

# The Impact of Financial Regulation on Indian Arbitral Institutions and Corporate Compliance

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**Abstract:** *Arbitration is a legal process that promotes the resolution of private disputes, commonly employed for business conflicts, particularly in the context of multinational transactions. The recognition of this practice in India in the late 19th century and was subsequently extended to various parts of British India in 1908. The Arbitration and Conciliation Act 1996 was enacted in 1996 with the purpose of dealing with both domestic and international arbitration. International commercial arbitration is a substitute approach for settling conflicts between private entities that arise from business transactions across different countries. It enables parties to bypass legal proceedings in national courts. In the legal matter of Marriott International Inc. versus Ansal Hotels Limited, the party appealing the decision aimed to contest an order issued by a single judge. The appellant contended that the single petition for relief on multiple causes of action was not viable, as each contract constituted an autonomous agreement aimed at delivering services.*

**Keywords:** Arbitration, State, Dispute, Commercial, Corporate.

## 1. Introduction

Arbitration or Alternative Dispute Resolution (ADR) is a mechanism in law which encourages parties to settle their differences privately, either by mutual consensus or by the mediation of a third person.<sup>1</sup> It can be considered a substitute for the traditional litigation system, which has been prevalent in this society for over a few centuries. Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions.

Arbitration has flourished in India since the end of the nineteenth century. Arbitration in India was statutorily recognized as a form of dispute resolution for the first time when the Indian Arbitration Act 1899<sup>2</sup> was enacted. However, it was confined to the three presidency towns only, i. e. Madras, Bombay and Calcutta. It was further codified in Section 89 and Schedule II of the Code of Civil Procedure, 1908,<sup>3</sup> where arbitration provisions were extended to different regions of British India, to which the Act of 1899 was not extended.

After the Economic Liberalization, 1991,<sup>4</sup> steps were taken to attract foreign investment, which required a comfortable business environment and ease of business. Therefore, the Arbitration and Conciliation Act 1996<sup>5</sup> came into force and repealed the Act of 1940. Interestingly, the Act of 1996 was based on UNCITRAL Model Law on International

Commercial Arbitration, 1985<sup>6</sup> and covered domestic and international Arbitration.

International Commercial Arbitration is an alternative method of resolving disputes between private parties arising from commercial transactions conducted across national boundaries that allows the parties to avoid litigation in national courts. It helps resolve disputes among international parties arising from internal commercial agreements. Section 2 (1) (f) of the Arbitration and Conciliation Act defines international commercial Arbitration as disputes arising out of a legal relationship where one of the parties is a citizen, resident, or habitually residing out of India. The traders of different countries use international commercial Arbitration to settle their business conflicts.

## 2. Case Law Relating to International Commercial Arbitration:

### Marriott International Inc. vs Ansal Hotels Limited<sup>7</sup>

#### Introduction

In this, the appellant, Marriott International Inc., sought to challenge an order passed by a single judge bench on March 8, 1999, based on the Arbitration and Conciliation Act, 1996,<sup>8</sup> under section 9.

#### Facts of the case

Appellant entered into and no. of contact with respondent no.1, i. e., Ansal Hotels, on 8 March 1997. As per the contract, the appellant was appointed to operate the hotel as a Marriot chain of hotels with the support to provide certain services like sales, preopening, marketing, advisory and

<sup>1</sup> Edwards, H. T. (1985). Alternative dispute resolution: Panacea or anathema. Harv. L. Rev., 99, 668.

<sup>2</sup> The Indian Arbitration Act 1899  
[https://jkarchives.nic.in/Record\\_Holdings\\_PDF/Acc.%20No.%201149.pdf](https://jkarchives.nic.in/Record_Holdings_PDF/Acc.%20No.%201149.pdf) (Accessed on 24-03-2024)

<sup>3</sup> The Code of Civil Procedure, 1908  
<https://www.indiacode.nic.in/bitstream/123456789/2191/1/A1908-05.pdf> (Accessed on 24-03-2024)

<sup>4</sup> Banuri, T. (1991). Economic liberalization: No panacea. The Experiences of Latin America and Asia.

<sup>5</sup> Ibid p.2

<sup>6</sup> [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf) (Accessed on 24-03-2024)

<sup>7</sup> AIR 2000 Delhi 337.

<sup>8</sup> The Arbitration and Conciliation Act, 1996  
<https://www.indiacode.nic.in/bitstream/123456789/1978/3/a1996-26.pdf> (Accessed on 24-03-2024)

technical services. Later, respondent number one terminated contracts and entered into agreements with ITC Hotels Ltd.

The appellant stated that the contract termination by respondent no 1 was illegal and proposed to resolve the differences through negotiation. Nevertheless, the appellant did not receive any assurance of resolving the dispute later on, as per the arbitration agreement between the parties arbitration hearing also proceeds at the Kuala Lumpur Regional Centre for Arbitration, Malaysia.

The appellant applied section 9 of the Arbitration and Conciliation Act on that respondent raised objections -

(i) That single petition for relief on various causes of action is not maintainable as each contract in which parties enter was an independent contract with the purview of providing services, so each contract was terminated using different termination letters as each cause of action was different.

