



A & A LAW CORP.

POWER OF COLLABORATION

A house of like minded professionals from
various specialised fields
offering expert solutions

ARBITRATION IN INDIA

A GROWING PHENOMENON

Activities we're great at:

- ▶ **ARBITRATION**
- ▶ **BANKRUPTCY & INSOLVENCY**
- ▶ **MERGER & ACQUISITIONS**
- ▶ **CORPORATE ADVISORY**
- ▶ **CORPORATE LITIGATION**
- DUE DILIGENCE** ◀
- LABOUR & EMPLOYMENT** ◀
- REAL ESTATE** ◀
- TAXATION LITIGATION** ◀
- INTELLECTUAL PROPERT RIGHTS** ◀

ARBITRATION IN INDIA – A GROWING PHENOMENON

India with its promising demographic dividend, ease of doing business environment, cheap labour, ready available market, largest democracy, liberalised economy has emerged as an attractive base for investments and large corporate agglomerates abroad as well as domestic. At the same time, a robust legal and judicial system in the country giving its subjects an array of options for a speedy, judicious, timely disposal of cases becomes another feature taken into consideration by corporate when it comes to starting a new business that too in a foreign territory. However, it is unfortunate how even today the Indian Judicial system suffers from various disabilities such as huge pendency of cases, lack of infrastructure, slow and costly litigation, etc. All this was hugely impacting India's image of being a conducive space for investment. People from the country as well as all around the world were less inclined to invest and the share of manufacturing sector and industry in overall GDP remained abysmal.

However, with India's recent push to 'Make in India' and giving a boost to economy through various policy measures such as Start Up India, Atal Innovation Mission, improving Ease of Doing Business Index of country has led the current government to give a push to Alternative Dispute Resolution as a way of resolving disputes.



In this context the policy space of the country marked a shift in enactment of robust laws for Dispute Resolution and which proved to be fruitful when the country saw a surge in adoption of Arbitration as way of resolving their dispute by many corporate entities.

Arbitration is one of methods under Alternative Dispute Resolution. It is simple and speedy way of resolving dispute wherein the solution is arrived at by way consensus. For these reasons it is increasingly being preferred by many in case of disputes and has revolutionised the narrative of Dispute Resolution.

What is Arbitration and how was it adopted by our country? Is Arbitration as a way of dispute resolution better than Litigation and how are the two different from each other? Can the Arbitration be used in cross border disputes? How Arbitration promises to be a solution to the problem of pending cases in the country.

What is Arbitration?

Arbitration is a form of alternative dispute resolution wherein the solution is achieved by a consensual, neutral and private way of coming to terms of agreement between the parties. To understand about Arbitration, we need to know the rationale of Alternative Dispute Resolution Mechanism. The idea behind Alternative Dispute Resolution is to dilute the culture of 'losing or winning' whenever a dispute arises, as in the usual attitude of people in general.

It progressively makes dispute resolution process consensual through tools like negotiation and conciliation, mediation. Another commendable aspect is the time bound or speedy disposal of dispute.

Arbitration being a form of Alternative Dispute Resolution is based on the tenets of 'negotiation, consensus, private and timely disposal'. All these features make arbitration a promising solution to the disputes. It is increasingly being used in commercial disputes, corporate disputes involving contracts, etc.

Historical Background of Arbitration

Arbitration is a novel Dispute Resolution Mechanism and our country has enacted the required statute for the same. The statute for Arbitration in the country is 'Arbitration and Conciliation Act' which was enacted for the first time in the year 1940. However, with changing times and changing demands of the economy as well as the nature of disputes, various Amendments to the Act have been enacted to keep the Mechanism more relevant and giving a push to Arbitration as a way of resolving dispute.

Though Arbitration has been coined as a novel concept in the legal parlance, surprisingly enough, our country has been acquainted with various Alternative Dispute Resolution Methods since ages which date back to Vedic Period. During Vedic Times the **Brihadaranyaka Upanishad** stated elaborate ways for dispute resolution and dedicated bodies have been described for the same,



which are very much similar to the modern day process of Arbitration that we follow today.

Our country has come far from where it started and has now emerged as one of strongest, extensive and relevant laws in the world.

Arbitration vis-a-vis Litigation

1. Provisions and Method of Arbitration

As discussed above, Arbitration is a method of conflict resolution without any party having to go to the court making it an excellent alternative to litigation. The procedure of Arbitration involves a neutral third party who hears the arguments of both sides and receives evidence. There upon he passes an order called Arbitral Award which is enforceable in the country by any court of law.

