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**WAIVER OF RIGHT TO OBJECT UNDER THE ARBITRATION &  
CONCILIATION ACT, 1996**- Yug Pratik<sup>1</sup>**ABSTRACT**

The provision for “Waiver of right to object” has been incorporated under Section 4 of the new Arbitration & Conciliation Act of 1996, in accordance with Article 4 of the UNCITRAL Model Law on International Commercial Arbitration. It states that if a party to arbitration intentionally abstains from raising objection within reasonable time, it amounts to waiver of his right to do so. The term ‘waiver’, which means voluntary relinquishment of a known and lawful claim, forms the crux of this provision.

This article primarily aims to provide a brief yet precise overview of the provision mentioned hereinabove and the essentials contained therein. At the first instance, it provides the statement of the provision of waiver under Section 4 of the Arbitration & Conciliation Act, 1996, followed by meaning of the term ‘waiver’ and the conditions precedent to waiver of right to object in an arbitral proceeding. Further, certain limitations and extent related to the hereinabove mentioned provision have been included, followed by a concise and relevant conclusion.

The author has referred to primary as well as secondary sources of research and the sources have been cited according to Bluebook 20<sup>th</sup> Edition. Suggestions from the readers are welcome and cordially acknowledgeable.

**PROEM**

Section 4 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) provides for the “Waiver of right to object”. It is inculcated in the Act on the basis of principles contained under Article 4 of the UNCITRAL Model Law on International Commercial Arbitration which states as provided hereunder:

*“A party who knows that any provision of this Law from which the parties may derogate or any*

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*requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.”*

The section mentioned hereinabove reads as provided hereunder:

***Waiver of right to object***

*A party who knows that –*

*(a) any provision of this Part from which the parties may derogate, or*

*(b) any requirement under the arbitration agreement,*

*has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.<sup>2</sup>*

It specifically provides that if a party has the knowledge of non-compliance of a non-mandatory provision of Part I of the Act or of any requirement under the arbitration agreement by the other party and, yet refrains from raising his objection to it within the stipulated time, the former is deemed to have waived off his right to object to such issue. The previous Arbitration & Conciliation Act of 1940 had no such provision. It has been incorporated in the Act with a view to minimize the process of arbitral adjudication in pursuit of negligence by the aggrieved party.

**1. Meaning of “Waiver”**

The term ‘waiver’ implies voluntary relinquishment of a lawful claim. In *Banning v. Wright*<sup>3</sup>, waiver has been interpreted as the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if that right is thereafter asserted. It connotes voluntary and intentional giving up of a known right by conduct or by silence.<sup>4</sup>

**2. Conditions precedent to waiver of right to object**

Although S. 4 of the Act does not cite the provisions of Part I from which no derogation is permitted, it can be inferred from the language of the statute itself. The Courts have, from time to time, interpreted the provisions of Part I of the Act with reference to waiver of right to object.

A party is deemed to waive his right to object if the following conditions are satisfied:

***(i) There must be voluntary relinquishment of right to object***

At the first instance, the party against whom the rule u/s 4 of the Act has been invoked must

<sup>2</sup> Arbitration & Conciliation Act, 1996, S.4, No. 26, Acts of Parliament, 1996 (India).

<sup>3</sup>(1972) 2 All ER 987.

<sup>4</sup>Bisheshwar Nath v. Commissioner, Income-tax, AIR 1959 SC 149.

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have known of the non-compliance of:

- a) a non-mandatory provision under Part I of the Act; or
- b) any requirement under the arbitration agreement.

Further, such party must have intentionally refrained from raising reasonable objections with respect to the issues mentioned hereinabove. If these elements are well in line, the party is deemed to have waived his right to object.

