International Commercial Arbitration

ICA

The last fifty years have witnessed an increasing dynamism in international trade. This is the neutral result of technological advancements. Better and faster machinery have resulted in an increase in the volume of produced merchandise, which has in turn led to producers seeking markets beyond their borders. With the Starling technological advances achieved in communication and travel, and the emerging global community, commercial activities transcend geographical and political boundries. The increase in transnational trade has naturally resulted in "international commercial disputes" that encompass different legal systems.

Business enterprises prefer independent parties to settle their dispute rather than national courts. They often agree to refer their dispute to an individual or group of individuals called arbitrators, for determination. The agreement to arbitrate is usually included in the contract and is known as an arbitration clause. By this method, businessman agree that in the event of a dispute, such dispute will be submitted to arbitrators for determination. Arbitrators are preferred because they are better placed than national courts to deal with the several legal problems that arise from transnational relations. Arbitrators employ procedures that are not more flexible and readily apply the international trade norms that are used and more acceptable to international merchants, than national

laws that may not cater for their needs. Further, businessman often do not trust foreign legal systems.

Increasing, international trade and the investment is accompanied by growth in cross border commercial dispute. Given the need for an efficient dispute resolution mechanism "international commercial arbitration" has emerged as the preferred option for resolving cross-border commercial disputes and preserving business relationships. with an influence of overseas commercial transaction, and open ended economic policies acting as a catalyst international commercial dispute involving India are steadily rising. This has led to tremendous focus from the international community in India's international arbitration regime.

International commercial arbitration is finding a safe heaven in world after years of neglect, mistrust and misunderstanding. international commercial arbitration now adays are co-ordinating the resolution of many countries commercial dispute involving parties from different countries

* "Growth of International Commercial Arbitration"

"ICA" as we know it today began in continental Europe in the 1920's. There were two major difficulties in then current situation.

i) The first difficulty was that in many countries an agreement to arbitrate could be validly entered into only in regard to an existing dispute by so called "compromis". In these countries an agreement to arbitrate.

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of "United Nations Commission on International Trade Law" (Model law on International commercial Arbitration) provides that an arbitration is international if.

i) The Parties which have their place of business in different States; or

ii) The Place of arbitration, or the substential part of performance of the contract.

"Commercial"

The word "commercial" is referred to in Article 1 of the Model law, which States that the law "applies to International commercial arbitration". Subject to any agreement in force between this state and any other State or States". So the term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of commercial nature whether Contrac=tual or not."

"Arbitration"

A dictionary definition of "arbitration" is the hearing or determining of a dispute between parties by a person Chosen, agreed between the parties or appointed by virtue of a Statutory Obligation. In other words "A method of Settling private disputes between two or more parties by the reference of the dispute to some neutral third party by their choosing, for that third party's final and bind=ing decision in the form of an arbitral award by which the disputing parties have previously contracted to abide". Therefore in arbitration.

i) The determination is intended to be final and binding; and

ii) The tribunal is not a court of a state.

P.T.O

According to Section 2(1)(f) of the Arbitration and conciliation Act 1966 defines "International commercial arbitration" as an arbitration relating to disputes arising out of legal relationships whether contractual or not, consi= dered as commercial under the law in force in india and where at least one of the parties is.

i) An individual who is a national of, or habitually resident in, any country other than India or

ii) where either of the parties is a foreign national or resident or is a foreign body corporate or is a company, associ= ation or body of individuals whose central management or control is in foreign hands. Thus under the indian law, an arbitration with a seat in India but involving a forei= gn party, will also be regarded as an "International commercial arbitration".

International arbitration itself is often a procedure involving the interaction of parties from differ= ent legal traditions ~~involving the interactions~~ and culture. Several different legal systems may be of relevance to the process. By way of example, a dispute may involve a claim for damages by a Swiss exporter against a US company, so to be resolved under "ICA". The procedure to be adopted can be seen as a compromise with both parties are happy to live with. The law and procedure may be unfamilier to both the parties.

Various attempts have been made to devise a widely accepted body of rules of international arbitration covering.

a) The arbitration law of the seat of the arbitration

b) The law relating to recognition and enforcement of arbitral awards & arbitration agreement. P.T.O

* Why parties Choose International Commercial Arbitration:

The reason why parties choose "I.C.A" to solve their dispute can be seperated into reasons that are applicable to arbitration in General and those that are applicable specifically to international arbitrations.

i) Arbitration permits the parties to choose persons with specialized knowledge to judge their dispute. The freedom to choose arbitrators with specialized knowled =ge is not available in those states that have restrict =ive arbitration laws that permits only lawyers to serve as arbitrators.

ii) Procedure in arbitration is flexible and can be adapted to the needs of the particular dispute.

iii) Arbitrators are choosen for a specific dispute. whet =her the arbitral tribunal is composed of a sole arbit =rators or a penal of three, the tribunal remains with the arbitration from its commencement until its con clusion. The resulting continuity in the procedure permits the arbitrator to become throughly familiar with the matter in dispute.

iv) Faster and cheaper: Faster decisions and lower costs as compared to litigation in the courts has been one the traditional arguments in favour of arbitration.

v) Arbitration is not subject to appeal on the merits. what the parties lose in legal security, because errors made by the tribunal in the application of law can't be corrected, they gain in the reduced amount of time required to reach a final decision and reduced costs.

Ambrose Bierce

Arbitral awards and arbitration agreements.

(c) Evidence and procedure.

According to Ambrose Bierce "International commercial Arbitration may be defined as Situation of many burning questions for a Smouldering one". In Other words International commercial arbitration is a way of solving disputes which the parties choose them -Selves, it is private, it is effective and in most parts of the world it is now generally accepted method of solving international business dispute."

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* Advantages and Disadvantages of "ICA"

→ Choice of Neutral forum and choice of arbitrator
→ Sped and finality
→ Flexibility
→ Confidentiality
→ Enforcement / New York Convention.
→ Award on merits and costs.

"Disadvanteges"

→ Limited powers of arbitral tribunal
→ conflicting awards.
→ cost factor.
→ A final reason for the current popularity of "ICA" is the comparative ease of enforcement of an award as compared to the enforcement of a Judge ment of a foreign court, unless there is a treaty between the State in which the judgement was issued and the State in which the enforcement is sought.

"Conclusion"

In a globalised economy, the commercial world looks accor increasingly towards arbitration as the best method of international dispute resolution. Arbitration offers a neutral and flexible forum, tailored to the parties wishes and the nature of the dispute. International commercial arbitration has a long history. The business community places trust in the arbitral process as it gives them the confidence to expand even into countries where the national court system may be seen as compt or to fail to meet basic standards of neutral justice.

"ICA" has proven spectacularly successfull in the post war era. It will no doubt continue to be so with the greater opportunties for trade and commerce on the international stage brought about by globalisation as the preferred forum of dispute resolution of international commercial disputes. "ICA" offers practitioners new opportunties for practia and is deserving of close attention.