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Alternate Dispute Resolution from Indian Corporate Perspective - Analysis and Trends by K.M. Rustagi

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ALTERNATE DISPUTE RESOLUTIONFROM INDIAN CORPORATE PERSPECTIVE– ANALYSIS AND TRENDS

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PREFACE

This article is an attempt to examine and analyze few of the issues that acted as a speed-breaker to the growth of alternate dispute resolution settlement process in India and view the trends to envision the future outlook.

History of resolving disputes through negotiations, mediation and arbitration in India can be routed to the ancient 'Panchayati Raj System'. 'Panchayat' means a body of five persons, now known as Arbitral Tribunal and 'Panch' means Arbitrator. The 'Sarpanch" and the 'Head Panch' are now called the Umpire.

The adversarial system of litigation introduced in India by the British was at times inadequate to meet the expectations of the people to get justice and the British recognizing it introduced the regulations touching arbitration, particularly in the provinces of Bombay, Bengal and Madras. Thus, the two systems, i.e. the traditional adversarial system of litigation and the negotiated and consented system, continued to coexist.

With the liberalization of Indian economy in 1991 and growth in domestic and international trade and commerce, Indian business and the regulatory regime also realized the need for a modernized law on arbitration and conciliation to effectively integrate with the global economy. The Arbitration and Conciliation Act, 1996 was the first step in this direction and though the first few years witnessed certain roadblocks on account of judicial intervention in interpretation of arbitration agreement, lack of professional arbitration and institutional framework, impetus shown by the judiciary of sticking to its stand of non-intervention in arbitration agreements and awards and consequent thereof the desire of the corporates to seek expeditious and fair settlement of disputes to arbitration are positive developments for alternate dispute resolution.

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PRESENT LAW

At present the law on conciliation and arbitration in India is enshrined in the Arbitration and Conciliation Act, 1996 (No. 26 of 1996), which came into effect from January 25, 1996 replacing the Arbitration Act, 1940.Prior to the Act of 1996, the law on arbitration was substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act 1937 and the Foreign Awards (Regulation and Enforcement) Act, 1961, which had become outdated in the light of growing complexities of trade and industry.

Since the United Nations Commission on International Trade Law (UNCITRAL) had in 1985 adopted a Model Law of International Commercial Arbitration, which were preceded by a set of rules adopted in 1980, the Indian Parliament predicated the new statute i.e. the Arbitration and Conciliation Act, 1996 ("Act") on the Model UNCITRAL Law and Rules.

The Act comprises of five parts – Part I (Arbitration: Sections 1 to 43), Part II (Enforcement of Certain Foreign Awards, Sections 44 to 60), Part III (Conciliation, Sections 61 to 81), Part IV (Supplementary Provisions, Sections 82 to 86) and Part V (Provisions of 1940 Act which have been deleted from 1996 Act). Thus, the statute provides statutory framework for arbitration and conciliation but it does not cover mediation. However, the term 'mediation' finds a reference under Section 89 of the Civil Procedure Code, 1908, which states that where a dispute has been referred for mediation the court shall effect compromise between the parties and follow such process as may be prescribed.

One of the main objectives of enactment of the Act was to minimize the supervisory role of the courts in arbitral process, which is now limited only to a few specific interventions viz. - reference to arbitration under Section 8, Interim awards under Section 9, appointment of arbitrator(s) under Section 11, challenge to the award for limited purposes as specified under Section 34 and finally enforcement of the award under Section 36. Apart from this, the doctrine of Competence is incorporated in Section 16 according to which the arbitral tribunal can decide on its own jurisdiction.

The first few years of applying the Arbitration Act of 1996, showed that neither Indian business nor the courts were prepared for this metamorphosis of dispute resolution process, which resulted into issues surfacing before the courts derailing the environment for alternate dispute redressal mechanism. However, the trends are changing and as per a PWC survey[2], in-house counsels are increasingly choosing the dispute settlement mechanism through arbitration in commercial contracts to leverage the advantages offered by the alternative dispute resolution mechanism such as speed of resolution, flexible process, and confidentiality of the process.

ISSUES

1. An Arbitral Tribunal can decide a dispute even when a commercial relationship has not been concluded under a valid contract.

