E - NEWSLETTER

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CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION AND PROFESSIONAL SKILLS

Himachal Pradesh National Law University, Shimla

INSIDE THE ISSUE

Of late

Section - 1

INTERNATIONAL UPDATE

1. PRE-CONDITIONS TO ARBITRATION ARE NOT MATTERS OF JURISDICTION SAYS ENGLISH COURT.

In the Republic of *Sierra Leone* v. *SL Mining Ltd.*, [2021] EWHC 286 (comm) the English High Court has declined to set aside an arbitral award, despite the fact that the defendant had allegedly failed to comply with certain pre-conditions to arbitration agreed in a multi-tiered dispute resolution clause. The Court said that the alleged non-compliance was a question of admissibility of the claim before the tribunal and not of the tribunal's jurisdiction. The matter was best determined by the arbitrators and the award was not amenable to challenge under Section 67 of the English Arbitration Act 1996. The decision provides welcomes certainty that arbitration agreements will be upheld, even where there are questions regarding compliance with pre-conditions to arbitration, such as mandated cooling off or negotiation periods. **read more.**

2. CHINA COURT SETS ASIDE CRYPTOCURRENCY AWARD ON PUBLIC INTEREST GROUNDS.

Shenzhen Intermediate People's Court has ordered that an arbitral award made by Shenzhen Arbitration Commission (also known as Shenzhen Court of International Arbitration) be set aside on the ground that awarding damages in US dollars in lieu of crypto is against the public interest. The Court held that, according to the Circular of the People's Bank of China, the Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the China Securities Regulatory Commission and the China Insurance Regulatory Commission on Preventing Risks from Bitcoin (Yin Fa [2013] No.289), Bitcoin does not have the same legal status as a fiat currency, and cannot and should not be circulated in the market as a currency. **read more.**

3. INTERNATIONAL BAR ASSOCIATION (IBA) RULES, 2020 REVISED.

The IBA, about 20 years after their introduction, and about 10 years after their first revision, has recently published the new version of the IBA Rules on the Taking of Evidence in International Arbitration (Rules). The update aligns the Rules with developments in the international arbitration practice and selectively clarifies its provisions. It furthermore responds to the "New Normal" of conducting arbitration hearings remotely. Fundamental changes, however, were not considered necessary. **read more.**

4. NEW SIGNATORIES TO THE NEW YORK CONVENTION

Malawi has become the 167th Contracting State to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. On March 4, 2021, Malawi deposited its instrument of accession to the Convention with the UN Secretary General. Shortly thereafter on March 4, 2021, the Parliament of Iraq passed the "Law on the Accession of the Republic of Iraq to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards," and becomes the 168th signatory to the Convention. **read more.**

5. 2021 AMENDMENTS TO THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR) ARBITRATION AND MEDIATION RULES: A RESPONSE TO EVOLVING PRACTICE

The ICDR of the American Arbitration Association has released its revised Arbitration and Mediation Rules, which came into force on March 1, 2021. The changes introduced are therefore a comprehensive update responding to issues that have arisen in both arbitration and mediation over the past decade. As regards mediation, the updates reflect the ICDR's commitment to the process. The Arbitration Rules now require a party to state in its Notice of Arbitration whether it is willing to mediate the dispute, prior to or concurrent with the arbitration. The older version of the rules merely required the initiating party to state if it had any interest in mediating the dispute. **read more.**

6. NEW PROCEDURAL RIGHTS AS INDONESIA-SINGAPORE BILATERAL INVESTMENT TREATIES (BIT) COMES INTO FORCE

Since Indonesia announced its intention to terminate and replace "all of its 67 bilateral investment treaties" in 2014, the State has actively re-negotiated several BITs. Starting with some of its largest trading partners in the region, Indonesia signed new BITs with Singapore in 2018 and Australia in 2019. On March 9, 2021, the Agreement between the Government of the Republic of Singapore and the Government of the Republic of Indonesia on the Promotion and Protection of Investments came into force after being ratified by both States. **read more.**

7. SUPREME COURT OF CANADA FINDS UBER ARBITRATION CLAUSE IS UNCONSCIONABLE

The Supreme Court of Canada in *Uber Technologies Inc.* v. *Heller*, 2020 SCC 16 upheld the Ontario Court of Appeal's decision that Uber's arbitration agreement is invalid and unenforceable, leaving disputes under the clause to be litigated in the courts. The Court re-affirmed the competence principle and the deference generally afforded to arbitrators by the courts, while creating an exception to the general rule of arbitral referral. **read more.**

8. SWISS FEDERAL SUPREME COURT (SFSC) CONFIRMS THAT NOT THE TRIBUNAL'S LEGAL REASONING, BUT ONLY THE OUTCOME OF THE AWARD CAN BE REASON FOR ANNULMENT FOR VIOLATION OF PUBLIC POLICY

The SFSC in its decision dismissed a challenge and opined that as per them the arbitrator had not violated public policy by finding in favour of a company that refused to pay commissions under an agency contract obtained through fraudulent behaviour (case no. 4A_346/2020 (in French)). The SFSC emphasized that the principle of *pacta sunt servanda* is violated only if an arbitrator refuses to enforce a contractual provision even though it deems as binding or, conversely, if it enforces a contractual provision that the arbitrator deems non-binding. **read more.**

9. AN "EXCEPTIONAL YEAR" FOR THE LONDON COURT OF INTERNATIONAL ARBITRATION

The London Court of International Arbitration has released its Casework Report for 2020. The statistics in the Report show an "exceptional year" and a continuing picture of growth for the institution. The report statistics also show a gradual "internationalisation" of the Court's caseload. It also demonstrates the institution's long-standing commitment towards improving the diversity of arbitral tribunals. **read more.**

10. THE LIMITS OF CONSENT IN MULTI-PARTY ARBITRATION AGREEMENTS.

The London Court of International Arbitration Rules (LCIA Rules 2014), provide for a "forced joinder", under Article 22.1(vii) it empowers an arbitral tribunal to order a consenting third party to be joined to extant arbitration proceedings, provided that an existing party also consents to the joinder, even if the other parties to the arbitration proceedings object. However, what constitutes the requisite "consent" and how may such "consent" be established? In the recent decision in *CJD* v. *CJE and another* [2021] SGHC 61, the Singapore High Court took the opportunity to consider the element of "consent" in a "forced joinder" and issues revolving around the proper interpretation and ambit of Article 22.1 (vii) of the LCIA Rules 2014. **read more.**

11. MEDIATION BODIES SEAL INTERNATIONAL ALLIANCE IN SINGAPORE TO IMPROVE STANDARDS.

Five international mediation training bodies have signed a memorandum of understanding in Singapore aimed at raising international mediation standards. The group has pledged 'to develop mediation into a recognised and viable profession' in a move that builds on the Singapore Convention on Mediation, which came into force last September and which allows for the easier enforcement by national courts of international settlement agreements, much as the New York Convention does for arbitration awards. **read more.**

12. HONG KONG AND MAINLAND CHINA ENHANCE LAW ON MUTUAL ENFORCEMENT OF ARBITRAL AWARDS.

This arrangement has successfully provided an effective mechanism of enforcing awards between these two, as there was separate Arrangement between the China and Hong Kong for the same since 2000. On November 27, 2020, a Supplemental Arrangement was signed, amending four aspects of the original arrangement to bring it further in line with current practice in international arbitration. Amendments will came effective immediately, while others will become effective after May 19, 2021. Importantly, award creditors will be able to seek enforcement of an award in both jurisdictions simultaneously as long as the total amount to be recovered does not exceed the amount determined in the award. Simultaneous enforcement was prohibited under the original Arrangement. **read more.**

13. AUSTRALIAN COURT CLARIFIES APPROACH TO SCOPE AND ARBITRABILITY OF AMBIGUOUS ARBITRATION AGREEMENTS.

In case *Cheshire Contractors Pty. Ltd.* v. *Civil Mining & Construction Pty. Ltd.* [2021] QSC 75, the Supreme Court of Queensland reiterated the willingness of Australian Courts to enforce broadly drafted arbitration agreements. In this judgment, Justice Henry concluded that a contract between two Australian entities that contained an arbitration agreement was referrable to arbitration under the Commercial Arbitration Act 2013. Consequently, the proceeding was stayed pending the outcome of the arbitration. **read more.**

14. INTERNATIONAL COURT OF ARBITRATION (ICC) AND SINGAPORE INTERNATIONAL ARBITRATION CENTRE (SIAC) ATTAIN "PERMANENT ARBITRATION INSTITUTION".

On May 18, 2021, the ICC and the SIAC has got the status of "Permanent Arbitration Institution" by the Russian Ministry of Justice. This is a major development for users of international arbitration in Russia who will now have access to three of the "top-five most preferred arbitral institutions" in the world, according to 2021 International Arbitration Survey prepared by Queen Mary University of London. **read more.**

15. ENERGY CHARTER TREATY AND EU LAW – THE ADVOCATE GENERAL'S OPINION CALLING FOR BROADENING THE REASONING FROM ACHMEA JUDGMENT TO ENERGY VHARTER TREATY (ECT) AND COURT OF JUSTICE OF THE EU (CJEU'S) JURISDICTION OVER A CASE CONCERNING NON-EU MEMBERS.

On March 3, 2021 the Advocate General in the proceedings before the CJEU under case file no. C-741/19[1] issued his opinion in favour of the CJEU's jurisdiction over a request for preliminary ruling to interpret the ECT in a case concerning two non-EU parties. Furthermore, the Advocate General has presented his view that the offer to arbitrate in the ECT should be considered incompatible with EU law in case of intra-EU proceedings. **read more.**

16. BRAZIL SIGNS THE SINGAPORE CONVENTION ON SETTLEMENTS ARISING FROM MEDIATION.

On June 4, 2021, Brazil signed the Singapore Convention on Mediation. The convention provides a uniform framework for settlement agreements put in writing resulting from mediations entered in one of the contracting states. Under the convention, a party can enforce such settlement agreements in the courts of any contracting state, provided that the settlement agreement was issued in that or in another contracting state. Moreover, the party can invoke the settlement agreement in any contracting state, to prove that the matter was already resolved. **read more.**

17. SWISS SUPREME COURT CONFIRMS THAT CLAIMS AGAINST BANKRUPT SWISS PARTIES DO NOT IPSO FACTO LOSE THEIR ARBITRABILITY

The Swiss Federal Supreme Court in its decision published on March 1, 2021 ruled on the arbitrability of a claim and the corresponding enforceability of an international arbitral award in the light of bankruptcy proceedings filed against the respondent in Switzerland (case no. 5A_910/2019 (in German)). In the decision SFSC reminded that Art. 177(1) of Swiss Private International Law Act, which deals with the notion of arbitrability and also applies in recognition and enforcement proceedings, provides that 'any dispute involving an economic interest may be the subject of arbitration'. **read more.**

18. SINGAPORE EXTENDS THIRD-PARTY FUNDING FRAMEWORK TO DOMESTIC ARBITRATIONS AND SINGAPORE INTERNATIONAL COMMERCIAL COURT (SICC) PROCEEDINGS.