According to the arbitration agreement between the parties, arbitration proceedings took place in Kuala Lumpur, Malaysia. Hence, this application is not maintainable under section 9.

(ii) Part I of the Arbitration and Conciliation Act 1996 applies only when the place of Arbitration is in India. Further respondent argued that contracts have the nature to be terminated. They had reasons to terminate the contract, so respondents cannot be asked to do something of those contracts and appellants; hence, the appellant was not entitled to any interim relief.

The appellant having no solid prima facie case to grant the interim relief, the single judge bench dismissed the petition. The appellant in this appeal contended that Indian law of Arbitration is based on the framework of UNCITRAL model law,<sup>9</sup> which governs international commercial Arbitration there. The Arbitration and Conciliation Act applies to all cases connected with India, irrespective of the place of Arbitration.

### Summary of the Judgement:

The Court stated that while studying specific provisions of the Arbitration and Conciliation Act 1996, courts have vested jurisdiction and power to grant interim relief. With that, this power of the Court is also significant in strengthening the arbitration proceedings.<sup>10</sup>

However, the Court further stated that as per subsection (2) of section 2 of the Arbitration and Conciliation Act, this Court does not have any jurisdiction to pass an order as per section 9 of the Act that is for an interim order, inherent powers that Court have cannot be exercised as to exercise inherent powers the proceedings should be taken in Court means the Court should have jurisdiction over the proceedings.<sup>11</sup>

<sup>9</sup> Ibid

<sup>10</sup> Avgar, A. C., Lamare, J. R., Lipsky, D. B., & Gupta, A. (2013). Unions and ADR: The relationship between labor unions and workplace dispute resolution in US corporations. *Ohio St. J. on Disp. Resol.*, 28, 63.

<sup>11</sup> Phillips, F. P. (2008). Diversity in ADR: More Difficult to Accomplish than First Thought. *Disp. Resol. Mag.*, 15, 14.

The Court can exercise its inherent power under section 151 of the code of civil procedure only when the matter proceeds appropriately before the Court and when there is a lack of jurisdiction of the Court in the matter, so the Court cannot exercise its inherent jurisdiction powers.<sup>12</sup>

The Court further stated that if the interpretation sought for Section 2 (5) of the Act is accepted, Section 2 (2) provisions of the Act will become obsolete. The way by which section 2 (2) and section 2 (5) can be read coordinately is that Part I of the Act must apply to any arbitration held under an agreement between parties, under the provisions of rules and by - laws of specific associations such as associations of merchants, stock exchanges, and different chambers of commerce, as well as Arbitration under specific statutes.

Further, despite all efforts made to ensure the accuracy and correctness of the information published, White Code VIA Mediation and Arbitration Centre shall not be responsible for any errors caused due to human error or otherwise.<sup>13</sup>

### 3. Critical Comments:

- 1) The petitioners had several grievances against the respondents, such as:
  - a) the respondents have entered into agreements with ITC in total contravention of the agreements with the petitioners.
  - b) the respondents are also guilty of terminating the agreement without giving the petitioners any requisite notice of termination. According to the petitioners, the MARRIOTT Operating Agreement provides that for contract termination, a minimum of 90 days' notice is required and termination by letter dated 4.3.1999 with immediate effect with no notice period is illegal.
- 2) The respondents had also taken the following objections:
  - a) That there is an apparent embargo of Section 2 (2) of the Act, which reads as "this part shall apply where the place of arbitration is in India". According to the respondents, Section '9' of the Act is in Part '1' of the Act, and in this case, admittedly, the venue of the Arbitration is Kuala Lumpur, Malaysia, and consequently, this Court has no jurisdiction to entertain this petition.<sup>14</sup>
  - b) The other grievance is that the respondents entered into a contract with the petitioners to get expertise and opinions from professional hoteliers.
  - c) It was discovered that the petitioners were not familiar with the requirements of the hoteliers in India. They could not give the information, suggestions and advice necessary for the operation

<sup>12</sup> Lipsky, D. B., Avgar, A. C., & Lamare, J. R. (2016). The evolution of conflict management policies in US corporations: From reactive to strategic. *Reframing resolution: Innovation and change in the management of workplace conflict*, 291-313.

<sup>13</sup> McKinnon, R. I. (1993). *The order of economic liberalization: Financial control in the transition to a market economy*. JHU Press.

<sup>14</sup> Arya, G. B., & Sebastian, T. (2012). *Critical Appraisal of Patent Illegality as a Ground for Setting Aside an Arbitral Award in India*. *Bond L. Rev.*, 24, 157.

of hotels in Indian conditions. The petitioners are also ignorant of the laws of India.