Although under Indian Contract Act of 1872, writing is not a requirement for validity of a commercial contract, the Indian Supreme Court found that writing is a requirement for a valid arbitration agreement under the Arbitration Act of 1996.

The issue was first decided by the Hon'ble Supreme Court in the matter of *Enercon (India) Ltd. and Ors.VsEnercon GMBH and Ors*[3].and the Hon'ble Apex Court after going through the facts held that "…. it cannot be disputed that there is a legal relationship between the parties of "long standing"...such a relationship may be contractual or not, so long it is conceded as commercial under the laws forced in India. Further, that legal relationship must be in pursuance of agreement in writing for an arbitration, to which the New York Convention applies."

The court further noticed that the relationship between the parties formally commenced on 12th January 1994 whereas the parties entered into their agreements at a later date, which provided identically worded arbitration clause and therefore held that "…… in

[2] *"Corporate Attitudes and Practices towards Arbitration in India"*, May 2013, *available at* http://www.pwc.in/en_IN/in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf

[3] (2014)5SCC1

the face of this, the question of concluded contract becomes irrelevant for the purposes of making the Arbitral Tribunal".

Above findings of the Hon'ble Apex Court are of significant import, as the In-house Counsels at Indian and International businesses may have to review the e-mail and other information exchanges to evaluate and undertake the risk analysis of a dispute, as mere absence of a concluded commercial contract will not take away the jurisdiction of the arbitral tribunal, if an arbitration agreement in writing is in existence. It can, therefore, be inferred that the Hon'ble Supreme Court has, therefore, held that if the parties have an arbitration agreement in writing, the dispute in a commercial contract which is oral and not in writing have to be settled through arbitration. The counsels may also like to consider entering into a separate arbitration agreement prior to conclusion of a commercial agreement instead of the current practice of combining the arbitration agreement and commercial agreement so that in the event the commercial agreement is not concluded and disputes arise, the parties may resort to arbitration.

2. *The parties cannot deny the benefit of a valid arbitration agreement/clause on the ground that it is unworkable.*

In the case of *Enercon (India) Ltd. and Ors.v. Enercon GMBH and Ors*[4]*.,* it was argued that the Arbitrators were of the opinion that the parties cannot proceed to arbitration as the arbitration clause is unworkable. The Hon'ble Apex Court held that –"…the court had to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause therefore when faced with seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limit of the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be peculiar to the business venture; the arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute."

[4] (2014)5SCC1

The Hon'ble Apex Court further referred to the case of Visa International Ltd. where it was held that –"[…] no party can be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes is evident from the agreement and material on record including surrounding circumstances. What is required to be gathered is the intention of the parties from the surrounding circumstances including the contract of the parties and the evidence such as exchange of the correspondence between the parties."

The court held that it is a well-recognized principle of arbitration jurisprudence in almost all the jurisdiction, especially those following the UNICITRAL Model Law that the courts play a supportive role in encouraging the arbitration to proceed rather than letting come to a grinding halt.

Thus, the Hon'ble Supreme Court reiterated the objects and purposes leading to the enactment of the Act and defined the role of courts as supportive to arbitration. This should also minimize the practice of the parties of running to the courts on flimsy and irrelevant grounds to block the arbitration process.

Further, since the improperly drafted arbitration clause is no longer likely to be a rescue against eschewing arbitration, it is in the interests of the corporate world to carefully and properly structure the arbitration agreement to avoid risks such as sharing of costs, inability of the arbitral panel to grant interim reliefs and prevent the other party to take advantage of an inadequately drafted arbitration agreement.

3. ***The Indian Courts cannot exercise powers conferred on them under Part-1 of the Arbitration Act where seat of the Arbitrator was outside India.***

Part I of the Act applies only to arbitration seated in India. Therefore, the Indian courts are not empowered under Part I of the Act to hear challenges to awards made in arbitration seated offshore.

However, the scope of the courts powers under Part 1, has seen a series of developments.

Hon'ble Supreme Court in the case of *Bhatia International v. Bulk Trading*[5]held that the Indian courts could exercise the powers conferred on them under Part I of the Act even in cases where the seat of the arbitration was outside India unless the parties explicitly excluded the application of Part I.

