



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## ROLE OF ARBITRATION IN MODERN TIME

### INTRODUCTION

Arbitration is one of the alternative forum to solve the disputes provided under the concept of *Alternative Disputes Resolution* (ADR). It is one of the forums which provides an alternative to the conventional methods of resolving disputes and therefore, less formal, speedy as well as more effective because it avoids procedural trap. It is not an alternative court rather something which is alternative of court. The law of arbitration originated from the English law like most of the Indian laws.

The UNCITRAL Model Laws were adopted by the United Nations Commission on International Trade Law on 21<sup>st</sup> June, 1985 and to give effect to its aim an objective, the *Arbitration and Conciliation Act, 1996* was subsequently enacted and finally came into force on August 22, 1996, but the applicability of the same was from 25<sup>th</sup> January, 1996. Finally, the statutory recognition brought back the sanctity of arbitration which was initially lost as an alternative dispute resolution, because it was gradually substituted by the newer techniques. So, in order to meet with the pace of globalization of trade and commerce as well as developments at the domestic and international level, the arbitration law is used for prompt resolution of disputes. It also governs the enforcement of foreign arbitral awards and also defines the law relating to conciliation.

### ARBITRATION AND CPC

Arbitration deals with the disputes of civil nature and has no relation to criminal matters and that is where Section 89 of the Code of Civil Procedure, inserted by Code of Civil Procedure (Amendment) Act, 1999, provides for the settlement of disputes outside the court. Also, Order X Rule 1A gives the power to court for directing the parties to adopt any method as specified in Section 89 of the Civil Procedure Code i.e. Arbitration, Conciliation, Mediation or Judicial

settlement including Lok Adalat. Further, there must be an arbitration agreement for the dispute to be resolved by the Arbitration.

In a leading case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction*<sup>1</sup>, the Supreme Court clarified that even if there was no arbitration agreement, the parties may adopt the method of arbitration by entering into a separate agreement and file the same in the court or by filing a joint application signed by both the parties or even the judge may record the acceptance of having arbitration in his order sheet and signed by the parties thereafter.

## **ARBITRATION AND OTHER MATTERS**

Arbitration has strict correlation with suits of civil nature and it has least applicability in other matters. In the landmark judgment of *Booz Allen v. SBI Home Finance Ltd.*<sup>2</sup>, the Supreme Court held that the cases related to criminal matters, matrimonial disputes, guardianship matters, insolvency and winding up disputes, testamentary matters and tenancy matters should not be referred to arbitration

## **DEVELOPMENT IN ARBITRATION PROCEDURE**

In present circumstances, the arbitration procedure is enhanced to a great extent in resolving the disputes, both at domestic and international level. The cross-border disputes are subsequently arose due to tremendous increase in foreign trade. Therefore, arbitration emerged as one of the effective methods of dispute resolution and preserve the relationship between two companies.

Section 20 of the *Arbitration and Conciliation Act, 1996*, has made the procedure much easier by allowing the parties to decide the place of arbitration proceeding and it may vary but the seat of the proceeding shall remain fixed. It is because whenever section 34 of the Act i.e. application for setting aside of arbitral award is invoked by any of the parties then the proceeding of setting aside the arbitral award must take place in the court situated in the jurisdiction of such area where the seat was located. So, unless section 34 is invoked by any of the parties, the arbitral award shall be final and it is enforced in the same way as the decree or order of the traditional courts are enforced.

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<sup>1</sup> *Afcons Infrastructure, Ltd. v. Cherian Varkey Construction* (2010) 8 SCC 24

<sup>2</sup> *Booz Allen v. SBI Home Finance Ltd.*, AIR 2011 SC 2507

In the case of *TPI Ltd .v. Union of India*<sup>3</sup>, the Supreme Court said that the arbitration is an alternate forum for redressal of disputes and it is the choice of the parties to opt for this. There is no compulsion on the parties to resort arbitration if a dispute arises and hence, section 34 is not an inbuilt right.

The Supreme Court in, *TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd.*<sup>4</sup>, clarified the difference of Section 29A of Arbitration Act before and after 2019 amendment. It said that the addition of words “in matters other than international commercial arbitration” made it clear that international commercial arbitration are not within the ambit of rigours of timeline as mentioned under Section 29A. Therefore, the Supreme Court subsequently directed the sole arbitrator to issue proper procedural directions for extension of time but also follow the expeditious conclusion of arbitration.

In *Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal*<sup>5</sup>, the Supreme Court said that in all the cases of arbitration where the proceedings were commenced and concluded prior to the 2019 amendment, the pre-amendment version of Section 34(2) (a) would apply.

The Supreme Court in, *N.N. Global Mercantile Private Limited v. Indo Unique Flame Ltd.*<sup>6</sup>, held that if an arbitration agreement is unstamped or insufficiently stamped then it is unenforceable in law under the definition of Section 2(h) of the Indian Contract Act, 1872.

In one of the landmark judgment, the Supreme Court held that section 34 of the Arbitration Act does not gives power to any court to modify an arbitral award rather they have power to set aside the same in part or full.

## CONCLUSION

Due to the tedious and expensive procedure of civil courts, arbitration has emerged as an appropriate alternative forum of dispute resolution in commercial matters by cutting down the troubles faced by the citizens. It resolves the misunderstandings and amicably benefits both the parties.

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<sup>3</sup> *TPI Ltd .v. Union of India*, 2001 (3) RAJ 70 (Del)

<sup>4</sup> *TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd.*, 2023 LiveLaw (SC) 39

<sup>5</sup> 2023 SCC Online SC 55

<sup>6</sup> 2023 SCC Online SC 495

There is manifold development in arbitration and it is still adapting as per the dynamic changes of the society. Moreover, it is emerging as one of the best forums to unburden the civil courts as well as it is free from biasness.

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