From June 28, 2021, Singapore will permit third-party funding of domestic arbitration proceedings in the Singapore International Commercial Court (SICC) and related mediation proceedings. In making these changes, the Ministry of Law is demonstrating its willingness to respond to the needs of international commercial parties who are considering Singapore for the resolution of their disputes, whether in mediation, litigation or arbitration. **read more.**

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NATIONAL UPDATE

1. NITI AAYOG TO LAUNCH ONLINE DISPUTE RESOLUTION (ODR) HANDBOOK.

NITI Aayog has planned to launch a new first-of-its-kind, ODR handbook in India. This new handbook will be launched in association with Agami and Omidyar Network India and with the support of ICICI Bank, Ashoka Innovators for the Public, Trilegal, Dalberg, Dvara and NIPFP. According to the press release by Niti Aayog, this new handbook will be an invitation to business leaders to adopt ODR in India. It highlights the need for such a mechanism, the models of ODR that businesses can adopt and an actionable pathway for them. **read more.**

2. CAIRN SAYS TAKING ACTION TO ACCESS VALUE OF $1.2 BILLION ARBITRATION AWARD AGAINST INDIA.

United Kingdom's Cairn Energy Plc said it is taking all necessary actions to access the USD 1.7 Billion it was awarded by an international arbitration tribunal after overturning a retroactive tax demand slapped by the Indian government. The Scottish firm invested in the oil and gas sector in India in 1994 and a decade later it made a huge oil discovery in Rajasthan. In 2006 it listed its Indian assets on the BSE. Five years after that the government passed retroactive tax law and billed Cairn Rs 10,247 crore plus interest and penalty for the reorganisation tied to the flotation. The state then expropriated and liquidated Cairn's remaining shares in the Indian entity, seized dividends and withheld tax refunds to recover a part of the demand. **read more.**

3. ONLINE DISPUTE RESOLUTION'S ROLE NECESSARY DURING COVID-19 PANDEMIC SAYS JUSTICE DY CHANDRACHUD.

The strength of ODR is founded in the concepts of decentralization, diversification, democratization and disentanglement of the entire justice delivery mechanism, said justice Chandrachud. He added that pandemic has transformed our lives in unimaginable ways, which inevitably also included the way courts operated with physical hearings giving way to virtual ones. **read more.**

4. INDIA CAN CHOOSE A FORUM FOR ARBITRATION OUTSIDE INDIA SAYS SUPREME COURT.

The Supreme Court in *PASL Wind Solutions Private Limited* v. *GE Power Conversion India Private Limited* has held that two Indian companies can choose a foreign jurisdiction to arbitrate their disputes. And that such an agreement will not adversely impact either party's ability to seek interim relief before Indian courts. The apex court's ruling partially re-enforced and partially overturned the Gujarat High Court's November order in favour of GE Power Conversion India against PASL Wind Solutions Pvt. Ltd. **read more.**

5. COMMERCIAL MATTERS INVOLVING ARBITRATION DISPUTES CAN ONLY BE HEARD BY COMMERCIAL COURT OF STATUS OF DISTRICT JUDGE/ ADDITIONAL DISTRICT JUDGE SAYS MADHYA PRADESH HIGH COURT.

A division bench of the High Court comprising of Chief Justice Mohammad Rafiq and Justice Vijay Kumar Shukla, in the case of *Yashwardhan Raghuwanshi* v. *District & Sessions Judge and another*, has held that Commercial matters involving Arbitration disputes can only be heard by Commercial Court of the status of District Judge or Additional District Judge. It held that a Civil Judge would not be the competent authority to entertain cases under Sections 9, 14, 34 and 36 of the Arbitration and Conciliation Act, 1996. **read more.**

6. TERM SHEET BINDING, ZO ENTITLED TO GET UP TO 7% IN OYO SAYS ARBITRATOR.

A court-appointed arbitrator has ruled that hospitality major OYO is bound by the terms agreed upon with rival ZO Rooms, which required the Ritesh Agarwal led company to cede up to 7% of its equity. The ruling delivers a major setback to OYO, which said it will contest the order vigorously. The verdict of the Arbitral Tribunal comprising former Chief Justice of India AM Ahmadi found the term sheet signed in November 2015 by SoftBank backed OYO to acquire ZO to be a binding agreement. **read more.**

7. PRESENCE OF AN ARBITRATION CLAUSE DOES NOT OUST THE JURISDICTION UNDER ARTICLE 226 IN ALL CASES: SUPREME COURT.

In *Unitech Ltd.* v. *Telangana State Industrial Infrastructure Corporation*, the Supreme Court held that "the jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority." Thus, the jurisdiction of the High Court cannot be ousted only on the pretext that the dispute is contractual in nature. **read more.**

8. DISPUTES ARE NOT ARBITRABLE AFTER SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE IS FILED: SUPREME COURT.

The Apex Court in *Indus Biotech Pvt. Ltd.* v. *Kotak India Venture (Offshore Fund) & Ors.*, reaffirmed the National Company Law Tribunal's decision, holding that the Adjudicating Authority has to advert to the material and the rival contentions of the parties before it and records a satisfaction as to whether there is a default or not. Having undertaken such exercise, the Adjudicating Authority had arrived at a clear finding of absence of default, rejected the petition and left the issue of arbitration to the Hon'ble Supreme Court by taking note of the arbitration petition pending before it. **read more.**

9. SUPREME COURT OVERRULES N.V. INTERNATIONAL VERDICT: SHORT DELAY IN FILING APPEALS UNDER SECTION 37 OF THE ACT CAN BE CONDONED IN EXCEPTIONAL CASES.

The three judge bench comprising RF Nariman, BR Gavai and Hrishikesh Roy J. in *Government of Maharashtra* v. *Borse Brothers Engineers and Contractors Pvt. Ltd.* held that in a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned. **read more.**

10. OPEN FOR PARTIES TO AN ARBITRATION AGREEMENT TO CHANGE THE SEAT OF ARBITRATION BY MUTUAL AGREEMENT SAYS APEX COURT

The Apex Court in his recent decision dated April 13, 2021 in *M/s Inox Renewables Ltd.* v. *Jayesh Electricals Ltd.* held that parties to an arbitration agreement can change the seat of arbitration by mutual agreement provided the same is recorded in the reward and is not challenged by either party. This decision of the Supreme Court once again highlights the need to be cautious when deciding the venue, place and seat of arbitration. The importance of the parties' choice in this regard cannot be gainsaid. **read more.**

11. COUNTRY'S FIRST ODR PLATFORM LAUNCHED BY CHANDIGARH BASED START-UP 'JUPITICE'.

A Chandigarh based start-up called Jupitice Justice Technologies, has launched the country's first ODR platform. The platform would be a medium for conducting virtual arbitration, mediation, conciliation etc. The advisory board of the company includes amongst others, several former High Court judges and other dignitaries. **read more.**

12. BOARD OF CONTROL FOR CRICKET IN INDIA (BCCI) WINS LEGAL BATTLE WITH DECCAN CHARGERS, BOMBAY HIGH COURT SETS ASIDE ARBITRATOR'S ORDER OF PAYING ₹4,800 CRORES.

In a huge boost to its financial position, sources in the BCCI claimed that the Board had finally emerged victorious in its legal battle against the Deccan Chronicle Holdings (DCHL) for the termination of their team Deccan Chargers in the Bombay High Court. After the BCCI terminated Deccan Chargers from the Indian Premium League in 2012, DCHL had approached the Bombay High Court, challenging the termination. **read more.**

13. INDIAN GOVERNMENT CHALLENGES PANNA-MUKTA GAS FIELD (RIL) ARBITRATION BEFORE UK HIGH COURT.

The government has challenged before an English High Court an arbitration award over a cost recovery dispute in the western offshore Panna-Mukta and Taoil and gas fields of Shell and Reliance Industries Ltd. An arbitration tribunal gave favourable award on January 29, 2021, Reliance said in its latest annual report. Reliance and Shell had through the arbitration sought raising of the limit of cost that could be recovered from sale of oil and gas before profits are shared with the government. The award came this year. **read more.**

14. NOVATION OF CONTRACT CONTAINING AN ARBITRATION CLAUSE CANNOT BE CONSIDERED: SUPREME COURT.

The Three judge bench comprising RF Nariman, BR Gavai and Hrishikesh Roy J. in *Sanjiv Prakash* v. *Seema Kukreja* in an appeal against the dismissal of a petition before the High Court of Delhi observed that the question of novation of a contract containing an arbitration clause cannot be considered in a petition filed under Section 11 of the Arbitration and Conciliation Act. **read more.**

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THE ARBITRATION AND CONCILIATION [AMENDMENT] BILL, 2021.

Indian legislation amended the Arbitration and Conciliation Act, 1996 so as to enable automatic stay on awards in certain cases and regulations on the qualifications and experiences and norms for accreditation of arbitrators. It shall be deemed to have come into force on the 4th day of November, 2020.

The key highlights of the provision of the amendment Ordinance are

1. Automatic Stay on Awards

The 1996 Act allowed the party to file an application to set aside an arbitral award. Courts have interpreted this provision to mean that an automatic stay on an arbitral award is granted the moment an application for setting aside an arbitral award was made before the Court. In 2015 the Act was amended to state that an arbitral award would not be automatically stayed merely because an application is made to the court to set aside an arbitral award. The Amendment specifies that stay on arbitral award can be provided if the court is satisfied that the relevant arbitration agreement or the contract or making of the award was induced or affected by fraud or corruption.