In *Venture Global Engineering v. Satyam Computer Services Pvt. Ltd*,[6] the Court construed Bhatia International to mean that Part I, including Section 34, applied to all arbitrations, domestic or foreign, and the Court could set aside a patently illegal foreign award for violating the public policy of India. After quoting Bhatia International extensively, the Court concluded that the legislative intent in not expressly providing that Part-I will apply only to domestic arbitration was to make Part-I apply even to outside arbitrations; but by not expressly stating that Part-I would apply to outside arbitrations, the intention was to allow parties to provide by agreement that Part-I or any provision therein (including the non-derogatory provisions) will not apply. The parties have the right to appoint arbitrator in the event an arbitration agreement is silent or the parties are not able to agree upon an arbitrator, then the Hon'ble Supreme Court /High Court upon the application from the parties, are empowered to appoint arbitrator (Ref. Sec. 11)

3.1 Court powers in appointing arbitrators under Section 11 of the Act

Another consequence of Bhatia International was seen in the case of *Indtel Technical Services Pte Ltd v WS Atkins PLC*,[7] where the Hon'ble Supreme Court ruled that it was empowered to appoint arbitrators in the event of a deadlock between the parties, even in cases where the seat of the arbitration was outside India. However, the corporates were was dissatisfied with this empowerment of Indian Courts to intervene in close border disputes where the seats of arbitration was outside India.

[5] *Bhatia International v. Bulk Trading*, [2002] 4 SCC 105.
[6] (2008) 4 SCC 190.
[7] AIR 2009 SC 1132.

3.2 The Indian Supreme Court overturned Bhatia International and restricted Indian courts to arbitrations under Part I

However, taking note of the discontent, the Hon'ble Supreme Court in *BALCO v. Kaiser Aluminium,*[8] decided in 2012 to overrule its decision in Bhatia International and held that the principle of territoriality is the governing principle of the Act and accordingly, the seat of arbitration determines the jurisdiction of the courts. Secondly, Part I of the Act will apply only to arbitrations seated in India. Therefore, an Indian court will no longer be able to hear challenges to awards made in arbitrations seated offshore. Thirdly, the Indian courts will also not have jurisdiction to order interim measures in support of arbitration seated outside India and lastly, the law laid down by this judgment will apply prospectively i.e., only to agreements which are concluded after the date of the judgment.[9]

The law laid down in BALCO was hailed all over the country as it restored party autonomy and the efficacy of a party's choice of seat and by this reclaimed the lost glory of the Indian arbitration law in International circles.

4. Changing Interpretation of the term 'Public Policy' has confounded Parties to arbitration

There is yet another string of cases which deserve mention while giving any overview of the Arbitration law in India and that is the "public policy" contingent.

Under Section 34 of the Act, any award can be challenged within three months of the making of that award by presenting an application under this section on limited procedural grounds. One of the grounds as per 34(2) (v) (ii) is if the award is against the 'public policy' of India.

It is the judicial interpretation of this phrase which brought forward the prospect of review of an arbitral award on merits which was not intended by the scheme of the Act

[8] CIVIL APPEAL NO.7019 OF 2005.
[9] Ibid.

or so it seems. In *Renusagar Power Company v. General Electric Co.*[10], the Hon'ble Supreme Court interpreted "public policy" and held that enforcement of the award will be refused if the award is contrary to public policy which is held to mean against the - (1)fundamental policy of Indian law; (2) interests of India and (3) justice or morality. Though this was held in the context of enforcement of foreign arbitral awards[11], it was held to be relevant for the enforcement of a domestic award under Section 34 as well.

Next came the landmark case of *ONGC v. Saw Pipes,*[12] which is accused of having set the clock back to the pre-1996 era by allowing a more intrusive interpretation of "public policy". The court in this case added the term "patent illegality" as the fourth ground. After this case, came the ruling in *Venture Global v. Satyam Computers,*[13] wherein, foreign awards i.e. awards passed in arbitrations seated outside India became amenable to challenge under Section 34 of the Act. In *Phulchand Exports Limited v. O.O.O. Patriot,*[14] the Hon'ble Supreme Court expanded the meaning of the expression 'public policy' under section 48 of the Act, and held that the scope and purport of the expression under section 34 and 48 are the same. However, the decision given in Phulchand has now been overruled by *ShriLalMahal Ltd. v. ProgettoGrano Spa*[15] in 2013. The Court held that the expression 'public policy' as found under Section 48 of the Act would not bring within its fold the ground of 'patent illegality'. The Court noted that the applicability of the doctrine of 'public policy' is comparatively limited in cases involving conflict of laws and matters involving a foreign element such as a foreign seated arbitration. It was held that - "If a ground supported by the decisions of that country was not good enough for setting aside the award by the court competent to do so, a fortiori, such ground can hardly be a good ground for refusing enforcement of the award. Moreover, Section 48 of the Act does not give an opportunity to have a 'second look' at the foreign award in the award-enforcement stage. 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), the enforcement of a foreign