Knowledge of non-compliance can also be inferred from the circumstances of the case.<sup>5</sup> Section 4 makes knowledge on the party waiving his right to object, a requirement, since the essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right, it means the forsaking of a right at the proper opportunity.<sup>6</sup>

***(ii) No objection raised within the stipulated time***

S. 4 of the Act has a certain retrospective effect. In order to invoke the provisions of S. 4 against a party, it must be ensured that such party, having knowledge of the non-compliance specified therein, refrained from forwarding his objection to the same within reasonable time or within the time period prescribed for doing so. No objection or even delayed objection amounts to waiver of right to object under the Act. However, a party would not be deemed to have waived his right to object if, on account of circumstances beyond his control, he is prevented for an extended period of time from sending any communication at all.<sup>7</sup>

***(iii) Party proceeds with the arbitral proceedings without any objection***

The right to object can be said to have been waived only if the party proceeds with the arbitration without objecting and acts of such proceedings would include for example, appearance at a hearing or a communication to the arbitral tribunal or the other party.<sup>8</sup> Wherein the parties knew the compulsory or non-compulsory conditions necessary under the arbitration agreement which has not been complied with and yet they did not object within the time limit and expressed the intention to raise objection but gave consent to undertake the arbitral proceedings, it amounts to waiver of right by that party who does so.<sup>9</sup>

**3. Extent of waiver of right to object**

The rule of waiver of right to object is not merely restricted to arbitral proceedings. It also extends to the Court proceedings under Section 34 of the Act. However, if a party has been deemed to waive of his right to object vide ruling of an arbitral tribunal, the Court, under

<sup>5</sup>S.C. TRIPATHI, ALTERNATIVE DISPUTE RESOLUTION (ADR) 71 (Central Law Publications 2018).

<sup>6</sup>Provash Chandra Dalevi v. Biswanath Banerjee, AIR 1989 SC 1834.

<sup>7</sup>S.C. TRIPATHI, ALTERNATIVE DISPUTE RESOLUTION (ADR) 71 (Central Law Publications 2018).

<sup>8</sup>Prasun Roy v. Calcutta M.D. Authority, AIR 1988 SC 205.

<sup>9</sup>S.C. TRIPATHI, ALTERNATIVE DISPUTE RESOLUTION (ADR) 70-71 (Central Law Publications 2018).

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Section 34(2) (v) of the Act, may reach upon a different conclusion in review of the arbitral procedure.

#### **4. Attending Arbitral proceedings under protest**

A question was raised before the High Court of Madhya Pradesh in the case of *Govind v. Bhurelal & Others*<sup>10</sup>, as to whether arbitration proceedings under protest amounts to waiver of right to object.

In the case mentioned hereinabove, the arbitrators, on 14<sup>th</sup> March 1989, directed the plaintiff to attend a meeting with regards to which the latter asked for a week's time to submit his reply. In the view of his request, 25<sup>th</sup> March 1989 was fixed as the date for meeting by the arbitral panel. The plaintiff attended the meeting on the assigned date and also signed the arbitral award. However, he submitted his objection challenging the jurisdiction of the appointed arbitrators, prior to signing the award.

The Honorable Madhya Pradesh High Court held that the principle of waiver or estoppel would not be applied to this case as the objection was raised prior to arbitral award being made.

Wherein a party took part in an arbitral proceeding under protest, it will not amount to waiver of right to object by that party and that party would not be bound by such arbitral award and can object to it.<sup>11</sup>

#### **5. Principle of waiver when not applicable in arbitration proceedings**

The principle of waiver u/s 4 of the Act does not apply in arbitral proceedings under certain circumstances. They are as mentioned hereunder –

- (i) absence of arbitration agreement;
- (ii) cases where arbitration clause in the contract is void or voidable;
- (iii) absence or lack of jurisdiction of the arbitral panel;
- (iv) cases in which mandatory provision of law has not been adhered to while conducting arbitral proceedings.

#### **DENOUEMENT**

Section 4 of the Act serves as a guiding provision in cases where a party to arbitration is intentionally silent and negligent towards its own interests. The rule of 'waiver of right to object' has been incorporated under the Act to secure the ends of justice. It rests on the principle that 'rights should not merely be exercised; they must be exercised within reasonable

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<sup>10</sup>(1994) 2 Arb.LR 103 (M.P.).

<sup>11</sup>Sakalu Ram v. State of Madhya Pradesh, (1994) 2 Arb.LR 254 (SC).

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time'. Hence, no objection at all or delayed objection is considered to be voluntary relinquishment of the right to object under the provision mentioned hereinabove. The principle of waiver under the Act thus strives towards striking a balance in the arbitration proceedings by empowering the adjudicating authority to carry on proceedings if objections are not raised as provided under Section 4 of the Act and, to discard delayed and unnecessary objections made by the parties.



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