2. Qualification of Arbitrators

The Act specified certain qualifications, expertise and accreditation numbers for arbitrators in a separate schedule, the Eighth Schedule. The requirements under the schedule include that the arbitrator must be an advocate under the advocates act 1961 with 10 years of experience, an officer of the Indian Legal Service among others. Further the general norms applicable to arbitrators include that they must be conversant with the Constitution of India. The bill removes this schedule for Arbitrators and states that the qualifications and experience and norms for accreditation of arbitrators will be specified under the regulation. This was done by substitution of section 43J of the principal act.

3. Repeal of the Arbitration and Conciliation (Amendment) Ordinance, 2020

The Arbitration and Conciliation [Amendment] Act, 2021 that received the assent of President on the 11th March, 2021 and was published in the Gazette of India on the same day, repealed the Arbitration and Conciliation (Amendment) Ordinance, 2020 [Order 14 of 2020].

Section-2

tête-à-tête

TETE-A-TETE WITH TARIQ KHAN

MR. TARIQ KHAN

Principal Associate,
Advani and Co.

Tariq Khan is an acclaimed arbitration lawyer and presently a Principal Associate at Advani & Co., New Delhi. He is an alumnus of Jamia Millia Islamia, where he completed his LL.B. Honours degree. Enlisted in the Forbes Legal Power list, 2020-2021 as one of the top individual lawyers. Youngest BW (Business World) Legal 40 under 40, 2020. Featured in Fortune 500 (India) magazine (Special Issue, 2017-2018) for authoring the best seller book 'On the Rise' published by Universal Law Publishing (an imprint of Lexis Nexis). Recognized as an arbitration Expert by SCCOnline. Qualified to the conference round of Judge Advocate General, Indian Army.

Skilled in international and domestic arbitrations, MSME disputes, writs, commercial, employment, insolvency, and bankruptcy laws. Represented some of the biggest global players in various disputes including construction, supply, joint venture, oil & gas, infrastructure, and renewable energy space. Also, represented leading domestic players in high-stake project disputes involving issues relating to defective works, breach of contract, loss of profits, liquidated damages, prolongation, escalation, delay, indemnities, and illegal termination of the contract.

He has handled arbitrations under SIAC (Singapore International Arbitration Centre) Rules, ICC (International Chamber of Commerce) Rules, DIAC (Delhi International Arbitration Centre) Rules, ICA (Indian Council of Arbitration) Rules, etc.

In this interview we speak to him about:

- His journey to become a successful lawyer and arbitrator.
- Making India a domestic and international hub for arbitration.
- The new normal and online dispute resolution.
- Significance of having a good mentor.
- Important academic activities a law student should do while in law school.
- Message to the young readers and students.

* This interview is recorded though questionnaire format over email by Ms. Saloni Paliwal, Student of HPNLU., Shimla.

Q1. First of all, Sir Congratulations on being featured in Forbes Legal Powerlist and BW Legal World's 40 under 40 list, 2020. From a young law student in JMI to having a successful career as an Arbitration Lawyer, and the recognition for the same shows your accomplishments in a rather short period of time. How would you define this journey and what has been your biggest driving force throughout it?

When I shifted from my hometown to New Delhi, I faced various issues especially because I did not have command over the English language. I pursued Science with computers in high school to become an engineer without much interest in any of the subjects; I didn't perform well in school and neither in the entrance exams. That's when my father suggested me to do law. Incidentally, I wasn't keen on pursuing law as a career as I had stage fright and I was not into reading. Reluctantly, I joined Faculty of Law, Jamia Millia Islamia at the age of 18 amidst challenging economic circumstances. During college, I worked on my weaknesses and turned them into my strength. I would participate in debates and other co-curricular activities and eventually became the Convener of my college's Literary and Debating Society.

Enthusiasm moves the world. Coming from a humble background myself, I wanted to set an example and encourage other students who are first generation lawyers and not from a prominent law college. Inspiring others by learning more and doing more has been my endeavor. In these years, I understood the value of time and worked towards my goal every single day. Every achievement motivated me to do better and set the next target. The fear of being a face in the crowd has been the biggest driving force and I have always strived to outdo myself, to grow and increase my knowledge.

Q2. Work from home and virtual courts are the 'New normal', this pandemic has brought major changes on the professional aspect even in the Legal Industry. How do you see this 'New normal' and should it be adapted even post-pandemic and how has the pandemic been a period of transition for you professionally?

Courts and tribunals all over the country have started taking effective measures for the reduction of the physical appearance of advocates, litigants, court staff, etc., while ensuring smooth dispensation of justice via virtual platforms. Though, the virtual hearings are now the only option until the pandemic is over, however, we must treat these virtual hearings as a development of law rather than thinking of them as a roadblock in accessing justice, even though, there are some issues in conducting virtual hearings. A lack of know-how about technology is one of the major hindrances in the resolution of disputes. Different time zone in virtual arbitrations is another issue faced in the conduct of proceedings. For example, if the parties are in New Delhi and the arbitrator is in New York, then they will have to come to terms with the different time zones for holding a virtual hearing. Also, judgments are being challenged on the ground that the principle of natural justice was violated, etc.

Many lawyers and arbitrators are not proficient in technology, virtual hearings were very inconvenient at times. Nevertheless, in times to come, I feel virtual hearings will be more convenient and will make arbitration in India a preferred method of dispute resolution.

I have personally tried to make the most out of the "work from home" situation. I have written more than 50 articles in the past one year. I have been invited by various organizations, nationally and internationally to deliver webinars on various topics of arbitration. These webinars are not only attended by law students but also, bureaucrats, members of government organizations like the CCI, IIBI, TRAI, PNGRB, CERC and SERC.

Q3. You have previously given credit to Advani & Co. & also cited lawyers like Abhishek Manu Singhvi and Fali. S. Nariman as your mentors and inspirations for helping you find a footing in the field of arbitration. What was their role in your life and how important is it for upcoming lawyers, to have a mentor?

There has been a divine intervention in my life that cemented my faith in this noble profession as there are some veteran legal eagles namely Justice A.K. Sikri, Dr. Abhishek Manu Singhvi, Mr. Sidharth Luthra, Mr. Fali S Nariman, Mr. J.P Sengh, Mr. Arvind Datar and Dr. Faizan Mustafa that have constantly motivated and guided a 'nobody' like me. My book, "On the Rise," would not have been possible without their support.

Abhishek Manu Singhvi and Fali. S. Nariman are pioneers in the legal sphere in many different ways. These are people who look at the law as what it should be, and not necessarily as what it is. They have been a mentor to me and helped me develop as an advocate.

Mentorship is essential. I think it is really important for students to have individuals that they can talk to about getting involved in their careers, because in law school there isn't often a direct path provided to students on how to make a mark in the field. It's important for students to be able to find people who are able to help them navigate that path. It's also important, as once you are practicing and come across tricky substantive legal issues, mentors help you learn how to deal with the difficulties. Essentially a mentor can help you with all areas of your practice.

Q4. Have you ever planned the mode of operation of Online Dispute Resolution? What will be the modus operandi according to you?

In recent times, a shift in the pattern of resolving disputes can be established as more and more ODR platforms have become operable in the country facilitating particular kinds of dispute resolution for many national and international companies. These ODR platforms have made easy the process of dispute resolution by combining the already existing process of ADR with cutting edge technology, making the process feasible and time convenient altogether.

Q5. What academic and para-academic activities do you suggest law students to undertake to be successful in the future with your experience and observation of young minds as a guest lecturer and visiting faculty in law institutions?

The harder you work, the luckier you will get. There is no substitute to hard work. Believe in yourself and focus on possibilities rather than the limitations.

I believe law students during their internships should put in two hundred percent efforts in whatever tasks assigned to them. These efforts will definitely be acknowledged and appreciated and will eventually help in securing a position in the firm. Needless to say, that smart work coupled with hard work is the ultimate combination.

These days there are so many opportunities for young aspirants to make a niche for themselves including but not limited to writing articles on important aspects of law. If a student is interested in pursuing a career in arbitration, he could actively participate in arbitration conferences, that are associated with groups like Young ICCA, ICC YAF, YSIAC etc. Attending these conferences and joining such groups help not only in gaining practical knowledge and technicalities, but also help in building connections.

Additionally, participate in the Moot Court Competitions involving your area of interest, attend conferences and events (either as a participant or volunteer), join diploma or online courses in specialized subjects, read important judgments and articles which will keep you updated.

Q6. The government has been working towards the institutionalization of Arbitration in India. What changes can be brought by the government and how they can work towards making India a hub of domestic and international arbitration?

To ensure an efficient arbitral mechanism and see it grow substantially in the near future, appointment of young lawyers as arbitrators must be encouraged.

Despite the existence of various arbitral institutions, institutional arbitration in India remains in a nascent state which is evident from the fact that almost 90% of arbitrations in India are ad hoc. The main reasons of parties being reluctant in approaching these institutions are lack of awareness about the advantages of institutional arbitration over ad hoc arbitration, outdated rules of procedures and poor infrastructure.

The government has taken steps to make India the hub of International Arbitration. However, larger issue has been missed i.e. why India is languishing for decades and has not been able to become an arbitration hub. The reason in my view is that emphasis is put only on cities like Delhi and Mumbai and that the concerns of other cities which are in need of an arbitration culture and institutions are not addressed. We must also promote arbitration culture in Kanpur, Lucknow, Ahmedabad, Kolkata, Jaipur etc. if we really want to make India a hub of arbitration.

Additionally, we must also learn from the development of the best three arbitral institutions i.e. ICC, SIAC and LCIA that have huge number of cases, growth in revenue etc. (e.g SIAC's case filings have increased by over 300% in the last ten years). Therefore, it is necessary that arbitral institutions in India adopt modern rules, make effective use of technology and provide organized structure of proceedings, excellent administrative support and good infrastructure. Additionally, ease of doing business in India also needs to be facilitated, to provide a solid base and ensure longevity. Not only will it make India the hub, but also create a dynamic arbitration culture.

Stakeholders will also have an important role to play in shaping up the future of arbitration in India. For instance, lawyers must understand that the practice of challenging every arbitral award must be discouraged and the focus should not be on getting more work from one client by filing frivolous challenges to the award, instead we must focus on making arbitration more effective which will eventually generate more work as there will be more investment.

Q7. "On the rise" gives us the perspective of the legal practitioners while facing various issues in their given field. So, is there any personal experience involved which led you to write this book or you want to give the glimpse of the real world to young legal minds which they should keep in mind before entering this infamous arena?

