

Arbitration in India will improve when attitude towards it will change– Justice B N Srikrishna

MUMBAI, 29 July 2017: In order to have critical appreciation of the recent amendments to Arbitration Act, 1996, assess the impact of such amendments on business and industry as also to suggest a road map for future arbitration in India, the Indian Council of Arbitration, the premier arbitral organization of the country, in association with FICCI, organized a Symposium on “Building the Future of Domestic and International Arbitration in India” in Mumbai.

The Symposium was inaugurated by Mr. Justice B N Srikrishna, Former Judge, Supreme Court of India. In his inaugural address, Justice Srikrishna lamented that arbitration is an enigma in India. He suggested for implementation of successful arbitration regime, we need to follow the working of international arbitration institutions of other jurisdictions. However, he thought that arbitration in our country would only flourish with the backing of utilizing lawyers and massive support of government. According to him, none of the arbitral institutions in India is up to the global standards. He was of the opinion that the prominent international arbitration centers flourish as they are manned by qualified lawyers and each stage of the arbitral process is closely monitored by their secretariat of competent people. He stated that the lack of this infrastructure is defeating arbitration in India. It is heartening for Justice Srikrishna to note that Government of Maharashtra had taken a resolution for all commercial disputes to be resolved by institutional arbitration. Courts are burdened with cases ever increasing pending cases.

In the background of Courts burdened with ever increasing pending cases and litigants indefinitely waiting for the final outcome, there is unfortunately a marked lack of professionalism in arbitration in India. He had strong objection against taking arbitration as a part time exercise, while arbitration demands early resolution of disputes. Doing arbitration in this way is a mockery of arbitration. He gave an alarm by saying that delayed resolution of disputes affect the country’s economy. He was surprised to notice that judges of subordinate courts are not even aware of what arbitration is about. Unless we gear up the court system in tandem with arbitration, there will never come a good eco system for arbitration in India. In order to bring in good arbitration culture, he suggested judicial officers thoroughly conversant with arbitration, efficient arbitration institutes and dedicated arbitration bar for professionals having full time occupation in arbitration and professional arbitrators. It is imperative upon the parties and the institutions to appoint arbitrators on the basis of nature of dispute to have logical conclusion of arbitration and timely execution of award. However, at present, in India, arbitration is regarded and observed as an additional layer of litigation. Yet, the intention should have been arbitration, not litigation. Legal community should support arbitration as a wholesome system. The prime advantage of arbitration is that the parties can exercise their options for selection of arbitrators. In other jurisdictions, the legislature follows the trend of arbitration, identifies changes and they get the laws changed. He was happy to inform that the

Committee formed by the Government for establishing institutional system of arbitration would soon submit its report recommending changes in the system and law. But arbitration in India, according to him, would only change when our attitude towards arbitration would be changed. He appealed to all the stakeholders of arbitration not to challenge the arbitration award on the merits, as the only scope for challenge of award should be limited to misconduct of arbitral process.

In his welcome address Mr. N G Khaitan, President, ICA, indicated three areas of concern as far as arbitration in India is concerned. (1) Delays in arbitration (2) Ad hocism or amateurism in arbitration (3) Less interference of Courts. He said India, despite its early enactment of arbitration, trails behind from other BRICS nations which have arbitration legislation much later than India. He urged the Govt. of India to establish BRICS Arbitration Centre in India. He advised the parties and their counsels to have relook at Section 34 before challenging the arbitral award. According to him, the progress of country depends on shunning the old way and adopting the new way. He is of the opinion that BITs must have arbitration provision instead of judicial remedy. He also remarked that India should be projected as a neutral venue for international arbitration.

Dr. Vishwapati Trivedi, Former Secretary, Ministry of Shipping, Govt. of India, was happy to see that the Symposium had been schemed to encourage arbitration in government organizations. He informed that there are over 200 PSUs in India and all of them have dispute resolution clauses in their contracts. However, some of the big PSUs have discontinued resorting to arbitration on the ground that the duration of arbitration is longer than litigation. He observed a good trend in PSUs after new amendments to Arbitration Act. A fresh spate of enthusiasm had been witnessed among PSUs in taking arbitration seriously. Even the judiciary has, by passing some path breaking judgments, had made it clear about their intention to see arbitration in a changing mode. There is increasing improvement in the proficiency of arbitrators. These remarkable changes have even brought change of attitude of the parties who are now less and less going to the courts for challenge of award. He highlighted the arbitration in Maritime disputes, which, according to him, is another area where appropriate attention had not been given as yet. As a result, most of the maritime arbitrations are held in foreign jurisdictions. PSUs involved in maritime arbitration must consider doing arbitration in India and accordingly formulate its dispute resolution clauses.

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