India is a signatory of the two international instruments— the United Nations Commission on International Trade Laws (UNCITRAL) Model Law on International Commercial Arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) which form the basis of the cross-border arbitration as well as the domestic arbitration adopted in India through the Indian Arbitration and Conciliation Act of 1996.



The Indian Arbitration and Conciliation Act of 1996 majorly governs the procedural as well as substantial aspect of Arbitration followed in the country.

PART – 1 governs the domestic arbitration comprehensively covering all important provisions such as of Arbitration Agreement, Number of Arbitrators, Appointment of Arbitrators, Composition of Tribunal, Conduct of Arbitral Proceedings, Arbitral award and its enforcement. Whereas PART -2 governs the enforcement of foreign arbitral awards and it is majorly adopted from, and/or based on the New York Convention.

Thus, the provisions of the Act are all encompassing keeping the essence of the idea of Arbitration intact. It will be good to discuss in brief some of the provisions to get some basic idea:

- a) Arbitration as defined in S.2(a) of the Act means any arbitration whether or not administered by permanent arbitral institution. This implies that arbitration can be conducted by a permanent institution for arbitration and also by an arbitral tribunal appointed by the mutual consent of the parties or an arbitral tribunal appointed Court.
- b) Arbitral Tribunal as defined in S.2(d) means a sole arbitrator or a panel of arbitrators. This is sometimes appointed by a competent Court of law on request of either of the parties or appointed by the

parties on mutual consent basis. The parties here are free to determine the procedure for appointing of the arbitrator/s. The parties are also free to decide the number of arbitrators in the panel, provided that such should not be even. If no consensus is achieved on the total number of Arbitrators in the panel then the Arbitral tribunal shall consist of a sole Arbitrator.

c) Arbitral Award is defined under S.2(c) stating that it includes an interim award. After the completion of the Arbitration, the decision is arrived at by the Arbitral tribunal which is final. The Arbitral Award shall state the reasons upon which it is based. The Arbitral Tribunal then passes an Arbitral Award which is enforceable by Court of Law. Such an Arbitral Award includes any interim award passed by the Arbitral Tribunal pending Arbitration Proceeding. The Arbitral Award shall be made in writing and shall be signed by the members of the Arbitral Tribunal.

d) Arbitration Agreement as defined under S.7 means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An Arbitration Agreement shall be in writing.



- e) Finality and enforcement of arbitral awards is explained under S.35 stating that an Arbitral Award shall be final and binding on the parties and persons claiming under them respectively.

2. Overall Comparison

On the basis of time taken: Arbitration proceeding is typically much more speedier when compared to normal litigation. Arbitration proceedings start immediately after the arbitrator is appointed. To make Arbitration much more efficacious in providing remedy and to arrest the issue of time/ delay in giving arbitral award, that appeared at various occasions, and even lead to appeal a number of appeals before the High court, the legislature added S. 29A to the Act vide Arbitration and Conciliation Amendment Act 2015 which provides a time limit of twelve months for the completion of arbitral proceedings. This period is calculated from the date the arbitral tribunal is appointed and such period may be ex-tended by a maximum period of six months by the parties. Moreover, under S.34, the Act provides for a recourse against arbitral award but at the same time puts a limit of three months to take action under the this provision. Thus, setting a time limit for appeal against arbitral award goes a long way in ensuring the finality of the arbitral award.



Conclusion is that, the maximum time limit for Arbitration Proceedings is one year plus six months (optional).

On the other hand, when it comes to litigation, there is no time limit and it varies widely across state to state, district courts to high courts, case to case, pendency of cases in the court, subject matter of dispute. It varies from anywhere few months to some years and the option of appeal to the other party further frustrates the finality of the decision.

On the basis of Cost: As the Litigation is spread over years and the provision of appeal can further take the dispute to High Court and later Supreme Court adding to both time and cost for the litigants. Opting for Litigation can expose you to years of expenses in resolving dispute without really coming to a conclusion. There is no real surety on the limit of cost and time involved.

Arbitration on the other hand puts a limit on both time and cost. Giving the option to parties regarding appointment of arbitrator further makes it open for the parties to decide on the cost and time factor.

On basis of Satisfaction of parties: The outcome of Arbitral Proceedings have more often than not, proved to be much more satisfactory to both the parties as compared to litigation. Reason being that the arbitral proceedings are much more private and consensual,

moreover there is a touch of negotiation and consent of parties involved in the whole process. Therefore, the parties are much more satisfied with the outcome of the proceedings and hence less likely to take recourse against the arbitral award

3. Success Rate of Arbitration

The advantages of Arbitration are many. The surge in people opting for arbitration is a clear signal for the same and point to the success rate of Arbitration as a method of dispute resolution. Today more and more people are opting for Arbitration and past few years have seen encouraging trends for commercial arbitration. This amply bears testimony to the success of Arbitration.