In the early days of my career, I realized that there is no dearth of opportunities, but it is the dearth of information that restricts the trickling down of a variety of options available to budding lawyers and hence, I felt that there was a dire need for a publication to give budding lawyers an insight of the legal profession and the challenges that follow.

When I came up with this idea, many people in fact discouraged me thereby making it one of the most challenging works of my life. It was difficult to execute the idea as it was my first book and being a first generation lawyer, I did not have any connections. However, I felt that there was no harm in taking aim, even if the target was a dream.

For young writers I would suggest them to get started as ideas take shape only after you start working on them.

Q8. The choice of arbitrators available in India has been continuously criticized. The process lacks opportunity to the experts of arbitration and that continued dominance of same judges as arbitrators after their retirement does not change their perspective from regular.

The reason why judges are preferred as arbitrators is because of their integrity and fairness. Before the amendment of 2015 to the Arbitration Act, 1996, a party used to appoint a sole arbitrator unilaterally and in some cases these arbitrators were the officers of the same company. In such cases, the independence and impartiality of these arbitrators was questionable. Thus, whenever an application for appointment of an arbitrator was filed in court, the courts were inclined in appointing retired judges as arbitrators. However, recently there has been a change in this approach as arbitration experts are also being appointed as arbitrators by parties as well as by the courts. Further, the amendment of 2015 introduced a disclosure to be given by the arbitrator before entering into reference wherein he/she must disclose his relationship with the parties, counsels or the subject matter of the dispute etc. and also disclose whether he/she can devote sufficient time to the arbitration. Also, a fixed time period was introduced for passing an award. Due to these amendments, there has been a rise in appointment of advocates and experts as arbitrators. Some of the arbitrators who are also retired judges are in demand as they do not apply the regular legal process and are very efficient and flexible. Though there may be few cases where the tribunal insists on the technicalities and strict rules of evidence and code of civil procedure as opposed to the mandate of the Act.

Q9. The Himachal Pradesh National Law University, Shimla has established this Research Centre on ADR and Professional Skills, how do you see this as an asset for changing the fate for the HPNLU students who are interested in the field of ADR?

With the growing popularity of ADR in the country, it is an excellent initiative. Research Centre on ADR will encourage students in taking up ADR as a career option and also provide them all the necessary information and resources relating to ADR. Additionally, the Centre will promote the ADR culture and benefit students extensively. Students will also get acquainted with the practical aspects of ADR as they will connect with many professionals from the field of ADR by attending various events that this Centre will organize.

Q10. Any message for students and readers who want to develop their future in the field ofADR?

Start Early

The only skills that I think are important include hard work, meticulous determination and interest in the subject. Do not wait for law school to get over and then start your journey towards a successful career in arbitration. Make sure that you grab all the opportunities that come to you during your law school. As a student you must attend courts hearings and arbitration proceedings during your internship and watch lawyers presenting arguments as that will give you an introduction to the practical aspects of the subject which cannot be learnt in the law school. Additionally, participate in the Moot Court Competitions involving complex issues on the subject, attend all the arbitration conferences and events (either as a participant or volunteer), join a diploma course or an online course on ADR and most importantly, read important judgements and articles on arbitration which will keep you updated with the recent developments in the law.

Be Flexible

There are incredible opportunities for young lawyers who are willing to make a mark in the field of arbitration however, one needs to be flexible and not restrict himself or herself to the top law firms. There is a lot of competition given the popularity of international arbitration and if you do not secure a job in a top arbitration law firm then do not get disheartened. There are many other boutique firms that are doing a lot of arbitrations and there are many lawyers who are dealing primarily into arbitrations. Though there will be a difference in the pay scale of a tier one law firm and other law firms however, what is more important in the initial years is 'what you are learning' rather than 'what you are earning'. Another, option can be working with an arbitral institution or a prominent arbitrator. All in all, if money is not the only object, then there are ample opportunities for young lawyers to get wonderful experiences in the field of arbitration.

Get Involved

It is extremely important to get involved with your peers and seniors in the arbitration fraternity. These days there are so many opportunities for young lawyers to make a niche for themselves in the arbitration fraternity including but not limited to writing articles on the subject, actively participating in arbitration conferences, being associated with groups like Young ICCA, ICC YAF, YSIAC etc. Attending these conferences and joining such groups help not only in gaining practical knowledge and technicalities, but also helps in building connections.

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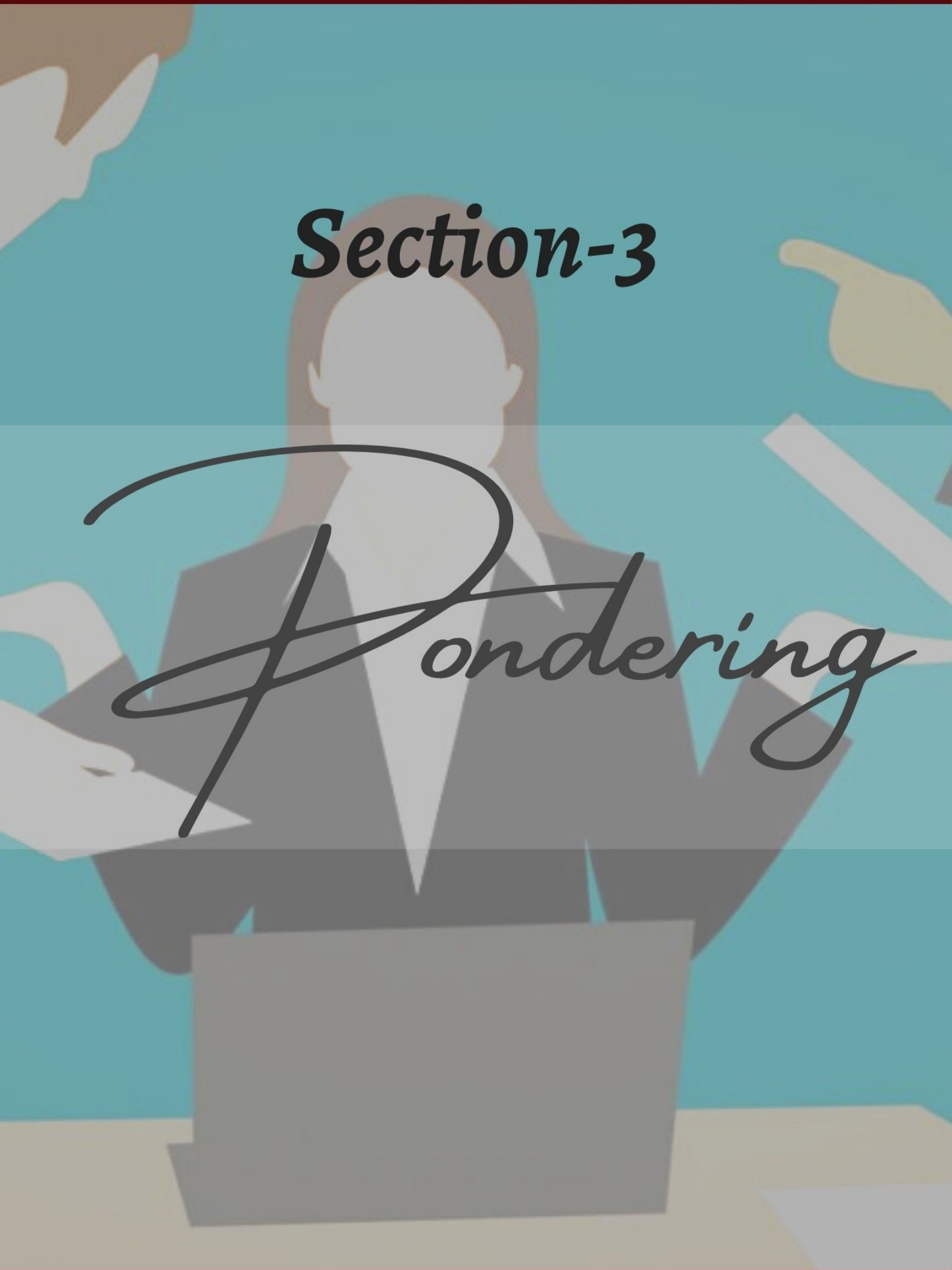

Section-3

Pondering

Research Essay

The Indian Judiciary: The Mascot Of Arbitration In India

~ Rachel Jacob Tharakan*

Once branded the "alternative" dispute resolution mechanism to litigation, arbitration has now transformed itself into an "*appropriate*" means for the resolution of all arbitrable disputes. While examining this transformation in the Indian context alongside the country's quest to become an arbitration hub, the Indian judiciary steps to the forefront as the change-maker. This essay seeks to trace the arbitration-friendly journey of change from the perspective of the Indian judiciary since the first legislative origins of arbitration in India.

I. The Beginning:

The first consolidated statutory recognition of arbitration can be traced to the Indian Arbitration Act of 1899 [1] and its subsequent codification in Section 89 and Schedule II of the Code of Civil Procedure, 1908.[2] However, due to inexpediency and contentions on technicality matters, the Arbitration Act, 1940 emerged as a repealing and comprehensive law on the subject.[3] Like its predecessors, the Act reflected the English law and dealt solely with domestic arbitrations. At the same time, its contemporary, the Arbitration (Protocol & Convention) Act, 1937, provided for the enforcement of foreign awards. [4] The 1940 Act, in continued precedence, turned out to be total dismay and thereby set a tone for the Indian judiciary's outlook towards arbitration. In ***Guru Nanak Foundation* v. *Rattan Singh,*** [5] Justice D.A. Desai puts forth this outlook as follows:

"Interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedier for the resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act, 1940. However, … an informal forum chosen by the parties for expeditious disposal of their disputes has, by the decisions of the Courts, been clothed with 'legalese' of unforeseeable complexity."

The Hon'ble Justice notes the court's interference in matters of domestic arbitration at the time. Still, with hindsight, it is determinable that such interference by the judiciary, particularly in International Arbitration, came at the cost of the development of India as an Arbitration Hub. Despite the introduction of the Arbitration and Conciliation Act in 1996 [6], following the UNCITRAL Model Law of 1985[7], for domestic and international arbitration, which even consolidated prior laws enacted to enforce foreign awards, India saw a rise in the export of International Arbitration disputes.