[10] 1994(Supp) (1) SCC 644
[11] Section 49 read with Section 48 of the Act
[12] AIR 2003 SC 2629.
[13] (2008) 4 SCC 190.
[14] (2011) 10 SCC 300.
[15] (2014) 2 SCC 433.

award can be refused only if such enforcement is found to be contrary to (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality.

The overruling of the decision in Bhatia International by Balco, and the subsequent overruling of the decision in Phulchand by LalMahal, shows that the judiciary has now adopted an increasingly pro-arbitration approach thereby granting higher sanctity to arbitral awards and arbitration as a dispute resolution process.

The Hon'ble Supreme Court in the matter of *Oil & Natural Gas Corporation Ltd. vs. Western Geco International Ltd.*[16] once again had the opportunity to examine if the award was in conflict with the "public policy" of India and placed reliance on the interpretation of public policy in India set out in *ONGC Ltd. v. Saw Pipes Ltd*[17]. ["**Saw Pipes Case**"] wherein it was held that an arbitral award should be set aside if it is contrary to:

- fundamental policy of Indian law; or
- the interest of India; or
- justice or morality, or
- if it is patently illegal.

The Court observed in the matter of *Oil & Natural Gas Corporation Ltd. vs. Western Geco International Ltd*[18]that the said phrase "fundamental policy of Indian law" had not been elaborated by the Court and held that it included following three principles:

a. **Judicial Approach:** No Tribunal, court or other authority should act in an arbitrary, capricious or whimsical manner or be influenced by any extraneous consideration while making any determination which would affect the rights of citizens or have civil consequences.

b. **Principles of Natural Justice:** These principles should be followed by all courts and quasi – judicial authorities while determining the rights and obligations of parties. The

[16] 2014 (10) SCALE 328
[17] AIR 2003 SC 2629
[18] 2014 (10) SCALE 328

parties to the dispute should be given the opportunity to be heard. The decision – makers should make reasoned decisions which reflects application of mind to the facts and circumstances of the case.

c. **Wednesbury's principle of reasonableness:** Where a decision by a court or tribunal is so perverse or irrational that no reasonable person would have arrived at it *[the Wednesbury principle]*, then such decision shall not be sustained it a court of law and maybe challenged.

Since the case of *ONGC Ltd. v. Saw Pipes Ltd*[19] was decided in relation to a foreign award, whose principles was referred to in the case of *Oil & Natural Gas Corporation Ltd. vs. Western Geco International Ltd*[20]*.,* which related to challenge to a domestic award under section 34 of the Act, it remains to be seen whether the above interpretation of "fundamental policy of Indian law" to challenge a foreign award under section 48 of the Act.

5. The law is unsettled on parties freedom to choose a foreign seat for an entirely domestic arbitration

Hon'ble Delhi High Court recently in the case of *Delhi Airport Metro Express Private Limited v. CAF India Private Ltd &Construcciones Y Auxiliar De Ferro Carriles*[21]*, SA* faced this issue. However, since the matter included a third foreign party also, the Hon'ble Court did not give a ruling on this issue and the matter remains in grey.

