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Understanding the Concept of Commercial Disputes and NSE Disputes Resolution through Arbitration

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Abstract

The main foundation of business transactions is an exchange of promises. Non-performance of the promises under the contract by either party will result in disputes. When business disputes or commercial disputes go for settlement, it becomes an onerous task to solve such disputes. William E. Gladstone said "Justice delayed is justice denied", this applies to imparting justice in all fields and matters regardless of whether being criminal or civil. The civil courts in our country are overburdened and choosing litigation for dispute resolution requires time and patience as having a dispute resolved in court is a complex process. Corporates have a dearth of time because when it's a dispute, either of the two money or goodwill is at stake. To reduce the time consumption and alleviate the process of dispute adjudication. Commercial courts were introduced under the Indian legal system through the Commercial court act 2015. "The Commercial courts, commercial division, and commercial appellate division of High Courts ordinance 2018 was promulgated by the President which came into force from 3rd May 2018". The pecuniary jurisdiction of commercial courts has been kept low so as to boost up the procedure for dispute settlement and to encourage people to choose Arbitration over any other means of settlement. "Commercial arbitration has widely been recognized in different parts of business world as a means of dispute resolution particularly from 1980s and 1990s". Arbitration is a flexible process and provides expert solutions as arbitrators are specialized professionals who have expertise in fields of trade and business. Another type of dispute that can involve arbitration is a National stock exchange dispute. The purpose behind bringing arbitration for resolving disputes of the National stock exchange (NSE) was to empower investors and to reduce the time wasted on solving disputes via courts.

Keywords: Commercial dispute, justice, commercial court, arbitration, litigation, stock exchange

INTRODUCTION

Foreign Direct Investment and International trade transactions increased post Liberalization period. Multinational companies were encouraged to invest in India and since then there has been a substantial rise in the number of commercial disputes. Business transactions are entirely based on the fulfillment of promises. Christopher and Naimark (2005) [1] say that 90% of international contracts include an arbitration clause. Non-performance of the promise by either party to the contract will result in disputes. Commerce is an essential element of the state hence solving the dispute is of predominant nature, unsolved disputes will cast negative effect commerce of the state. Grievance redressal involves time and patience which sometimes exceeds the benefit arising out of the adjudication to the parties. To reduce the time of solving disputes and create an effective mechanism for dispute resolution Commercial courts were established by the government of India. Keeping in mind the index of ease of doing business an

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amendment ordinance was promulgated by the President in 2018. With the rapid growth of industries and the economy in the last few decades, the need for a fast and effective dispute resolution mechanism has been strongly felt. Time is not less than currency for business holders and therefore they require a method that is less time-consuming and certain at the same time. There is one more reason for corporates choosing arbitration and other ADR method for solving disputes and that is the present condition of civil courts. In India, there is a myriad number of cases pending in civil courts for the smallest denomination of compensation to gigantic amounts of money involved, but because of less number of judges, infinite adjournments, and infrastructure of the courts those cases get stretched over a long period of time. The Application of ADR as a method of solving the commercial dispute is not a new concept and countries like the U.S.A, Germany, the UK, Canada, Switzerland, and Australia have been using it for ages. Arbitration was the first ADR technique to be accepted worldwide thereafter according to changes in time and nature of disputes other techniques were adapted and modified. The concept of Arbitration is not new in India and has been used for centuries. The concept of "Panch Parmeshwar" has been widely accepted and practiced. Arbitration was popular in regions of Rome and Greek civilizations since the sixth century. Even in Bengal Regulation of 1772, it is stated that accounts-related disputes to be referred to arbitration. . Sometimes parties attempt to solve their dispute on their own or with help of the facilitator, this process is called mediation. It is a cheaper process when compared with litigation and Arbitration. Not only Commercial but also disputes of the stock exchange are being resolved using arbitration. The purpose behind bringing arbitration in dispute resolution for the National Stock Exchange was to empower investors and to reduce litigation as it involves unnecessary time consumption and is a costly process. Through this paper, the author attempts to explain the concept of commercial dispute and National stock exchange dispute and the role of arbitration and mediation for the resolution of such disputes.

BACKGROUND OF RESEARCH

Commercial Dispute was introduced in the 1980s and 1990s, before which it was not done in a formal and organized manner. Admittance of Foreign companies in the Indian economy bought the culture of pre-written methods of solving disputes and introduced the Commercial dispute concept. The commercial dispute is defined under Section (2) [2] of the Commercial Courts Act, 2015 [3]. Commercial disputes were dealt with via litigation before the introduction of ADR methods. It was a time-consuming process and corporates with good economic status used to knock courts and the ones with less capital made unjust compromises to avoid litigation. When ADR got a legal framework in form of the Arbitration and Conciliation Act, business corporates started understanding its need for disposal of small disputes and with time this method gained trust and confidence and emerged as a successful method of solving disputes. National Stock exchange has also recognized arbitration as a method of solving disputes of the capital market that arise due to many reasons some of them being Complaints against Listed Companies, against Trading members, and against a company that is not listed under Stock exchange. There are three means by which complaints can be resolved at the exchange. In NSE there is a Grievance Redressal Committee that consists of members who are not full-time employees (retired) of NSE. This committee is responsible for resolving complaints within 15 days of the registration of complaints. The mechanism and fees of the arbitrator are discussed further in the paper.

