

Arbitration and Conciliation Act, 1996

— BAI's proactive step against its abuse

One of the major objectives of 'Arbitration and Conciliation Act, 1996' was to minimise the supervision role of judiciary in the arbitral process. Accordingly under Chapter VIII, Sec. 35 & 36 provide :

35. **Finality of arbitral awards** — Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.
36. **Enforcement** — Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

It is observed that despite the provisions of Section 35, all works authorities viz. CPWD, NHAI, Railways, State PWD's, etc. invariably go in appeal against the arbitration award if it is in favour of the contractor. This kills the very objective of the

arbitration and conciliation proceedings. It is reported that NHAI alone has challenged arbitration awards in favour of contractors amounting to Rs. 7,000 crores. The reasoning for challenging such awards is said to be to avoid the scrutiny of Audit and/or Vigilance Department. Net result is contractors' huge amounts get locked up and they have to spend substantial amounts in legal fees.

BAI therefore feels that it is necessary to take up the issue with 'Arbitration Council of India' to resolve the matter.

In order to put up facts before the 'Arbitration Council of India', BAI needs to collect data from its members. Members are requested to send in the below-given format, details of arbitration cases, wherein award has gone in their favour and has been subsequently challenged by the works authority.

The details should reach the BAI secretariat in Mumbai on or before 15th October 2009.

Name of the contractor	Name of the work	Name of the works authority/ owner	Contract value	Status of dispute	Value of award + interest upto award	Date of award	Interest after award	Remarks
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