTOCOL AND CONVENTION) ACT.

[INDIA ACT VI, 1937.]

(19th January, 1939.)

Preamble.

WHEREAS India was a State signatory to the Protocol on Arbitration Clauses set forth in the First Schedule, and to the Convention on the execution of Foreign Arbitral Awards set forth in the Second Schedule, subject in each case to a reservation of the right to limit its obligations in respect thereof to contracts which are considered as commercial under the law in force in British India;

AND WHEREAS it is expedient, for the purpose of giving effect to the said Protocol and of enabling the said Convention to become operative in [the Union of Burma] to make certain further provisions respecting the law of arbitration;

It is hereby enacted as follows:-

Commencement and operation.

1. The provisions of this Act shall have effect only from such date as the President of the Union may, by notification, appoint in this behalf, and the President of the Union may appoint different dates for the coming into effect of different provisions of this Act.

Interpretation.

2. In this Act "**foreign award**" means an award on differences relating to matters considered as commercial under the law in force in [the Union of Burma] made after the 28th day of July, 1924,-

(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the First Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the President of the Union, being satisfied that reciprocal provisions have been made, may, by notification in the Gazette, declare to be parties to the Convention set forth in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(c) in one of such territories as the President of the Union, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Act an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made

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

3. Notwithstanding anything contained in the Arbitration Act or in the Code of Civil Procedure, if any party to a submission made in pursuance of an agreement to which the Protocol set forth in the First Schedule applies and which relates to matters considered as commercial under the law in

force in [the Union of Burma], or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, 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.

Effect of foreign awards.

4. (1) A foreign award shall, subject to the provisions of this Act, be enforceable in [the Union of Burma] as if it were an award made on a matter referred to arbitration in [the Union of Burma].
(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 [the Union of Burma], and any references in this Act to enforcing a foreign award shall be construed as including references to relying on an award.

Filing of foreign award in Court.

5. (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.

Enforcement of foreign award.

6. (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.

Conditions for enforcement of foreign awards.

7. (1) In order that a foreign award may be enforceable under this Act it must have-
 - (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed,
 - (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties,
 - (c) been made in conformity with the law governing the arbitration procedure,
 - (d) become final in the country in which it was made,

(e) been in respect of a matter which may lawfully be referred to arbitration under the law of [the Union of Burma].

and the enforcement thereof must not be contrary to the public policy or the law of [the Union of Burma].

(2) A foreign award shall not be enforceable under this Act if the Court dealing with the case is satisfied that-

(a) the award has been annulled in the country in which it was made, or

(b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented, or

(c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that if the award does not deal with all questions referred the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in clauses (a), (b) and (c) of sub-section (1), or the existence of the conditions specified in clauses (b) and (c) of sub-section(2), entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence.

8. (1) The party seeking to enforce a foreign award must produce-

(a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made;

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in clauses (a), (b) and (c) of sub-section (1) of section 7 are satisfied.

(2) Where any document 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 [the Union of Burma].

Saving.

9. Nothing in this Act shall-

(a) prejudice any rights which any person would have had of enforcing in [the Union of Burma] any award or of availing himself in [the Union of Burma] 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 [the Union of Burma].

Rule-making powers of the High Court.

10. 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.

Note: Burma, being at the time a part of India, is party to this pre-separation Protocol.

Note: For such a notification, see Burma Gazette, 1938, Part I, page 1089.

Note: For such rules, see Burma Gazette, 1939, Part IV, page 44.

[ATTACH LIST 1] 02 THE SECOND SCHEDULE.

[ATTACH LIST 2] 01 THE FIRST SCHEDULE.