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This phenomenon could be attributed singularly to the judgments that increased scope of judicial interference at the stage of enforcement of arbitral awards. An excellent illustration of the same would be the Supreme Court's approach in ***Bhatia International* v. *Bulk Trading S.A. and Anr.***[8] and ***Venture Global Engineering* v. *Satyam Computer Services Ltd.*** [9], wherein it blurred and contradicted the legislature's demarcation of domestic and international arbitration to hold the procedural laws of the former [Part I of the Act] to be applicable to the latter unless excluded in an express or implied manner. Such a regressive interpretation as regards curial jurisdiction was criticised for being inherently against the objective of the Arbitration Act, i.e., the fair and efficient settlement of disputes.

II. The Golden Years of Change

The year 2012 heralded the change of the Indian judiciary in support of Arbitration in India with the Apex Court's decision in ***Bharat Aluminium and Co.* v. *Kaiser Aluminium and Co.*** [10]. The case overruled the previous decisions and went ahead to explicitly state that Part I of the Act would not be applicable to "*foreign-seated arbitrations*." Thus, the judgment brought Indian law at par with English [11] and Singapore law [12], the most sought-after jurisdictions for International Commercial Arbitration. Furthermore, the court made abundantly clear their interest and power to merely supervise and support all domestic and international arbitrations having India as its designated seat.

However, the judgment was only the beginning of the curative period for the Indian judiciary. In the prior decade, the Supreme Court had laid down several interpretations concerning the challenge of arbitral awards in terms of the 'public policy doctrine'[13] or the 'arbitrability of fraud,' which gained focus during these golden years.

The legislature took note of the changing face of the judiciary and introduced significant amendments in 2015[14] and 2019. [15] These amendments changed the arbitration landscape to make India a preferred global arbitration seat with the reduction of judicial interference regarding arbitrator's appointment, introduction of specific timelines, and establishment of a supervisory arbitration council. Courts expressed their support for these amendments, without losing sight of the true objective of arbitration, by way of the following decisions –

1. ***Board of Control for Cricket in India* v. *Kochi Cricket Private Limited & Ors.***[16] **and *Hindustan Construction Company Limited & Anr.* v. *Union of India & Ors.*** [17]

While discussing the retrospective application of the amended Section 36 [18] to pending arbitral challenge proceedings under Section 34 [19], the Apex Court upheld such application in BCCI judgment. However, the 2019 Amendment Act introduced Section 87 in apparent contravention to the decision. [20] Thus, the judiciary took a proactive step and struck down the section as "manifestly arbitrary" in violation of the intent of the 2015 Amendment Act and Article 14[21] of the Indian Constitution in the latter case.

2. Ayyasamy* v. *A. Paramasivam [22] **and *Rashid Raza* v. *Sadaf Akhtar*** [23]

Following up on the long-drawn debate on arbitrability of fraud, the Supreme Court laid down a landmark precedent in the *Ayyasamy* Case, stating that the doctrine of separability and the principle of kompetenz-kompetenz have to be balanced. Thus, it essentially held that allegations of "*serious fraud*" would not be arbitrable, whereas "*mere allegations*" of fraud were arbitrable. The recent case furthered this decision by introducing the following two tests to determine whether mere "simple allegations" of fraud would not vitiate the effect of an arbitration agreement –

* Does the allegation pertain to the underlying contract in its entirety and, most importantly, the agreement to arbitrate in order to render the same void? or

* Whether the allegations merely affect the parties' internal affairs without causing any implication in the public domain?

3. Union of India* v. *Hardy Exploration and Production (India) Inc. [24] **and *BGS SGS Soma JV* v. *NHPC Ltd.*** [25]

In its distinction between seat and venue, the former case held that an expressed opinion or determination was essential to the determination of the seat of arbitration, and mere usage of words such as "*place*" or "*venue*" would not ipso facto grant the same status. The latter case purportedly overruled such a ratio by removing any distinction between the terms (unless there is an expressed contrary intention in the agreement). It stated that the designated seat/venue constitutes the place for subsequent proceedings and confers jurisdiction exclusively to the Courts of such place.

III. 2020 – The Monumental Year of Transformation:

The year has been monumental in more ways than one, given the unprecedented circumstances of a pandemic and the necessitated shift to an online dispute resolution mode. Needless to say, the judiciary actively supported the move to a virtual setting, especially for arbitration in India, since the online version was still in its nascent stages before the pandemic. The legislature also promulgated Arbitration and Conciliation (Amendment) Ordinance, 2020, [26] to ensure that all stakeholders have an opportunity to seek unconditional stay against enforcement under Section 36 of the Act when the underlying arbitration agreement or contract or making of the arbitral award may be induced by fraud or corruption.[27] The judiciary meanwhile set forth the following landmark judgments –

1. Mankastu Impex Private Limited* v. *Airvisual Limited [28]

Revisiting its discussion on seat versus venue, the court clarified that the significance of a seat of arbitration lies in determining the applicable law and jurisdiction of judicial review.

2. Avitel Post Studioz Limited & Ors.* v. *HSBC PI Holdings (Mauritius) Limited [29]

In the continuance of its previous judgments on the arbitrability of fraud, the court formulated the following test to determine "*serious allegations of fraud*" –

* Whether it could be evidently concluded that the clause or agreement to arbitrate in itself does not exist by virtue of such fraud?

* Whether allegations have been made against the State or its instrumentalities concerning arbitrary, fraudulent, or malafide conduct, which would necessitate the jurisdiction of a writ court?

3. Vidya Drolia and Ors.* v. *Durga Trading Corporation [30]

Expanding the scope of arbitrability of disputes in India, the Apex Court held disputes relating to tenancy matters as arbitrable under the Transfer of Property Act, 1882, [31] unless a forum with exclusive jurisdiction governs such a dispute.

These decisions indicate that the debate around the efficacy of arbitration in India hinges upon the pillars of arbitrability and designation of seat. Since both ultimately rely upon judicial interference to adjudicate and resolve contradictory inferences, it was indeed necessary for the judiciary to lay down absolute standards and tests as precedents. Such binding precedents help parties in the timely resolution of their disputes and promote the benefits of the arbitration mechanism.

IV. Continuing or Renegading the Momentum?

Furthering the pro-arbitration stance undertaken by the judiciary, the legislature introduced Arbitration and Conciliation (Amendment) Act, 2021[32], on March 11, 2021, which sought to rectify concerns and conceal loopholes present in the previous amendments. Firstly, it allowed for the continuation of the principle of 'no automatic stay on enforcement of awards' as brought in by the 2015 Amendment. However, it qualified the same with a proviso, which indicates that the court may order for an unconditional stay if there is a prima facie case of fraud or corruption regarding arbitration agreement or arbitral award. [33] Secondly, following the widespread criticism of the Eighth Schedule [34], introduced by the 2019 Amendment Act, the legislature has provided for the omission of the same and substituted Section 43J [35]: Norms for accreditation of arbitrators to be determined by way of subsequent regulations.

While the amendments may have been introduced with the right intentions, they fail to fulfil their purpose. Regarding the qualification for the automatic stay of enforcement under S.36, the 1996 Act or subsequent amendments do not define fraud or corruption. This is despite the same being a ground for the challenge under S.34. The judiciary has evolved precedents, but there is no accurate threshold to justify or judge such a prima facie case, except for Indian Contract Act standards for fraud. [36] Furthermore, the Amendment Act prescribes the proviso shall be construed to have come into effect since October 23, 2015. It explains that the same shall be applicable to all cases, whether or not the arbitration or court proceedings commenced before or after the commencement of the 2015 Amendment. Such an overarching and ambiguous standard merely renegades from the pro-arbitration stance, and consequent dilemmas bar the development of arbitration in India.

Similarly, while the Eighth Schedule's omission is commendable, as it genuinely hindered the autonomous appointment of arbitrators by parties, the substituted section continues to have no real impact. This is because the Arbitration Council of India, responsible for introducing and implementing the regulations referred to in S.43J, is yet to come into existence. Therefore, qualifications, experience, and norms required for accreditation of arbitrators continue to remain a mystery for the layman and legal professionals. When India is positioning itself to be an arbitration hub, such ambiguity could deter participants from selecting the jurisdiction as a preferred seat.

Thus, it is safe to presume that the Amendment Act of 2021 would significantly impact the arbitration practice in India, from the appointment of arbitrators to the challenge and enforcement of arbitral awards. The principles evolved by the amended sections do purport a pro-arbitration stance prima facie. Hence, the impact should ideally be towards promoting commercial arbitration as an effective mechanism amongst Indian corporations alongside the designation of India as an efficient arbitral forum. With proper guidance from the judiciary, the amendment could ensure that unfettered arbitration is practiced and enforced in India.

V. The Conclusion:

Over the years, the judiciary has understood the need for a robust arbitration framework in the legislative and enforcement sphere in the nation. Therein, it has actively contributed to the same via its decisions, without overstepping into interference, in an advisory and supervisory capacity. The recent growth in arbitration can thus, be definitively attributed to the support of the Indian judiciary. With the pandemic-led shift towards a preference for virtual arbitration as a mode of dispute settlement and the deviations brought in by implementing the 2021 Amendment, it will be interesting to see the Courts exude their support under this new phenomenon to the Indian Arbitration regime.

Such support should ideally be directed towards defining the contours of the amended provisions to avoid a backtrack in the pro-arbitration stance. The same could be achieved by clarifying the threshold for fraud and corruption under the Act, constraining the retrospective application of the amendment to arbitral proceedings that commenced after the prescribed date, and directing the immediate establishment of the Arbitration Council of India. These suggested measures would remove the ambiguities present in the law and thereby, strengthen the arbitration regime in India. Furthermore, it would provide parties with a fair and equal opportunity to identify applicable law or standards and ensure compliance with the same. Finally, to truly impact, it is of utmost significance that the judiciary and legislature remain in alignment with each other about a mutual yet global understanding of pro-arbitration stance.