- d) The respondents also complained that it is not only the quantitative inputs on the part of the petitioners that have proved unsatisfactory and inadequate. The respondents also complained that petitioner No.2 had not supplied any preliminary evaluation report of the project as required under the terms of the Termination Service Agreement. According to the respondents, the petitioners have not given an environmental impact statement.
  - e) The respondents also indicated that the petitioners are ignorant of the Indian legal requirements and the suggestions given by them are meaningless for the Indian conditions and requirements, particularly their advice and suggestions about fire safety norms, hotel rooms' bedcovers, number of kitchens, the quality of services.
- 3) I also believe that even if the learned arbitrators ultimately conclude that the respondents are guilty of the breach of contract, the petitioners can be adequately compensated in terms of money.
  - 4) The petitioners have not made a case for the grant of interim relief at this stage. Therefore, in this view of the matter, it is not necessary to decide the pleas and objections of the respondents.
  - 5) The petitioners are also not entitled to any interim relief because, in the instant case, the agreement was terminated on 13.1.1999, and this petition was filed in April 1999. Before filing this petition, the respondents have already signed a contract with other parties. Third - party rights have intervened. That party is not before the Court. There is no satisfactory explanation for this delay in filing this petition.
  - 6) According to Section 14 (1) of the Specific Relief Act, 1963, it is clear that the contract in the following categories cannot be specifically enforced. The Section 14 (1) reads as under:
    - a) a contract for the non - performance of which compensation in money is an adequate relief;
    - b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or violation of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;
    - c) a contract which is in its nature determinable;
    - d) a contract, the performance of which involves the performance of a continuous duty which the Court cannot supervise.
  - 7) Apart from 14 (1) (a) of the Specific Relief Act,<sup>15</sup> the petitioners are not entitled to any interim relief because of the embargo of Section 14 (1) (b). The agreements between the parties run into such minute and numerous details which are so dependent on the personal qualifications or volition of the parties or otherwise from its nature such that the Court cannot enforce its specific performance of its material terms. The petitioners are not entitled to any interim relief because

the contract involves the performance of a continuous duty which the Court would find challenging to supervise.<sup>16</sup>

- 8) Considering the facts and circumstances, the petitioners have not made out a strong prima facie case for the grant of interim relief. The balance of convenience is also not in favour of the petitioners. Granting any interim relief at this stage may cause irreparable injury to the respondents, whereas the petitioners can always be compensated in terms of money.

#### 4. Conclusion

In a nutshell, we can tell that the ADR is rapidly developing at national and international levels, offering more straightforward methods of resolving disputes. The increasing trend of ADR services can easily be inferred from the growth of the "arbitration clause" in most contracts. The effective utilization of ADR systems would go a long way in plugging the loophole obstructing the path of justice. This concept should be deeply ingrained in the minds of the litigants, lawyers and judges to ensure that ADR methods in dispensing justice are frequently adopted.<sup>17</sup>

The methods of alternative dispute resolution are less time - consuming and are very cost - effective. Thus, awareness needs to be created amongst the people about the utility of ADR, and simultaneous steps need to be taken to develop personnel who can use ADR methods effectively and with integrity. Using these methods, people can resolve their disputes informally without going through formal court trials.

A fast - growing economy requires a trustworthy, stable dispute - resolution procedure to attract foreign investment. Due to the massive backlog of cases pending in Indian courts, commercial players in India and abroad have strongly preferred resolving conflicts through Arbitration. Despite being one of the original members of the New York Convention, Indian Arbitration has not always followed international best practices. However, there has been a substantial shift in attitude in the last five years.

Indian arbitration legislation has been brought in line with international best practices by courts and legislators. With the courts' pro - arbitration approach and the 2015, 2019, and 2021 Amendment Acts in place, there is reason to believe these International best practices will soon be incorporated into Indian arbitration law.

International Commercial Arbitration is the most prominent of the procedures for resolving commercial disputes in international commerce. Although it is a voluntary procedure that depends on the parties' agreement, once such an agreement has been reached, neither party can withdraw from the agreement unilaterally. Arbitration performs much

<sup>15</sup> THE SPECIFIC RELIEF ACT, 1963  
[https://www.indiacode.nic.in/bitstream/123456789/1583/2/A19634\\_7.pdf](https://www.indiacode.nic.in/bitstream/123456789/1583/2/A19634_7.pdf) (Last accessed on 12-03-2024)

<sup>16</sup> Cronin-Harris, C. (1995). Mainstreaming: Systematizing corporate use of ADR. *Alb. L. Rev.*, 59, 847.

<sup>17</sup> Lipsky, D. B., & Seeber, R. L. (1998). The appropriate resolution of corporate disputes: A report on the growing use of ADR by US corporations.

the same function as litigation in the State courts, i. e. it leads to a final and binding decision in the form of an award. An arbitral award can generally be more easily enforced in a foreign country than the decision of a state court.

The 135 States that have become party to the New York Convention have committed themselves to enforcing foreign arbitral awards with limited exceptions. There is no similar worldwide convention by which States have promised to enforce the judgments of foreign State courts. In recent years, there has been a significant increase in investment arbitrations. Many of these arbitrations are carried out under the special arbitration regime in ICSID as provided by the Washington Convention. However, many are carried out using the institutions of ordinary international commercial Arbitration. Investment arbitrations raise issues do not present in ordinary international commercial Arbitration. At this point, it is unclear what impact they will have on the development of the law governing international commercial Arbitration in general.

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