

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

Looking Above The Horizon – Why Are Financial Institutions Moving Towards Arbitration And Is India Prepared For It ?

Authored By-Parth Rathore

It is important to understand as to why this topic is discussed at a large scale in recent times. In the year 2019, 58% of the total number of arbitrations at the AAA (American Arbitration Association) and 32% of the total number of arbitrations at the LCIA (London Court of International Arbitration) had the involvement of financial institutions.¹ This change in the approach of financial institutions was rapid and its magnitude was huge, which led experts to speculate as to what might be the main reasons for this sudden change in approach. If we look at financial institutions closely, we come to know that they have traditionally always preferred litigation over arbitration as a method for dispute resolution. There are various reasons for this. Firstly, because the disputes in courts are of public nature and it helps banks to create a substantial amount of pressure on defaulters. Secondly, judges in the courts have complete freedom to exercise various powers that are vested in them like summary judgements, interim measures and warrants for not-appearing in court, etc., which do not exist in arbitration.

The Main Drivers Behind The Change

- The nature of claims involving financial products became increasingly complex in the previous decade. The 2008 economic crisis was hugely responsible in changing the traditional notion of litigation in financial disputes, because financial institutions felt that adjudicators who possess deep and specialized knowledge of finance are needed to understand transactions which are complex. There are various disagreements which are a

¹ Aranha, M. (2021, February). Arbitration as an alternative. Deccan Herald. Retrieved from <<https://www.deccanherald.com/opinion/panorama/arbitration-as-an-alternative-954591.html>>

result of formulaic calculations and complex financial models, which require serious understanding of financial markets and financial products. Arbitration allows different parties to choose decision makers who have specific expertise. Arbitration unlike litigation avoids creating a precedent.

- Parties from emerging markets in international finance are becoming increasingly involved. In disputes where enforcement of foreign judgements tends to become problematic, arbitration is preferred. The primary reason for this is that enforcement of arbitral awards under the New York Convention is comparatively much easier.
- Brexit has also played a role in this shift. On 31st January 2020, the United Kingdom ceased to be a part of the European Union (EU). Before this happened the Brussels Regulation (recast) used to determine the rules that would be applied by EU courts when enforcing court judgements and giving effect to court jurisdiction clauses within the EU. Though Brexit has not affected international arbitration in anyway but because a replacement of those rules has not been decided therefore major uncertainty remains over enforceability of English court judgements and court jurisdiction clauses.
- It is also important to understand the role globalization has played in this shift. Globalization played a major role in increasing the use of arbitration in derivatives transaction. This was the main reason because of which ISDA published a guide in 2013 which primarily talked about how arbitration can be used in the ISDA Master Agreement. This guide got updated in 2018 and incorporated an enlarged range of ISDA model arbitration clauses which would be applicable to many arbitral institutions and seats around the world. This clearly proves the increased use of arbitration in financial transactions.
- Various changes have been made by arbitral institutions in recent years so that arbitration can be made more attractive to financial institutions. These amendments were primarily done to clarify and introduce some procedural tools so that arbitration can be made more cost-effective and efficient. I am personally of the opinion that two very important changes took place in recent time with respect to financial institutions in International Arbitration.

- *Introduction of Summary Dismissal* – Until very recently there was an uncertainty in international arbitration on whether arbitral tribunals have the authority to dismiss defence or claims that are manifestly without any merit on a summary basis. This procedure has always been available in litigation but in recent years this distinction between arbitration and litigation has fallen away because P.R.I.M.E Finance (This is an arbitral institution which is completely dedicated for arbitrations relating to the finance sector) and other major arbitral tribunals around the world have either published guidance notes which confirm that arbitral tribunals do have such a power or have amended their rules which has in-turn expressly given power to the tribunals to do this. But it is important that these parties have their arbitral seat in a jurisdiction like London or New York so that helpful case laws are available which can conform that awards are enforceable in accordance with summary procedures. Also, it is important that parties arbitrate under the rules of one of these arbitral institutions which allow summary dismissal procedure.
- *Revised rules 2022 for P.R.I.M.E. Finance Arbitration* – If financial institutions do not want to adopt procedural rules of regular arbitral institutions, as an alternative, they have an option to arbitrate under P.R.I.M.E Finance Arbitration Rules. As mentioned above this institution is specifically made to deal with complex financial disputes. The 2022 revision of the rules has introduced a new procedure of emergency arbitrator, which will majorly help in consolidation, primarily in situations where multi-parties and multi-contracts are involved. P.R.I.M.E also offers an option to select a specialist arbitrator from its panel which includes almost 250 arbitrators. Apart from summary dismissal these changes have also played a major role in making financial institutions change their approach.²

Is India Prepared To Tackle This Shift?

It is no secret that India has chosen to take a very pro-arbitration approach in recent times. The Indian Parliament's revolutionary approach has been complimented very well by the Indian Judiciary on this matter. This [post](#) talks in detail about India's pro-arbitration stance in recent times. As mentioned above the Indian judiciary has played a crucial role in furthering this agenda.

² <https://www.ashurst.com/en/news-and-insights/legal-updates/quickguide---use-of-arbitration-in-finance-disputes/>

The Indian Supreme Court adopted group of companies doctrine in **Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc. & Others** in 2012 for the first time. This judgement is widely regarded as the beginning of India's shift towards a more pro-arbitration approach. After this, various judgements of India's top court have repeatedly underlined this agenda. The Supreme Court in **PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion** gave Indian parties the right to choose a foreign seat for arbitration and underlined the importance of party autonomy in arbitration. The **Amazon v. Future Retail** judgement talks about different methods of enforcing foreign-seated emergency awards in India. This [post](#) systematically breaks down the Amazon judgement and explains it in detail.

Despite India making significant strides in the field of arbitration, it majorly lacks in the infrastructure to deal with financial arbitration. It is no hidden fact that financial disputes in India are on a rise. Huge Indian corporations like Kingfisher, Reliance and Firestar Diamonds have defaulted in recent times. It is paramount that specialized institutions that can deal with financial arbitrations or an alternative body like P.R.I.M.E Finance are set up as soon as possible. There is no doubt that we can see a significant change in the field of financial arbitration if the above-mentioned steps are taken. Leading financial institutions will always prefer arbitration over court submissions because it results in widespread media coverage which in-turn has adverse effects on all parties that are involved. No specialized body exists as of now in India which can deal with such arbitrations. Retired judges who aren't experts in finance and possess very limited knowledge continue to adjudicate in these types of matters. There is one more hurdle that comes in the way of financial arbitrations in India, specially regarding banks. There is a real chance of the award getting challenged in a court, even though very limited grounds for challenging the award are available in India and this can lead to huge losses and delays.

India as of now is not prepared to tackle this global shift of financial institutions shifting to arbitration but it isn't too far away from embracing this change because both the government and the judiciary are willing to take huge strides to turn India into an arbitration-friendly jurisdiction. Certain areas which are mentioned above require some minute changes and India can definitely turn into a financial arbitration hub if these changes are made.