

11 RMLNLUJ (2019) 121

The Path Ahead by Establishment of New Delhi International Arbitration
Centre: An AnalysisTHE PATH AHEAD BY ESTABLISHMENT OF NEW DELHI INTERNATIONAL ARBITRATION
CENTRE: AN ANALYSIS

by

V. Suryanarayana Raju*

ABSTRACT

The recent Acton establishment of New Delhi International Arbitration Centre is the undoubtedly need for the development of Institutional Arbitration in India. On the other side overwhelmingly the doubt is arising that, what extent this New Delhi Arbitration Centre would be useful for gaining confidence among the parties relating to commercial disputes. Previously ICADR (International Centre for Alternative Dispute Resolution) failed to gain expectation from the business community for adoption of Alternative Dispute Resolutions specifically Institutional Arbitration. The quick dispute resolution gives confidence to any litigant and moreover it has huge impact in the Indian economy. Further it will give confidence to the investors for the investments in our country. From the 1990's the economy has grown with the rapid speed; simultaneously it requires expeditious settlement of disputes through Institutional Arbitration.

The welcome measure which has been taken up by the central government by creating New Delhi International Arbitration Centre, considered as an institute of national importance for the overall development as a hub for Arbitration. As per the government objective this institution is meant for promoting



Page: 122

and developing Institutional Arbitration in India. In India generally parties prefers Ad-hoc arbitration in comparison with the Institutional Arbitration. There are so many issues like judicial involvement, confidentiality in the field of any type of arbitration in India, etc. which create huge impact on the development of Institutional Arbitration in our country. By incorporating the New Delhi International Arbitration Centre, the centre shall have huge responsibility for gaining international investors' confidence as well as domestic parties' confidence for choosing the Institutional Arbitration as a settlement mechanism. By gaining confidence from the investor community on quick dispute settlement, there is a huge chance of increasing of investments in India. It will be helpful to the country's economy and GDP growth. In this Article the author looks forward and elaborate discussion on abovementioned points which includes the objectives and composition of NDIAC and further the path which need to be taken by NDIAC for the development of Institutional Arbitration.

Keywords: Institutional Arbitration, NDIAC New Delhi International Arbitration Centre), Ad-hoc Arbitration, Alternative Dispute Resolution, ICADR.

"Arbitration is one of the Alternative Dispute Resolution mechanisms for sorting out disputes between the parties outside the court procedure in similar like Conciliation, Mediation and Negotiation etc. Due to globalization in the recent world, the international trade has been developed drastically. By development of

trade between the nations disputes also arise with similar effect. For sorting out of these disputes, the parties are choosing arbitration as a lucrative mechanism. Out of the arbitration existed in the present form is either Domestic arbitration or International Commercial Arbitration. The finalisation of domestic arbitration and international commercial arbitration depends on the nationality of the parties.¹ In order to solve disputes by way of arbitration the parties either need to choose Ad-hoc Arbitration or Institutional Arbitration"².

Ad-hoc arbitration is the process wherein parties of the arbitration agreement decide the procedure of arbitration. But in the process relating to institutional arbitration the particular chosen institutional rules will be applicable. Apart from the rules of arbitration from starting to ending of the arbitration



Page: 123

proceedings the particular institution will monitor all the proceedings with effective manner. This process is completely different from Ad-hoc arbitration such as appointment of arbitrator, gathering of evidence, conduct of the arbitral proceedings and jurisdiction of the arbitral tribunal etc. In this type of arbitration the institution is responsible for all proceedings as per the rules adopted by the institution.