International Arbitration

Emergence of globalisation and increase in economic activity across the borders has compelled the countries around the world to come up with a consistent, fair, and speedy way of overcoming and settling cross- border disputes.

The provisions for such dispute are incorporated in the Act as well. Section 2(1)(f) defines International Commercial Arbitration as arbitration relating to disputes arising out of legal relationship, whether contractual or not, considered as commercial under the law in force in India, where atleast one of the parties is a foreign national, a body corporate, association or body of individuals. The



idea is that the central management or control of such foreign corporate, association, etc must be in foreign hands. So, an arbitration with seat in India, but involving a foreign party as mentioned above, will be regarded as International Commercial Arbitration. However, it will be subject to Part I of the Act. On the other hand, if an International Commercial Arbitration is held outside of India, then the parties would be subject to Part II of the Act which majorly talks about the enforcement of arbitral awards.

Conclusion on choosing Arbitration

Arbitration as a form of Dispute Resolution has come out successfully worldwide and is being preferred by everyone out there, be it corporate or private individuals undergoing a contract. Recent years have seen a surge in people entering into Arbitration Agreements and/or incorporation of Arbitration Clause in the Contracts, Memorandum of Understandings, Agreements, etc.

As discussed above, Arbitration is being preferred for reasons like being a private and consensual way of conflict resolution. The choice given to the parties for choosing the arbitrator of their choice and the manner of choosing the Arbitrator also makes it more attractive.

More so, as compared to litigation, Arbitration has proved to be way more cost-effective and speedy way of settling disputes. Arbitration promises to give you a



smooth exit from the dispute. This specially makes Arbitration the perfect choice in current scenario when time is equivalent to money.

Most often we see that in a dispute, a thorough examination and analysis of highly technical details which are relevant to the subject matter of the dispute is needed. In such cases, legalities become less important compared to the technicalities of the case. Arbitration allows the parties to choose an Arbitrator of the choice who specializes in such matters. This makes the process of Arbitration more reliable as compared to Litigation.

Another attractive feature of Arbitration is that the proceedings under arbitration are highly confidential and as such no public record of the disputes and the proceedings.

Thus, Arbitration comes with a bundle of advantages, such as being a fair, speedy, cost-effective, simple and confidential alternative to a costly and time taking litigation process and becomes a great choice in resolving disputes.

Disclaimer

The information contained herein is of general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue in the future. No one should act on such information without appropriate professional advice after the thorough examination of particular situation.

The document is meant for private circulation only.

KEY TEAM



CA. Mukesh Aggarwal
(Senior Advisor)



Adv. Vivek Aggarwal
(Senior Partner)



CS. Kumkum Gupta
(Senior Partner)



Adv. Ritika Sharma
(Senior Associate)



CA. Sachin Singhal
(Advisor)



CA. Divya Madan
(Advisor)



CA. Vinit Agarwal
(Advisor)



CA. Arun Bhargav
(Advisor)

OUR SYNERGISTIC NETWORK



KSMC & ASSOCIATES
Chartered Accountants

www.ksmc.in



ACROPOLIS
Acropolis Advisory Pvt. Ltd.
www.acroadvisory.in

ABOUT US

A&A Law Corp is a full service law firm where lawyers, company secretaries, chartered accountants and other various legal experts works together as a team with a determination and focussed approach, providing spectrum of services and giving one stop solution for every business need and requirements.

We at A&A Law Corp believe in interpreting Law in its most reasonable way and applying legal principles to advance the cause of our clients. Each team member of A&A Law Firm is committed to the practice of Law equipped with an in-depth research on the subject and all its manifestations. As a team we are pledged to the oath of ensuring deliverables of foremost level with consummate proficiency and efficiency.



www.aalawcorp.com



Email: aalawcorp@gmail.com

CONTACT US

Registered Office

G-5, Vikas House, 34/1,
East Punjabi Bagh,
New Delhi-110026

T: 011-41440483, 42440483

Delhi Branch Office

E-16/391, Sector-8, Rohini,
Delhi - 110085

T: 011- 47506498

M: +91 9811770164

Singapore Office

10, Anson Road,
International Plaza, #33-13,
Singapore - 079903

T: +65 62243466

M: +65 83141339