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Research Essay

Effect of Arbitration (Amendment) Act, 2021 on the Automatic Stay of Arbitral Awards

~ Nabira Farman*

I. Introduction

The Indian government has often adopted necessary changes in the pursuit of making India an arbitration hub. Indian Arbitration law is in consonance with the UNICITRAL Model Law for International Commercial Arbitration. With the passage of time, the Arbitration and Conciliation Act, 1996 [hereinafter the "Arbitration Act"] has gone through several amendments. The issue of enforcing the awards has always been in the limelight. Parties aggrieved by the arbitral award, pertaining to any of the grounds enumerated under Section 34 of the Arbitration Act, can challenge the award and have a chance to get it annulled by a court of law having jurisdiction to do the same. However, a stay granted automatically preventing the enforcement of the award as soon as an application challenging it has been filed, contravenes the very purpose behind arbitration since its objective is to act as a speedy method of dispute resolution. In this article, we shall discuss in detail how amendments in the Indian arbitration regime have brought changes to the concept of the automatic stay of arbitral awards.

II. A Brief History of Contemplation of 'Automatic Stay'

Arbitration and Conciliation Act, 1996

Earlier according to the principal Arbitration Act, an arbitral award was automatically stayed immediately after an application challenging the impugned award had been made. In other words, an award could be prevented from enforcement upon the mere filing of a petition under Section 34 of the Arbitration Act as enforcement of the award under Section 36 was not possible without the disposal of Section 34 Petition.

The Law Commission of India Report No. 246

The law commission showed concerns over the delay of the arbitral process and recommended various amendments in its report. It, therefore, suggested amending Section 36 to do away with automatic stays immediately when an award is challenged.[1] The arbitral award could not be enforced until the court passed a decree for reviewing the impugned award and it suffered an unnecessary stay till then. Even though, the decree resulted in dismissing the challenge petition and upheld the award, the excessive delay defeated the purpose of arbitration. Therefore, the legislature should do away with the suspension of the award upon merely being challenged by the losing party.

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The winning party, having the award in its favour must be able to reap the benefits of the award regardless of it being challenged in court by the other party. The Commission also recommended adding Section 34(5) and 48(4) which requires that an application under the aforementioned sections shall be disposed of within a time span of one year from the date of notice being served and as expeditiously as possible.

Arbitration and Conciliation (Amendment) Act, 2015

Above position was changed in the 2015 Amendment which specified that the automatic stay of awards must be discontinued and the Courts had the discretionary power to impose a conditional stay on the award upon hearing the grievances of the party challenging the award. However, the Act failed to clarify whether this amendment would be applicable to awards challenged after the date of enactment, i.e., 23rd October 2015 of the said Act or even on those challenged before the date of its enactment.

◊ ***BCCI* v. *Kochi Cricket Pvt. Ltd.*** [2]

The Apex Court in this case, interpreted Section 26 of the 2015 Amendment which had left a grey area regarding the scope of applicability of the Amendment Act, 2015. Various High Courts have interpreted it in divergent ways. The dilemma was whether the Act must be applied prospectively or retrospectively to the arbitral proceedings that were initiated before its onset and subsequently in court proceedings related to those arbitral processes. As a consequence, confusion arose whether the amended Section 36 of the Arbitration Act is applicable on enforcement proceedings when the award has been challenged via a Section 34 petition. The court concluded that it should apply after the Amendment Act, 2015 was brought into force. However, the court held it to be applicable retrospectively with respect to the enforcement of awards. The court gave the reasoning that the right to automatic stay was not vested under Section 36 and a separate application must be filed for the same for the court to consider. This decision was made after duly deliberating on the recommendations of the Law Commission's 246th Report which said that automatic stay on the implementation of the arbitral award defeated the purpose of the system of alternate dispute resolution of which arbitration is a form.

Arbitration and Conciliation (Amendment) Act of 2019

This Act came into being on 9th August 2019 after receiving the assent of the president. It omitted Section 26 to remove the confusion, which was more or less already settled in *BCCI* v. *Kohli* (Supra). It also introduced a new provision to put an end to the discussion. Section 87 was inserted which provided that unless the parties agreed otherwise, the 2015 Amendment would be applicable prospectively in all cases, i.e., the arbitrations commencing after the

enactment of the Act as well as the arbitral awards challenged after the enactment of the Act. Thus, the execution of awards challenged before the Act was yet again taken back to stay automatically. The Act had subsequently rendered the judgement in Kohli ineffective.

◊ ***Hindustan Construction Company Limited and Others v. Union of India*** [3]

Nevertheless, a matter came before the Hon'ble Supreme Court where the petitioners (Hindustan Construction Company) pleaded before the court that despite winning several awards in their favour against the Respondents (the Union of India), they are being dragged in-to insolvency. They argued that the Government of India and some public companies owned by the government owed it over INR 6000 crores, but they were unable to recover the amount of the award granted in their favour, due to the provision of the automatic stay. In this case, the Court struck down Section 87 on the grounds of unconstitutionality and arbitrariness. It thereby revived Section 26 of the 2015 Act. The Court reasoned that it was detrimental to the cause of justice to render the creditor in whose favour the award has been passed in distress. The respondent company in spite of having the favourable award could not enjoy the fruits of the same since the amount to be compensated was not at all received. Adjudication of the challenge of an award is a cumbersome judicial process which approximately takes six years on average. It resultantly leads to an automatic stay whose wrath is suffered by the award holder. The delay caused in this way defeats the very objective of the arbitration. Thus, the Court restored the position laid in *BCCI* v. *Kochi* (Supra).

III. Arbitration and Conciliation (Amendment) Act, 2021

On 4th November 2020, the Government of India brought another amendment through an ordinance promulgated by the President. This ordinance was given the shape of enactment in April 2021.[4] This Amendment Act has brought the debate of automatic stay once again in the picture. It adds another proviso to Section 36(3) of the Arbitration Act. It aims to form a mechanism for putting an automatic stay on the arbitral awards while they are facing challenge under Section 34. This proviso is applicable to cases where the arbitration agreement or the arbitration clause added to the contractual agreement which sets the arbitral process in motion, is itself induced by fraud or corruption. Moreover, the proviso can also be invoked to stay the arbitral award if it is found influenced by the vice of fraud or corruption.

An award induced by fraud or corruption violates India's public policy. Arbitrability of fraud has been taken seriously by the legislature and the amendment furthers the stance of the Supreme Court in such matters. The award holder cannot benefit from an agreement or award that is cloaked in fraud or corruption.

◊ ***Avitel Post Studioz Ltd. & Ors. v. HSBC PI Holdings (Mauritius) Ltd.*** [5]

The Apex court revisited the essential tests laid down in *Rashid Raza* v. *Sadaf Akhtar* [6] and decided whether parties can refer a matter to arbitration where either of the parties alleges the presence of fraud in the agreement to arbitrate. The tests are as below:

- Whether the fraud plea permeates the contract in its entirety and, above all, the arbitration agreement, making it unlawful? Or
- Whether the accusations of fraud have any public domain implications apart from affecting the internal affairs of the parties?

The Bench concluded that it is necessary that the allegations of fraud are serious and should arise when the abovementioned tests were satisfied. In civil disputes, issues involving fraud or misrepresentation are decided under Section 17 of the Indian Contract Act, 1872. However, it does not impede a reference to arbitration even if a party initiates criminal proceedings against the other for the same. Although it puts into question the performance of the arbitration agreement, an allegation of fraud does not render the dispute non-arbitrable.[7]

◊ ***Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties*** [8]

Following the judgment laid down in *Avitel* (Supra), the court held that if the accusation of fraud lies within the ambit of Section 17 of the Indian Contract Act, 1872, the conflict shall still be able to go for arbitration.

◊ ***Venture Global Engg. LLC. v. Tech Mahindra Ltd.*** [9]

The Supreme Court laid concerns on the principle of arbitrability of fraud in this case where the impact of fraud was considered if the award is enforced. The constituted bench comprised of two judges, namely, Justice J Chelameswar and Justice AM Sapre, and both of them had different opinions. While the former opined that disclosure of new facts to form the basis of fraud was essential since the non-disclosure or suppression of material facts can amount to fraud, the latter laid down that the arbitral process as a whole, stands vitiated and would be declared as *void ab initio* if the allegations of fraud are proven. He argued that such an act breached the public policy standards enshrined in Section 34(b)(ii) of the Arbitration Act. [10]

IV. Criticism of the recent Amendment Act, 2021

The Amendment Act, 2021 although having an objective towards public welfare, has been criticised on various grounds. Let us now briefly discuss the same under the following subheads:

Prima facie fraud must be proved and such burden lies on the party alleging fraud

The proviso added to Section 36(3) does not come into play easily by a mere allegation of fraud. The court needs to be satisfied that there is ample amount of evidence that *prima facie* shows

that the above conditions are met. In the case of *Associate Builders* v. *DDA*[11], the Supreme Court opined that an arbitral award can only be challenged based on grounds laid down in Section 34(2) of the Act and not otherwise. The Court further said that the judiciary will not interfere with the arbitral process by reassessing or reappreciating the evidence and replace the learned arbitrator's decision with its own. To establish that there is *prima facie*, some fraudulent activity involved in the making of the arbitration agreement, the court might have to go beyond the arbitral award and dwell on the merits of the case. By examining evidence for the stay on proceedings, the court would be somewhat contradicting its own position decided in the above case which has since acted as a precedent in many cases thereafter.[12]

Imposition of Unconditional Stay automatically

Earlier, as per Section 36 of the Act, an award still stands enforceable even if it is challenged in the court under Section 34, albeit the court may stay the award applying some conditions as it may deem fit according to the case at hand. Therefore, the court is at liberty to stay any proceeding to a particular award without imposing any conditions. The court can simply exercise its discretion in severe matters of fraud or corruption involved in the arbitral award. Thus, there was no need of amending the legislation in this regard in the first place.[13]

Sufficient provisions already existed

Section 34(2)(a)(ii) of the Act provides a ground for challenging an award for being affected by the whims of fraud. Interpretation of this section invalidates the agreement itself for it being against the law in force in India. As per Section 17 of the Indian Contract Act, 1872[14], if a party uses any deceitful means to induce the other party to form the contract, such contracts are voidable at the hand of the aggrieved party under Section 19 of the Indian Contract Act,1872 for lack of free consent.[15] The latter can rescue itself from performing any of the obligations of the contract and file a suit against the fraudulent party for any compensation it claims. Enforcement of such agreements is also prevented by the provision laid in Section 18 of the Specific Relief Act, 1963.[16] Therefore, we can conclude that an agreement induced by fraud may even be challenged in a court or even in the arbitral tribunal for being non-arbitrable. According to the judicial decision in *Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties & Ors.,*[17] the Supreme Court held that it is not necessary that a dispute will be rendered non-arbitrable in the rise of the contract being derived as a consequence of fraud defined in Section 17 of the Contract Act, 1872. The agreement may contain certain civil wrongs or criminal elements, but it cannot ipso facto conclude that the subject matter of the dispute lacks arbitrability.