The dimensions of ad-hoc arbitration include choice of law aspects and procedure of the arbitration. In case we talk specifically on choice of law in the Ad-hoc arbitration the parties to the arbitration agreement needs to choose certain aspects of arbitration. It includes law relating procedure for arbitration, substantive law to the dispute, choice of seat. But on the other side in the institutional arbitration simply the parties need to write in their arbitration agreement of two aspects. First they have to choose a specific arbitral institution and its rules for the conduct of arbitral proceedings. Second the parties need to choose seat of arbitration. Once the arbitration dispute is submitted to the arbitral institution means the particular institution will take care till the award is made. There is no need to the parties for the appointment of the arbitrators and monitoring of the proceeding of the arbitration. One of the major advantages in the institutional arbitration is that the parties simply can submit the dispute to arbitration. Upon that the arbitral institution will take care the proceedings etc. However, on the other side in the Ad-hoc arbitration, the parties themselves need to appoint an arbitrator and all the procedures which are mentioned under the Arbitration and Conciliation Act, 1996 need to be followed. The lengthy procedure under the Act causes huge impact on finalization of arbitral awards. Perhaps in the institutional arbitration the institutional rules are well versed and have friendly ecosystem towards conduct of arbitration. Also the famous arbitral institutions keep updating their rules and maintain standards with the passage of time. Further all famous developed institutions develop their arbitration as per the standard of United Nations commission on international trade law on international commercial arbitration model law rules. Further elaborating the advantages of an institutional arbitration that it will give timely awards with specific reasoning. By this reasoning I would like to say that the institutional arbitration is advantageous as compared to Ad-hoc arbitration.

In India "the Arbitration and Conciliation Act, 1996" provides provisions relating Ad-hoc arbitration. The said Act is almost silent on the provisions of institutional arbitration. Despite the law commission in its various reports suggested for the incorporation of provisions relating to "institutional arbitration in the Arbitration and Conciliation Act, 1996"³, the legislature did not feel the need to develop the practice of law relating to institutional arbitration. On the other side countries like Hong Kong and Singapore provided attractive



provisions relating to institutional arbitration. The International Arbitration Act⁴ enacted by Singapore and Hong Kong arbitration ordinance⁵ having some supportive measures for the development of institutional arbitration. We can understand that this is one of the reasons the parties in India choosing Ad-hoc arbitration, even though we are having 35 more reputed institutions for arbitration. According to survey conducted in 2013⁶ most of the Indian parties prefers Ad-hoc arbitration in comparison with the counterpart institutional arbitration. Generally in foreign countries where the amount of dispute is more, parties prefer to go for institutional arbitration.

In India specifically there are certain reasons for failing of the institutional arbitration which includes:

- a. Lack of support from the state and central governments for the development of institutional arbitration.
- b. More judicial interruption or intervention in the procedure of arbitration.
- c. Lack of infrastructure in the Arbitral institutions.
- d. Absence of important and credible Arbitral institutions.
- e. Absence of provisions relating to institutional arbitration in the "Arbitration and Conciliation Act, 1996".
- f. Lack of Legislative support.
- g. Overwhelming confusion relating to the institutional arbitration.

The establishment of "New Delhi international arbitration centre" as institute of national importance is because of the fact that the previous "international centre for alternative dispute resolution" failed to achieve its objectives, vis-à-vis providing better facilities to the parties in arbitration, mediation, negotiation, etc. It also failed for creating awareness among the parties which prefers alternative dispute resolutions.

Due to the failure of the ICADR the government came up with the Act named as "New Delhi International Arbitration Centre". The objective of the Act includes⁷:



1. Establishment of NDIAC ("New Delhi International Arbitration Centre") for creating an independent and autonomous regime for institutional arbitration.
2. To nullify the "International Centre for Alternative Dispute Resolution" (ICADR).
3. To create a hub for institutional arbitration with national importance.
4. To decrease the Case Load of the investors and develop confidence among the investors of commercial disputes.
5. To develop credibility among investment community.
6. To improve the economical growth of India.

By analysing the objectives mentioned under the said Act, the establishment of NDIAC is clearly by the failure of ICADR in development of institutional arbitration in India. Further ICADR failed to gain the confidence from the parties from commercial disputes and investor community. The awareness among the parties is very important for development of institutional arbitration. In India the choosing of arbitral institution for arbitration proceedings are at low level in comparison with the developed

economies. By establishing NDIAC as an institution of national importance definitely it will create certain impact on the parties to the arbitration for choosing of institutional arbitration.

The incorporation of particular institute needs to work with objective of decreasing the case load in the normal courts. Particularly the more concentration needs to be given to cases relating to commercial disputes. By doing this there are advantages like economic growth and gaining confidence from the foreign investors.