6. Cost and unfamiliarity with laws of foreign seats made international arbitration less attractive

Based on the author's understanding of Indian Corporate environment, another reason behind a series of litigation blocking international arbitration was lack of familiarity of the Indian business with the arbitration process outside India. Indian business, upon the

[19] AIR 2003 SC 2629
[20] 2014 (10) SCALE 328
[21] I.A. No. 10776/2014 in CS(OS) 1678/2014

opening of Indian economy in 1991, was perhaps first time getting exposed to the overseas collaboration and business tie-ups in a diluted regulated regime and in the race of seizing opportunity and fear of missing the bus entered into arbitration agreements without due thought and consideration. Perhaps, this was also the result of perceived lack of bargaining power and optimism of never ending smooth business relationship and as a consequence, never having to resort to arbitration outside India. Therefore, the arbitration agreements between Indian Companies and foreign companies provided for seat of arbitration at Geneva, London or New York, even in cases, where the foreign company was from Middle East or Africa. In the event of dispute or difference, the Indian Party was reluctant to the overseas arbitration due to lack of relationship with law-firms abroad, high legal costs, insufficient familiarity with the arbitration process, high travelling costs and other inconveniences and resorted to court intervention to delay or block the arbitration process.

However, as is evident from the analysis of issues set out before, Courts did not fall into this trap and Indian businesses have now learnt their lessons and the trends are visible in lawyers and in-house counsels thought process, their time spent on drafting arbitration agreement and choosing new seats of arbitration such as Singapore, Dubai or Hong Kong.

According to a survey by PWC[22], Singapore and England have been the preferred seats for arbitration, primarily driven by the factors like regional advantage and cost efficiencies.

7. "Take it or leave it" arbitration clauses are valid

Historically, arbitration clauses have been inserted by Government companies such as utility, infrastructure and energy companies, in their standard template contracts, (where one party is in a dominant position and the other party agrees to a non-negotiated agreement because of its need to get the service/product) as well as by builders and developers in non-negotiated real estate contracts. The other parties to such

[22] *"Corporate Attitudes and Practices towards Arbitration in India"*, May 2013, *available at* http://www.pwc.in/en_IN/in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf

contracts were generally perceived to have less bargaining power and therefore their consent to arbitrate was not out of free will. The most striking feature of such arbitration clauses was that the managing director or his nominee of the government entity or builder/developer were named as the sole arbitrator. In the event of any grievance or complaint, the obvious preference of the government suppliers, consumers and property buyers was for courts rather than for arbitration. The respondent first challenged the eligibility of the arbitrator in court which resulted in delays. Even when the courts upheld the appointment of such arbitrators, the other party did not have full confidence and therefore, resorted to other tactics to present or block the arbitration.

Business and government entities involved in consumer arbitration need to come forward and offer their customers/suppliers a fair arbitration agreement so that both parties have confidence in the arbitration process. These trends have started emerging gradually and the arbitral tribunal of three/five arbitrators are becoming norm of the day following the enforceability of the Act and the directions shown by the Hon'ble Supreme Court through BALCO and other cases as discussed before. This, however has another corollary effect as India still does not have adequate number of qualified arbitrators and proper institutional framework for arbitration.

8. Consumer Arbitration: Arbitration agreement may exclude the jurisdiction of the consumer courts

To protect the interests of the Indian consumer, the Indian Parliament had enacted Consumer Protection Act, which provided for establishment of quasi-judicial commissions to settle the consumer disputes speedily. The Hon'ble Supreme Court in the matter of Skypak Couriers Limited v. Tata Chemicals Limited[23] held that the Commission is not empowered to refer the matters to third persons for consensual adjudication dehors the Arbitration Act. It can therefore be inferred that the Parties can refer even such matters to arbitration which in the ordinary parlance will fall within the purview of consumer courts, with free consent.

[23] AIR2000SC2008

9. Institutional support is important to encourage success of arbitration in India

Another reason for arbitration process not gaining ground in India was the lack of infra-structure and institutional framework.

While globally major arbitral institutions such as London Court of International Arbitration (LCIA), American Arbitration Association (AAA), Singapore International Arbitration Centre (SIAC) and International Chamber of Commerce (ICC) exist, a proper institutional framework is lacking in India. Though lately LCIA has set up its chapter in India and Confederation of Indian Industry (CII) and other industrial forums are also taking steps to set up an institutional framework for arbitration, pace in this direction needs to be improved to give impetus to consensual dispute settlement process through arbitration. On the other hand, it also proves that the industry and trade is keen to pursue the dispute settlement process through arbitration and is, therefore, directing its associations and forums to aggressively work in this direction.