The award can also be challenged and set aside by the court by filing an application under Section 34(2)(b) for contradicting the public policy of India. As explained further in the provision, an award can be said to be in contradiction of the public policy when it is induced or affected by fraud or corruption or when it violated the principles of confidentiality (Section 75) or admissibility of evidence (Section 81) of the Arbitration Act.

Delay in dispute redressal

Since the amendment applies retrospectively to all such awards that even commenced before October 23, 2015, a myriad of applications may be invited that would be languishing inside courts for disposal.[18] This will defeat the purpose of the Arbitration and Conciliation (Amendment) Act, 2015 which was brought about having the objective to settle matters via arbitration lessening the load on courts and speed up the contract enforcement.[19] Adjudication by way of arbitration primarily aims to allow corporates to settle their disputes in a time bound manner. The arbitration process should resolve their monetary claims by awarding a just compensation to the aggrieved party within a determined short period. If excessive delay is caused even in the arbitral dispute resolution mechanism, it will hamper the ease of doing business in the country.[20]

V. Conclusion

The above discussed legislation is an advantage for stakeholders who have suffered from the scourge of fraud or corruption. The law on this subject is clear that until the challenge of such an arbitral award is addressed, it remains stayed unconditionally. The sole condition for grant of such stay is to show the alleged fraud or wrongdoing. The parties can prove the allegations based on the tests proposed in *Rashid Raza* (Supra) and *Avitel* (Supra). Whilst the latest amending act has garnered criticism because it can delay the execution of award, it is quite germane to understand that the execution of awards that are inherently coloured in error is not beneficial but harmful. The legislation is directed to uproot the evil of fraud in commercial relations. It is a harsh step that can hamper the process of enforcement but at the same time, it will help deter parties who act fraudulently as enforcing the award will become too cumbersome for them. The author personally views it as welcoming legislation and directed towards bringing positive effects in the arbitration regime.

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Case Comment

N.N.Global Mercantile Private Limited v. Indo Unique Flame Ltd.

(2021 SCC OnLine SC 13)

Enforceability of an Unstamped Arbitration Agreement- Pro Arbitration Stance

~ Stuti Agarwal*

I. Introduction

The Supreme Court delivered a visionary judgement on January 11, 2021, named *N.N.Global Mercantile Private Limited* v. *Indo Unique Flame Ltd.* [1] This path-breaking case has re-opened a settled position in law – whether an unstamped arbitration agreement is valid and enforceable in the eyes of law. Due to contradicting judgements, it had to be referred to a five-judge Constitutional bench to shut down the whole debate finally. [2]

This article follows a conventional approach wherein, after stating the facts, issues, judgment, and observations, the author has analysed the decision based on legal principles and case laws.

II. Brief Facts of the Case

Indo Unique Flame Limited (Indo Unique), the primary respondent, was granted the work of washing/beneficiation of coal for Karnataka Power Corporation Limited (KPCL). Pursuant to the order, Indo Unique provided a bank guarantee of Rs 29.29 crore to KPCL. Further, Indo Unique (respondent) and Global Mercantile Private Limited (appellants) entered into a subcontract regarding transporting, handling, sliding, etc. of coal. The subcontract contained a clause regarding the furnishing of a bank guarantee and an arbitration clause. In accordance with the same, the appellants furnished the bank guarantee to the State Bank of India (the banker of the respondent).

Disputes arose between Indo Unique and KPCL, and as a result, KPCL invoked the bank guarantee furnished by Indo Unique. Subsequently, Indo Unique invoked the bank guarantee, provided by Global Mercantile.

A commercial suit was filed by Global Mercantile against Indo Unique, before the Commercial Court, Nagpur, on the ground of wrongful invocation of bank guarantee. The main contention put forth by Global Mercantile was that no work was allotted under the work order, and hence, Indo Unique did not suffer any losses, thus invocation of the bank guarantee was fraudulent in nature and was not in accordance with the work order. Thereafter, Indo Unique filed an application before the court under Section 8 [3] of the Arbitration and Conciliation Act, 1996,

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but the same was duly rejected by the court, on the ground that bank guarantee, did not fall within the ambit of the arbitration clause and the same is amidst the bankers, for the due performance of the contract. Indo Unique challenged this decision before the Bombay High Court by way of filing a writ petition.

The High Court set aside the ruling of the Commercial Court and ruled in favour of Indo Unique. It held that –

i. It is an undisputed fact that there exists an arbitration agreement, and hence, an application under Section 8 of the Arbitration and Conciliation Act, 1996 was maintainable.
ii. The dispute at hand was capable of being solved by means of arbitration, therefore, the suit filed before the commercial court was not maintainable.
iii. An objection was raised regarding the unenforceability of the arbitration agreement as the same of not duly stamped. This objection could be raised under Section 11 of Arbitration Act or before the arbitral tribunal at an appropriate stage.

The decision of the High Court was further challenged by Global Mercantile before the Honourable Supreme Court.

III. Issue before the Court

Whether an arbitration agreement would be considered valid and would be acted upon, even if the said agreement is not stamped and considered as unenforceable under the Stamp Act.

IV. Judgement and Observations of the Court

After hearing the Petitioner and Respondent at length, the court held that an arbitration agreement shall not be unenforceable, non-existent and invalid, even if there was inadmissibility of evidence in the substantive contract or on grounds of non-payment of the Stamp Duty, primarily due to the following reasons-

Firstly, the arbitration agreement/clause is considered to be separate from the entire contract. The doctrine of separability has been stated in Section 16 [4] of the Arbitration and Conciliation Act, 1996 (based on Article 16 of the UNCITRAL Model Law of International Commercial Arbitration). Separability is an integral part of the autonomy of the parties in the arbitration agreement. The Supreme Court in the Global Mercantile judgement has made an attempt to give effect to the intention of the legislature to make arbitration, as a dispute resolution mechanism, a less technical affair. Therefore, it has been held that an arbitration agreement need not be necessarily stamped to be enforceable. Non- stamping of the same does not render the agreement to be invalid. However, it has been clarified that, under the underlying contract, the adjudication of rights and obligations cannot proceed unless due compliance with the provisions of the stamp duty laws has been made.

Secondly, emphasis has been laid on the minimum judicial interference in matters relating to the arbitration. On reading Section 5 [5], and Section 16 [6] jointly, along with the insertion of Section 11 (6A) [7] (this amendment requires the courts to identify the existence and not the validity of the underlying arbitration agreement, before referring the matter to arbitration), the court, while examining the question- whether the underlying contract is voidable on account of the non – payment of stamp duty, held that the same could be resolved by the arbitration referring to the principle of kompetenz-kompetenz. The court, in this case, was certain about the existence of the arbitration agreement and thus referred the matter to arbitration, in spite of the presence of apparent defects.

Thirdly, the Supreme Court took into consideration its two previous judgements – *SMS Tea Estates* v. *M/S Chanmari Tea Co. (SMS Tea Estates)* [8] and *Garware Wall Ropes* v. *Coastal Marine Constructions and Engineering Limited (Garware Wall Ropes)* [9]. The court overruled SMS Tea Estates primarily for two reasons – (1) it prefaced the insertion of Section 11(6A) [10] and further retrenched court interference. (2) It erroneously did not extend separability to retrieve the arbitration agreement from an unregistered contract. 'Garware Wall Ropes Case' took direct inspiration from SMS Tea Estates case and held that an underlying agreement cannot be upheld unless the requisite stamp duty has been paid. The court elaborated that the Garware Wall Ropes case did not reflect the correct position of law as it failed to bifurcate the arbitration clause in an arbitration agreement and grant it an independent existence. The Garware case was further affirmed by the three-judge bench of the court in the *Vidya Drolia* v. *Durga Trading Corporation* [11], thus the present case was referred to the Constitutional Bench of five judges as the three judge benches had taken contrasting views.

Lastly, The Maharashtra Stamp Act (the State Legislation, which is equivalent to the Indian Stamp Act), does not cover within its ambit, the requirement of the payment of the stamp duty with regards to the arbitration agreement. Hence, it does not hinder the enforcement of an independent arbitration agreement.

Additionally, the Supreme Court laid down guidelines regarding the manner in which the courts should deal with objections pertaining to non-stamping or insufficient stamping –

i. The arbitral tribunal shall impound the documents and direct the parties to pay the requisite stamp duty along with any penalty, towards the satisfaction of the creditors.

ii. Under Section 8 of the Arbitration & Conciliation Act, 1996[12] (reference to the arbitrators), the court shall not impound the documents and will refer the matter to arbitration. However, the court shall direct the parties to stamp the document before the arbitral tribunal to adjudicate upon the matter.

iii. Under Section 9 (interim relief) [13], the court shall grant the said interim relief for the purpose to safeguard the subject matter of arbitration. However, the court shall impound the documents and further direct the parties to pay the requisite stamp duty.

iv. Under Section 11 (the appointment of the arbitrator) [14], the court shall constitute the arbitral tribunal, but further direct the parties to stamp the documents before the arbitral tribunal commences to adjudicate upon the said matter.

V. Analysis

The Supreme Court in this case, has placed heavy reliance on the twin principles of – 'separability' and 'kompetenz- kompetenz' as it connotes the autonomy of the arbitration agreement. The Doctrine of separability states that, even if the underlying substantive commercial contract is invalid, terminated or unenforceable, the validity of the arbitration agreement would remain unaffected, unless the arbitration agreement is itself impeached on the grounds that it is void ab initio. It is a settled principle in the jurisprudence of the arbitration that the arbitration agreement has an independent existence from the rest of the substantive agreement in which it is encapsulated. On the other hand, the doctrine of kompetenz-kompetenz states that the arbitral tribunal has the capability to rule on its own jurisdiction, which includes objections regarding the validity, scope and existence of the arbitration agreement in the first occurrence. However, at later stages of proceedings, it can be subjected to judicial scrutiny. According, to the Arbitration Act, a challenge before the court of law is only maintainable after the final award has been declared under Section 16(6) [15] of the Act. The doctrine of kompetenz-kompetenz has been primarily evolved to curb the intervention of the judiciary at a pre-reference stage and reduce unmeritorious objections and challenges which are raised on the grounds of the jurisdiction of the arbitral tribunal.