COMMERCIAL DISPUTE RESOLUTION VIA ARBITRATION

Arbitration can be defined as a "*Mechanism for the resolving the disputes which take place usually between two or more parties involved in an agreement, under which parties agree mutually to be bound by the decision given by the Arbitrator according to law or, if so agreed, other considerations, after a fair hearing such decision being enforceable by law*" [4]. Thus Arbitration can be called a process of dispute resolution in which an Arbitrator is appointed by the parties involved in the dispute or by the court at the request of concerned parties who are unable to decide mutually as to who shall be an Arbitrator. Precisely Arbitration is an alternative to litigation in process of solving a dispute. The arbitrator can be called as an "*impartial judge of a court who gives a private judgment (termed as* *an award)*" [5]. The arbitration clause is incorporated in agreements. Arbitration and Conciliation Act 1996 states that arbitration contracts can be enforced by the state machinery. The arbitration clause in an agreement is different from other clauses of that agreement, it is a remedy available for the party bearing loss due to non-performance of the contract, and an arbitration clause can be regarded as an agreement altogether included within the main contract. Legal departments of corporate handle disputes in a very organized and systematic manner applying all the possible strategies to favor their organization. Before the application of arbitration for solving disputes companies used to approach the court for handling commercial matters. For big corporate firms which had a legal department it was not a difficult task to move to the court for settlement but for small companies with less staff and no hired legal professional litigation was nothing less than a nightmare, and therefore many times small businesses preferred to forego their benefit over litigation. The cost of litigation has been increased drastically along with time and efforts to file a case. All these lead to the recognition of arbitration as an alternative mechanism of dispute resolution, and management of companies have now started noticing the benefits of this method.

In India Arbitration is governed under Arbitration and Conciliation Act Section 8(1) [6] of the Arbitration and Conciliation Act states that the court before which dispute is brought and which is subject matter of arbitration agreement, shall, if a party so applies not later than submitting his first statement on the matter of the dispute, refer the parties to arbitration. The existence of a statutory legal mechanism that lays down rules pushes corporates to undertake commercial arbitration in a serious and effective manner. Many corporates which are being managed by highly qualified professionals are using arbitration as a proactive tool for developing a good brand image in the economy as involvement in litigation sometimes affects their stakes in the market.

ADR mechanisms are also promoted by UNICITRAL to encourage states for modernizing their existing legal regime on the arbitral process so as to take into consideration the features of International Commercial Arbitration. The UNICITRAL includes all stages of the arbitral process from very agreement to the step of appointment of arbitrators and deciding jurisdiction of the Arbitral tribunal and the regulation of the arbitral award.

DISPUTE RESOLUTION AT NSE

Disputes at NSE arise when the rights of an investor are infringed. Rights such as to get a copy of the Unique Client Code, get a copy of the documents executed, the Right to receive funds and securities on time, and get details of the charges that are levied on transfers. When any right is violated, the investor has a remedy of filing the complaint against the trading member in the exchange or taking up a complaint against the listed company, or filing for arbitration if there is a dispute.

As per SEBI circular, CIR/MRD/ICC/30/2013 dated September 26, 2013, the process of dispute resolution begins when the complaint is filed and the NSE ISE center analyses the issues and takes up all the required documents from the involved trading member and forwards the response to Exchange. The exchange then forwards the response of the trading member to the Investor and upon dissatisfaction of Investor a Joint meeting is held if the complaint is still not resolved within 15 days then GRC sets up a panel that gives decision if the Investor or Trading member is unsatisfied with the decision then they can opt for Arbitration Panel settlement. The period of applying for arbitration is the same as mentioned in the Limitation Act i.e. three years from the date of the dispute.

A panel can be constituted with the sole arbitrator if the claim is less than 25 lakhs however if claims exceed 25 lakhs then a panel of three arbitrators has to be appointed. The arbitration application needs to be filed at the Regional Arbitration Center nearest to the address mentioned in the KYC of the investor. The NSE implements awards in favor of the investor, which means that the amount is taken from the trading member and paid to the investor. If an investor or Trading Member is dissatisfied with the arbitration award, he or she may file an appeal application. If the Trading

Member wishes to pursue the appeal further in appellate arbitration, an interim amount is paid to the investor from the IPF.

CONCLUSION

Disputes carry the name of the corporates and therefore are to be resolved to keep in mind the reputation and stake of the firm and image of investment. Litigation as discussed above is a lengthy process and the length higher is cost, time, and effort. Therefore Corporates prefer including an arbitration clause in their agreement that mentions the place of arbitration, mode of dispute resolution which will be followed, and sometimes even the number of arbitrators who will be hired. NSE has also resolved to arbitration as it reduces time and cost and also helps companies in saving their repute as once a court case is filed and a company is proven guilty there are chances of downfall in the prices of shares of that company. Arbitration, although is gaining importance but also the time and cost involved, is increasing due to fewer arbitrators and fewer arbitration institutes. Despite a few drawbacks, the future of arbitration seems to be brighter than that of litigation in our country.

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