10. There is a growing need for more qualified arbitrators

The institutional arbitration process framework will also help in eliminating another lacuna in Indian arbitration scene, i.e. the lack of professional arbitrators. As per PWC's[24] survey, companies prefer retired judges when the seat of arbitration is in India and external experts for cases when the seat is outside India. Companies consider factors such as reputation and expertise, knowledge of law and prior experience in arbitration in selecting the arbitrators. Since arbitral institutions keep on their own panel professionally qualified and experienced arbitrators, the parties and the courts taking advantage of the same will soon be able to realize the advantage of arbitration over litigation.

[24] Supra which13? page paragraph or note?

11. Procedural rigidity is holding arbitration from realizing its full potential in India

The institutional framework coupled with the availability of qualified and experienced arbitrators will also eliminate the procedural rigidity presently seen in the arbitration process in India. This arises due to the fact that arbitrators are generally judges and the parties are represented by litigating lawyers. Judges, given their experience of adjudicating disputes under Code of Civil Procedure follow the process experienced by them over the years. Likewise, the senior managerial staff appointed by companies as arbitrators are not trained in the procedural aspects of arbitration resulting in "adhocism". As earlier stated, this adhocism and procedural rigidity coupled with perceived bias has resulted in deficiency of trust in the arbitration process. Therefore, availability of experienced and trained professional arbitrators, clear procedure and institutional framework are bound to be positive for arbitration procedure. It need not be reiterated that proper choice of arbitrator is crucial to arbitration process as it ensures right consensual approach over legalistic approach. Internationally the arbitral panels of institutions primarily comprise of lawyers and academicians as against the practice of appointing retired judges prevalent in India and probably this change in the process is the need of the day. This is not to belittle the contribution of judges as arbitrators but at the same time we cannot discount the impression of trade and industry that arbitration is also conducted like litigation including the frequent adjournments as faced in the litigation.

The arbitration process should be without legalese and technicalities of court litigation and professional arbitrators together with institutional framework are needed for this purpose.

This will also ensure expeditious and satisfactory delivery of justice. Delay in arbitrations like court cases is also a reason for dilution of trade confidence in the arbitration process.

12. Rising costs and delays are a cause for concern

The industry and parties to litigation are also concerned about the high cost of arbitration fee which include fee of arbitrators and lawyers, space cost which, together with the delays, lack of competent and professional arbitrators and professional rigidity

forced the business to seek dispute resolution through courts despite a preference for alternative Dispute Resolution mechanism. Initially, the arbitration was conceived to be a less expensive and quick dispute resolution mechanism, however, at present, the arbitration process is as expensive as litigation if not more and also as much time consuming. In the absence of an institutional framework, arbitrators' fee are not regulated and if the arbitral tribunal comprises of 3-5 arbitrators, then the arbitrator's fee for retired Supreme Court or High Court Judges are left to readers' imagination. This coupled with delays becomes a deterrent against using the arbitration mechanism. In my view, this problem can be largely addressed through development of institutional framework and availability of trained and professional arbitrators.

13. Enforcement and challenges to the award

A major roadblock perceived in the arbitration process by the Indian business, particularly the small and medium scale business is the enforcement of the award. The Parties have to seek the enforcement of the award through the courts only following the Code of Civil Procedure and as per my discussions and experience, the enforcement of an award at times may take anywhere between 2-5 years. The Parties and their counsels devise new tactics to delay and challenge the award.

14. Efforts and recent trends

However, the trends in India are changing and the Trade Associations as well as the Law Commission are working towards the changes necessary for making the arbitration process popular and preferred choice of dispute resolution system.

The Law Commission is interacting with industry and trade forums to bring about amendments to the Act and address the issues decided by the courts in the cases relating to arbitration, some of such have been highlighted before.

The industry and trade forums are also working in the direction of educating and training people to become qualified arbitrators, mediators and adjudicators. Simultaneous to the development of infra-structure, the impetus of the trade associations, bar councils, judiciary and bureaucracy should be on familiarization and training of the parties, counsels and arbitrators to understand the nuances of the

arbitration and conciliation process and consider the mechanism as a tool to foster positive business environment, growth of trade and increase in foreign investment. Work in this direction already seems to be underway and as per PWC survey, 82% of the companies with arbitration experience indicated that they would continue to use arbitration for future disputes and 46% companies with no arbitration experience are open to arbitration.

Therefore, the environment in India is rightly being created to facilitate the growth of arbitration process and industry and trade forums are working conjunctively with the courts and the government to meet this objective.