

Seventeenth Loksabha

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Title: Introduction of the Arbitration and Conciliation (Amendment) Bill, 2021.

THE MINISTER OF LAW AND JUSTICE, MINISTER OF COMMUNICATIONS AND MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD): Madam, I beg to move for leave to introduce a Bill further to amend the Arbitration and Conciliation Act, 1996.

HON. CHAIRPERSON: Motion moved:

“That the Bill further to amend the Arbitration and Conciliation Act, 1996 be taken into consideration.”

HON. CHAIRPERSON: Shri Gaurav Gogoi

... (*Interruptions*)

HON. CHAIRPERSON: Shri Manish Tewari

... (*Interruptions*)

HON. CHAIRPERSON: Prof. Saugata Ray

... (*Interruptions*)

HON. CHAIRPERSON: Shri Bhartruhari Mahtab

... (*Interruptions*)

SHRI BHARTRUHARI MAHTAB (CUTTACK): Madam, I thank you for giving me this opportunity. I would like to raise objection to the introduction of this Bill which is amending the original Act again. ...(*Interruptions*)

This is with regard to the introduction of the Arbitration and Conciliation (Amendment) Bill, 2020 that is listed today and the leave for introduction has been sought by the hon. Minister. I oppose the introduction of this Bill as it has many ambiguities. ...(*Interruptions*)

Madam, for example, Clause 34 does not contain any express provision for setting aside an award or refusing its enforcement if the arbitration agreement or contract which is the basis of the award was induced or affected by fraud or corruption. ...(*Interruptions*) If a ground is not available for setting aside an award, how can it be available to an applicant seeking a stay of its enforcement? ... (*Interruptions*)

Similarly, Clause 36 is not in consonance with Clause 34. The language of Clause 36 is in conflict with that of Clause 34. ... (*Interruptions*)

Thirdly, the mandate to unconditionally stay the enforcement in cases of corruption lacks logic or reasoning, when court can exercise its discretion to put any applicant to such term before granting any stay order. ...(*Interruptions*) This reverses the effect of the

2015 amendments to the Act which had done away with automatic stay on enforcement of arbitral awards upon a challenge being made under Section 34 of the Act. The Government has given no reason for this major step back. ...(*Interruptions*)

Lastly, this Bill omits the detailed criteria for accreditation of arbitrators introduced by the 2019 amendment to the Act contained in the Eighth Schedule. ...(*Interruptions*) In any event, it remains uncertain how the Indian courts will take a *prima facie* view in relation to the involvement of fraud or corruption in the contract, arbitration agreement or arbitral award at the enforcement stage. ... (*Interruptions*) If this issue has not been previously raised between the parties, it will be difficult for courts to form a preliminary view without asking parties to produce detailed evidence in support of their position. ...(*Interruptions*)

Therefore, I oppose the introduction of this Bill. I would like to be educated by the Minister as to what was the hurry to bring in this amendment in the Act. ...(*Interruptions*)

SHRI RAVI SHANKAR PRASAD: Madam, I very respectfully urge that at the stage of introduction, we have to see the legislative competence of the House. ...(*Interruptions*) The Government has got the power under the Constitution to bring an amendment. The hon. Member Bhartruhari Mahtabji is talking about the merits of the Bill which will be explained by me while giving a detailed reply. ... (*Interruptions*) But very briefly I would like to say that even in Clause 34 – with your experience you know it very well – if it is against public policy namely fraud or induced by corruption, it will be a ground for setting aside the award. ...(*Interruptions*)

What we are saying is that many fly-by-night operators get awards based upon dubious agreements and seek enforcement not only in India but also outside. Therefore, to contain those elements, this is being brought about with a condition, '*prima facie* satisfaction'. If that is there, it will go before Section 34 but enforcement will be stayed at the *prima facie* level. Therefore, there is no point at all with the greatest respect to him ...(*Interruptions*)

As far as the competence of the arbitrator is concerned, Madam, we are giving the power. Now, instead of having it in the Act, it will be decided by the Arbitration Council of India as to who shall be competent and who shall not be. All the provisions are there; and all the regulations made shall be placed before the House itself. Therefore, there is no lacking of competence. There is a purpose. All this will be explained on merits ...(*Interruptions*)

माननीय सभापति : प्रश्न यह है :

“कि माध्यस्थम् और सुलह अधिनियम, 1996 का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति प्रदान की जाए।”

प्रस्ताव स्वीकृत हुआ।

SHRI RAVI SHANKAR PRASAD: Madam, I introduce the Bill.

... (*Interruptions*)

HON. CHAIRPERSON: Item No. 14 – Shri Ravi Shankar Prasad-ji.

... (*Interruptions*)