Advantage of an Indian Seat of International Arbitration

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These days many foreign law firms have started recommending Foreign companies to agree on an arbitration clause proving India seated International Arbitration. Hence, the negative feeling about having an Arbitration in India is slowly changing. The Procedural law applicable to the India Seated Arbitrations is Arbitration and Conciliation Act,1996. One of the main reasons for the above said change in the mind set of foreign lawyers is the amending Act (Arbitration and Conciliation Amendment Act, 2015) which came into effect from 23rd October 2015 but there are various other reasons also. The Author endeavors in this article to explain the real advantages for a Foreign Party in having an international Arbitration seated in India.

Signatory to New York Convention[2]**:** India is a signatory to New York Convention on Recognition and enforcement of Foreign awards, 1956 and hence an arbitration award passed in an Indian seat is enforceable in about 75 countries across the world, covering all major countries. But at the same time, India does not recognize all the New York Convention countries and recognizes only about 35 countries. Hence, if you are choosing a seat outside India which is not recognized by India, even the said seat is a New York Convention seat, you cannot get the support of New York Convention to enforce the award. The only option available would be to file a Civil suit based on the award. In India, due to overly burdened courts, a civil suit will take anywhere between 5 to 10 years to attain finality.

Interim orders by the Courts: The amended Act, empowers the Courts in India to grant interim orders in support of the Foreign Seated International arbitrations as well as India seated Arbitrations, prior to formation of the arbitral tribunal. Courts in India are very fast in granting interim orders. Hence India seated Arbitrations can have the advantage of seeking interim orders from the courts, prior to starting of the proceedings. Moreover, the appropriate courts for handling the litigations relating to an International Arbitration are the High Courts in India. The Judges of the High Courts are having the required exposure to international arbitrations and hence they are efficient also.

English Language in the High Courts: The official language of the High Courts in English and hence all pleadings are arguments happen in English. Since the appropriate courts for handling the litigations arising out of an International Arbitration are the High Courts of India, an English knowing foreign party will not have a language problem. The High Court Judges are

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[2] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

well trained and having the required exposure to procedures of international arbitrations and hence they are effective also.

Time limit for completion of Arbitration: All the India seated International Arbitrations are governed by Arbitration and Conciliation Act, 1996, since it is the procedural law. In India as per S.29A of the said Act[3], arbitrators should pronounce the final award within 12 months from the date of appointment. Parties by consent can extend the above said time line by another six months. Beyond 18 months only the Courts have the powers to extend the time. Hence, even ICC & SIAC arbitrations seated in India comes to a faster conclusion, than other popular seats.

Availability of International Arbitral Institutions: Unlike China, India allows all international Arbitration Institutions to administer Arbitrations in India. Hence all top Arbitral Institutions including SIAC (Singapore International Arbitration Centre), ICC (International Chamber of Commerce), HKIAC (Hong Kong International Arbitration Centre), LCIA (London Court of International Arbitration) etc., are administering large number of arbitrations seated in India. SIAC has India office in GIFT city, Gujarat and in Mumbai.

Challenging of Awards: Indian courts have very less chance of interfering into the Arbitration proceedings. India's arbitration law is like UNCITRAL Model law[4] and hence the grounds available for challenging the Arbitration award are very limited. The 2015 amendment has further reduced the scope of interference by the Courts on the ground of Public Policy. More over as per the amended law, if a party wishes to challenge an award it requires to deposit a minimum of 75% of the award amount in the court. In case the challenge fails, the winning party may be allowed by the court to withdraw the said amount. This is a very unique provision to expedite recovery of the awarded amount.

Fast track Arbitrations: Parties while entering the contract can choose expedited arbitration procedure. In such a case, the arbitration should be completed within 6 months from the date of appointment of Arbitrator. The above said fast track system is recognized in law.

Emergency Arbitrator Award: Indian law does not recognize emergency arbitrator award expressly. As per Indian law only the final award passed in a foreign seat can be enforced in India based on the New York Convention. Hence interim awards including emergency arbitrator awards are not enforceable in India. But India being a signatory to New York Convention on recognition and enforcement of Foreign awards, an emergency arbitrator award passed in an India seated Arbitration is enforceable in all the countries that permit enforcement of interim arbitration awards including Singapore & Hong Kong.

[3] Arbitration and Conciliation Act, 1996 which came into effect on the 23rd of October 2015
[4] UNCITRAL Model law on International Commercial Arbitration

IBA[5] Rules on Conflict of interest in International arbitrations: All over the world the above said Rules is only an option available to parties to the Arbitration. But Indian Arbitration law has incorporated the same into the Act itself. It has also made the declaration by the Arbitrators with regard to their relationship with the parties and counsels. The Red list of the above said IBA Rules is incorporated as Schedule VII to the Act and if any Arbitrator is covered by any of the provisions of the said schedule, he is not eligible to get appointed as an Arbitrator. These provisions are ensuring independence and impartiality of Arbitrators and hence India has become an attractive seat.

Costs of Arbitration: One of the major components of the cost of International Arbitrations is Legal Fees. When compared with Singapore or London, the legal costs to handle an arbitration in India is much lesser. Moreover, there are many highly qualified, trained legal professionals and para-legal professionals available in India and hence the costs are affordable.

Indian Law is similar to English Law: Since the procedural law of arbitration in India is based on UNCITRAL Model law, even foreign qualified lawyers can understand easily. Even if Indian law is chosen by the parties as substantive law, the foreign counsels having exposure to English law can handle the matter with less assistance from Indian lawyers. Even Indian Courts follow the English court Judgments in commercial matters and hence parties find it comfortable with Indian substantive law.

Foreign Lawyers as Party Representatives: Indian law does not permit foreign lawyers to practice Indian law, in India. But there is no bar for Foreign lawyers in appearing before Arbitrators, since they are considered as Party Representatives. Hence Many Foreign lawyers and QCs appear in international Arbitrations seated in India.

[5] International Bar Association Guidelines on Conflicts of interest in International Arbitration (2014)