Certain advantages of "New Delhi International Arbitration Centre" are as include:

1. Autonomy of the parties for choosing institutional arbitration and rules of particular institution.
2. The possibility to get expertise arbitrators from industry and various fields.
3. Saving of time and cost relating to arbitration.
4. Confidentiality of the matter relating to arbitration.
5. Choice of law relating to enforcement of the foreign arbitral award seated outside India.



The famous arbitral institutions play important role in the development of arbitration. By seeing the certain advantages for choosing of particular institutions includes:

1. Specified rules of arbitration.
2. High standard of professionalism.
3. Expertise arbitrators.
4. Checks and balancing system.
5. Administrative support.
6. Accountability of arbitrators.

Some of the world renowned arbitral institutions are as follows:

1. Swiss Chamber's arbitration Institution.
2. Singapore International Arbitration centre.
3. ADR Institute of Canada.
4. International Chamber of Commerce (ICC) International Court of Arbitration.
5. International Centre for settlement of Investment Disputes.
6. Hong Kong International Arbitration Centre.
7. Permanent Court of Arbitration.
8. American Arbitration Association and international centre for dispute resolution.
9. London court of International Arbitration.

Following are some of the important provisions of the Singapore International Arbitration Centre Rules which might be considered for its growing popularity. These include—

1. Expedited Procedure.
2. Multiple Contracts.
3. Joinder of additional parties.
4. Emergency arbitration for conservatory relief.
5. Multi party appointment of arbitrator.
6. Confidentiality.



These above said important provisions in the arbitral rules made the Singapore international arbitration centre famous for the amicable settlement of cross border disputes by way of institutional arbitration. Moreover rules at par standard with the international conventions, starting from arbitration agreement to enforcement of arbitral award. With these reasoning I would like to substantiate that the centre became global hub for arbitration. By establishing NDIAC the authorities may refer certain important aspects of the rules relating to Singapore international arbitration centre in order give best rules to the institution.

On analysing the rules of International Chamber of Commerce, International Court of Arbitration assures best quality of service to the parties of arbitration on choosing the institution. This institution rules are set as a benchmark for the international dispute resolution in matters like intellectual property rights, maritime aspects, joint venture and construction projects etc. On seeing the important provisions under the rules include:

- a. Joinder of additional parties and claims between multiple parties.
- b. Case management conference and procedural time table.
- c. Conservatory and interim measures include emergency arbitration.
- d. Specified time limits with expedited procedure.
- e. Following the all international conventions into in the overall rules of the arbitral institution.
- f. Confidentiality.

The rules are working in an effective manner in order to solving the arbitration disputes amicably and made centre as hub for international arbitration. By adopting and implementing the similar provisions in our upcoming New Delhi International Arbitration Centre there is a possibility that India would become a global hub for international arbitration.

"By seeing the Indian scenario, Institutional Arbitration is still under the pipe line to finding its roots towards growing importance in comparison with the other institutions in the world. In other developed countries the parties voluntarily preferring to the institutional arbitration. Moreover the laws and policies towards the institutional arbitration in the developed countries are attractive.

In India, the Justice Shri Krishna Committee on the Arbitration has submitted its report with overwhelming recommendations towards the development of Institutional Arbitration. "On the basis of report recently the New Delhi International Arbitration Centre bill which has been introduced in the



parliament and enacted the legislation for establishing a world class institution towards development of Institutional Arbitration in India. This is a welcome measure but again with drastic lagging, further the recent Amendment Act to the Arbitration and Conciliation Act named as Arbitration and Conciliation (Amendment Act), 2019 also which came with the objective to ranking institutions and finally towards development of Institutional Arbitration in India"⁸. Perhaps, government by

understanding the necessity and importance came up with the New Delhi International Arbitration Centre Act, 2019 and Amendment Act 2019.