The principles of autonomy as well as separability are distinct in nature, but are however, inter- related and play an integral role in promoting the autonomy of the process of arbitration.

In the case of Heyman vs. Darwin Ltd, the House of Lords held that English law is in the process of evolving to recognize the separate existence of the arbitration which can survive the termination of the main contract. Lord Wright opined that-

"An arbitration agreement is collateral to the substantial stipulations of the contract. It is merely procedural and ancillary, it is a mode of settling disputes, though the agreement to do so itself subject to discretion of the court. [16]"

The principle of separability has been affirmed in the case of *Bremer Vulkan Schiffbau and Maschinefabrik* v. *South India Shipping Corporation*, wherein the case of Heyman was cited as an authority and Lord Diplock stated that –

"The arbitration clause constitutes a self-contained contract collateral or ancillary to the ship building agreement itself." [17]

The law in U.K. as of now is that, if the courts receive a plea wherein the parties are to be referred to arbitration, and the court is certain about the existence of the arbitration agreement then it has to mandatorily refer the said parties to arbitration, irrespective of the objections being raised regarding the validity of the substantive contract, where the arbitration clause has been placed. The court shall not take into consideration the objections pertaining to the jurisdiction of the arbitral tribunal, until the final award has been duly passed.

In case of *A. Ayyasamy* v. *Parmasivam & Ors*, Dr D.Y Chandrachud, J opined that – "*The Arbitration and Conciliation Act 1996, should in my view be interpreted so as to bring in line the principles underlying its interpretation in a manner that is consistent with the prevailing approaches in the common law world. Jurisprudence must evolve towards strengthening the institutional efficacy of arbitration. Deference to a forum chosen by the parties as a complete remedy for resolving all their claims is but a part of their evolution. Minimizing the intervention of the court is again a recognition of the same principle."* [18]

It is pertinent to mention that, the Supreme Court has overturned the case of *SMS Tea Estates*, which duly recognized the separate nature of the arbitration agreement but held that the agreement, could not be acted upon as it was unstamped and thus was unenforceable. The case of Garware Wall Ropes was similar to that of SMS Tea Estates, the contention of the respondent in this case was that, the provisions of the Stamp Act did not affect the validity of the arbitration agreement due to the doctrine of separability. The court was unconvinced and stated that the case of *SMS Tea Estates* [19] had survived the insertion of Section 11 (6A) to the Arbitration Act [20]; and further elaborated that the provisions of the Stamp Act are applicable to the whole deed or document, which encompasses the arbitration agreement as well. It concluded by stating that "*it is not possible to bifurcate the arbitration clause contained in an agreement or conveyance so as to give it an independent existence."* The court also mentioned that the joint reading of the Section 7(2) of the Arbitration Act [21] and Section 2(h) of the Indian Contract Act, 1872 [22] suggests that an arbitration clause/agreement is a contract and thus as per Indian Stamp Act, any unstamped contract is unenforceable and invalid.

Contrary to the above stated judgements, the court in the case of N.N. Global Mercantile, extended separability from the Maharashtra Stamp Act. While overruling the case of SMS Tea Estates, the court observed that "*separability of the arbitration clause on the registration of the substantive contract, ought to have been followed even respect to Stamp Act*." [23]

This is a welcome judgement, which places India at par with other western countries. It is a step forward in making India a hub for arbitration in the near future. The Supreme Court has

duly recognized that a mere technicality of the non- payment of stamp duty cannot render an arbitration agreement invalid. The stamp duty forms an integral part of the revenue of the states, but the same cannot antecede the validity of the enforceability of the entire arbitration agreement.

VI. Conclusion

It had become a trend among the parties to raise objections at the pre-reference stage regarding the non-stamping of the arbitration agreement, causing an undue delay in the process. Separability acts as a shield from the technical defects of the arbitration agreement from the purpose of its enforceability.[24] There is no real reason to render the arbitration agreement invalid, when the States, in reality, are not losing out on any actual revenue. The parties in question will have to mandatorily comply with the provisions of the Stamp Act while adjudication in order to rely on the substantive contract to decide the disputes in arbitration.

This decision is definitely applaud worthy, irrespective of the decision of the constitutional bench as it is step in progress to make India, pro- arbitration jurisdiction.

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Section-4

Up-&-Coming

CALL FOR PAPERS BY GUJARAT NATIONAL LAW UNIVERSITY SRDC ADR MAGAZINE [July 15, 2021]

Gujarat National Law University SRDC ADR Magazine is inviting submissions for Volume II, Issue II. Contributions for the magazine are welcome from all academicians, practitioners and law students. ADR Magazine accepts submissions on a rolling basis, subject to the preference for publication in the upcoming issue granted for those submissions made before the prescribed date, i.e., 15th July, 2021. The magazine permits submissions in the nature of Articles, Case Comments, Legislative Comments and Book Reviews falling within the scope of Alternative Dispute Resolution. **More about the event.**

NYAYSHASTRAM'S RATAN K SINGH NATIONAL NEGOTIATION COMPETITION, 2021 [July 22, 2021]

The competition simulates legal negotiations in which law students, acting as advocates/ counsels as well as clients shall negotiate a series of legal problems. All of the simulations deal with the same general topic, but the negotiation situation varies with each round and level of the competition. The problems for the competition may range from Consumer Law, Insurance Law, Intellectual Property Law, Commercial Law, and Construction Law. Any student currently in three or five year Law course from a BCI recognised University can participate. Last date for the registration is 22nd July, 2021. **More about the event.**

CALL FOR PAPERS BY INDIAN ARBITRATION LAW REVIEW BY NATIONAL LAW INSTITUTE UNIVERSITY, BHOPAL [August 31, 2021]

The Indian Arbitration Law Review is an annual double-blind peer-reviewed journal of the National Law Institute University, Bhopa, supported by L&L Partners Law Offices. Submissions for scholarly, original and unpublished written works from people across the legal profession students, academicians and practitioners – are invited, to be published in Volume 4 of the Journal. IALR accepts manuscripts on a rolling basis. Manuscripts received after the submission deadline shall be considered for publication in Volume 5. **More about the event.**

THINKING INTERNATIONALLY ABOUT IP AND ADR: WHAT EVERY LAWYER AND CORPORATE COUNSEL SHOULD KNOW BY IC JOHN MARSHALL LAW SCHOOL [August 19, 2021]

The two hour Continuing legal education (CLE) program, featuring experienced speakers from Government, International organization and industry will offer an honest and practical discussion of ADR including patents and Trademark. Event shall be held virtually and registration is free of cost. **More about the event.**

Section-5

HPNLUites: The Achievers


The team comprising of Shrey Sharma and Ayushi Soni from 4th Semester has emerged as '1st *Runner-up'* in Lei Ipsum First National Arbitration Moot organised by Narsee Monjee Institute of Management Studies. They also received a cash award worth Rs. 5000/-.



A team comprising of Subham Saurabh from 8th Semester, Tejaswi Shukla and Shubham Mahajan from 6th Semester has participated in the First National Mediation Competition, 2020 organized by KLE College of Law, Mumbai wherein Subham has been awarded *'Best Counsel Award'*.

Abhyudaya Raj Mishra from 4th semester has participated in National client counseling organized by Asian law college, Noida wherein he has emerged as 'Best counsel' in the competition.

Ritik Jinata from 4th Semester has participated in National Client Counseling Competition at University Institute of Legal Studies, Himachal Pradesh University, Shimla wherein he has emerged as '*1st Runner up*'.


The team comprising of Shaurya Dutt and Khushbu Sood from 6th Semester has emerged as '*Quarter Finalist*' in First Jagran Lake University - APCAM International Mediation Tournament, 2021.

The team also participated in Tamil Nadu National Law University Med-Arb Competition, 2021 where in they have emerged as '*Best 8th team*'.

Manaswini Dube from 4th Semester has been adjudged as the '*Best Speaker*' at the International Law Fest - Lex Bonanza Chapter IX. She was also awarded as the '*First runner-up'* in the Debate Competition organized by Indian Institute of Technology, Delhi in cultural fest, Rendevous 2021.



The team comprising of Ishaan Singh Jain, Ishu Dayal Srivastava and Ayush Singh from 4th Semester has been declared as *winner* of the National Moot Court Competition, 2021 organized by Symbiosis Law School, Nagpur along with the cash prize of Rs. 15000/-.

The team has also emerged as top ten team under Novice Category, in National Law School Asian Parliamentary Debate, 2021 by National Law School of India University, Bengaluru.

The team comprising of Arsh Chhajer, Virupaksh Virad, Tanishk Sharma from 4th semester has been adjudged as Semifinalist in 7th Smt. Kashibai Navale National Moot Court Competition, 2021 organised by Sinhgad Law College, Pune. Tanishk also bagged the 'Best researcher award along with Rs. 5000 as Cash Prize.

The team comprising of Manaswini Dube and Prachi Thakur from 4th Semester won the award for '*Best Debating Pair*' in the National Virtual Legal Literary Event, 2021 organised by SGT University.

They also won '*Special Mention for Exemplary Performance*' in the National Moot Court Competition, 2021 organized by Edunation Online and a '*Honour of Merit*' in the Lex Macula National Mediation Competition 2021.

Aadya Pandey from 4th Semester has received '*3rd Position*' in National Debate Competition organized by University School of Law and Research, Meghalaya.

She also received '*Special Mention*' *in* 14th National Inter-University Debate Competition—UDBHAV, organized by G. B. Pant University of Agriculture and Technology, Pantnagar (2021).

She has also emerged as '*Winner*' in International Paper Presentation Competition organized by Indore Institute of Law in its International Law Fest – Lex Bonanza, 2020.

About Team
Centre for ADR and Professional Skills

DIRECTOR : ***Mr. Santosh Kumar Sharma***

(Asst. Professor of Law, HPNLU, Shimla)

CO-ORDINATOR : ***Mr. Digvijay Singh Katoch***

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Bhanu Pratap (4th Year, B.A., LL.B)

Akshat Trivedi (4th Year, B.B.A., LL.B)

Saloni Paliwal (3rd Year, B.B.A., LL.B)

Ankeeta Bhatnagar (3rd Year, B.A., LL.B)

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