On considering various provisions of the particular Act certain important provisions has incorporated. One of the important provisions is composition of the arbitration centre:

The NDIAC is going to consists of seven members including:

1. "Chairperson, who is a Judge of the Supreme Court or a High Court, or an eminent person who having a special knowledge and experience on conduct of arbitral proceedings or administration of arbitration",
2. Two eminent persons who holds knowledge and experience in field of institutional arbitration,
3. Member from ministry of finance,
4. Member from the ministry of law not below the rank of Joint Secretary,
5. "Representative from a recognised body of commerce and industry, appointed as a part-time member, on rotational basis".

By elucidating the other important provisions under "The New Delhi International Arbitration Act" includes objects and functions of the centre. The centre having the objects of the following shall be⁹:

1. To convert centre into a one of the important centre for institutional arbitration for conducting International Commercial Arbitration and Domestic arbitration.
2. For promoting advocacy programmes and conduct of research with scope of developing international arbitration and other alternative dispute resolution mechanisms.
3. To provide facilities for the parties of the arbitration and other alternative dispute resolution mechanisms.
4. To maintaining of panel of arbitrators and other specialists of both national and international level for conduct of arbitration proceedings.



Page: 129

5. In order to collaborate with the famous institutions for improvement of familiarity of the arbitral centre.
6. To provide the procedure of rules relating to arbitration and alternative dispute resolution mechanisms.
7. To set up the facilities in India and abroad for conducting the proceedings of domestic arbitration and international commercial arbitration.

Further the "New Delhi International Arbitration Centre" under the Act needs to perform certain functions¹⁰:

1. To conduct domestic and international arbitration in a professional manner.
2. Need to provide cost effective services relating to Arbitration and other alternative dispute resolutions in a time bound manner.
3. To promote the research and advocacy programmes in the field of arbitration and other ADR's.
4. To provide knowledge to the stake holders on arbitration, mediation, negotiation and Conciliation, etc.
5. To maintain the cordial relations with domestic and international institutions for

smooth function of the arbitration and for promoting alternative dispute resolution methods.

On elaborating this Act the central government prescribed to the centre for the establishing Chamber of Arbitration¹¹. The Chamber of Arbitration which contains the panel of arbitrators selected from applications received at national and international level. For deciding the pool of arbitrators in the panel, centre need to identify expertise of the "international commercial arbitration and other than international commercial arbitration". Further the centre need assess the knowledge on other alternative dispute resolution methods.

As per the requirement under this Act the "New Delhi International Arbitration Centre" may establish arbitration academy¹² with the objective of giving training to arbitrators in the field of international commercial arbitration and other areas relating to arbitration. By the same way the academy will be useful to conduct research in the area of arbitration and alternative dispute resolution methods.



Page: 130

CONCLUSION

On conclusion I would like to say the establishment of "New Delhi international arbitration centre" in place of "International Centre for Alternative Dispute Resolution" having certain important advantages like encouragement of institutional arbitration and making India into hub for international arbitration. Moreover this centre which need to function with objective like creating awareness on arbitration and other alternative dispute resolutions. However, in case of following the objectives mentioned under this Act will make dispute settlements through arbitration and other ADR's. By quick solving of dispute through these methods may attract investor communities for investments, simultaneously there is chance of economic growth and creation of employment opportunities in India.

* Assistant Professor (Law), Hidayatullah National Law University, Raipur. <vadapalli.surya@gmail.com>.

¹ The Arbitration and Conciliation Act, S. 2 (1)(f) 1996.

² Submitted to NALSAR as a Ph.D. Proposal, 2018.

³ See 246th Law Commission Report.

⁴ *Singapore International Arbitration Act*, revised Edition, 2002.

⁵ Hong Kong Arbitration Ordinance, 2011.

⁶ "Corporate Attitudes & Practices towards Arbitration in India", PricewaterhouseCoopers (2013), available at <https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towardsarbitration-in-india.pdf> (Last accessed on 13/6/2019).

⁷ The New Delhi International Arbitration Act, 2019.

⁸

⁹ The New Delhi International Arbitration Centre Act, S. 14 (2019).

¹⁰ The New Delhi International Arbitration Centre Act, S. 15 (2019).

¹¹ The New Delhi International Arbitration Centre Act, S. 28 (2019).

¹² The New Delhi International Arbitration Centre Act, S. 29 (2019).

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.