

Institutional Arbitration in India – Recent developments

S Ravi Shankar¹

A few days back the Union cabinet approved the Arbitration and Conciliation (Amendment) Act bill, 2018 which is declared as an important effort of the Government of India to encourage Institutional Arbitration and to make India a center of robust ADR mechanism. The objective of the bill seems to be to take steps towards institutionalizing the arbitrations in India and to make certain changes to the Arbitration Act. This is in addition to the “**The New Delhi International Arbitration Centre Bill**”, 2018 which was introduced in Lok Sabha (LOWER HOUSE OF PARLIAMENT OF INDIA)on the 5th of January 2018.

Institutionalizing Arbitration in India is an important requirement to increase the efficiency of the arbitration system of India. Everyone is aware that thousands of Arbitrations are happening in India under the adhoc arbitration system. Adhoc arbitration system empowers the parties/arbitrators to devise the procedure of arbitration and allows arbitrators to fix their fees. In some cases, fee fixed by the arbitrators and the time taken to complete arbitrations were not within acceptable limits and hence the said system is widely criticized by the arbitration community of India. Efficiency of the adhoc arbitrations were based on the individual capabilities of the Arbitrators and the co-operation of the counsels appearing for the parties. But Globally most of the arbitrations are handled by institutions and they are governed by the rules of the arbitral Institutions. The said Rules of the Arbitral institutions specify the procedure to be followed by the Arbitrator as well as the Administration of the Institution in conducting arbitrations. The said Rules also provide for a transparent fee calculator based on the quantum of the claim and the work load. In India, even though there are a few arbitral institutions already providing services, the effort from the government will surely take it forward.

Indian Arbitral Institutions: There are many Arbitral Institutions situated in India and a few of them are having their own Rules, Procedures, Arbitrator Panel & facilities. In India, all international arbitral institutions are also allowed to

¹ The author is an international & Domestic Arbitration lawyer and Senior Partner of Law Senate Law Firm New Delhi & Mumbai

administer arbitrations. Government of India is encouraging parties to resolve their disputes through Arbitrations. In that endeavor the following Institutions are recognized by Government of India for administering online arbitrations in India:

1. International & Domestic Arbitration Centre in India (IDAC), Vadodara
2. ASSOCHAM International Council of Alternate Dispute Resolution (“AICADR”), New Delhi
3. Bangalore International Mediation, Arbitration and Conciliation Centre (BIMACC), Bangalore
4. Centre for Advanced Mediation Practice, Bangalore
5. Construction Industry Arbitration Council, New Delhi
6. Delhi Dispute Resolution Society (DDRS) Department Law Justice & LA, New Delhi
7. Indian institute of Arbitration & Mediation, Kerala
8. International Centre for Alternate Dispute (ICADR), New Delhi
9. Mumbai Centre for International Arbitration, Mumbai
10. Nani Palkhivala Arbitration Centre (NPAC), Chennai
11. ODRways, Kolkata, West Bengal
12. Online Consumer Mediation Centre, Bengaluru

Arbitration Council of India (ACI) is a body created by the said 2018 amendment bill, will grade arbitral institutions and accredit Arbitrators by laying down norms and will take all steps to encourage arbitration and other ADR mechanisms in India. The said recognized arbitral institutions may be given the powers of appointing arbitrators in adhoc arbitration matters. The said council is going to be a body corporate headed by a retired Supreme Court Judge is expected to create a system for grading/ empaneling of existing Arbitral institutions in India. India being a big country, the said effort will bring in discipline and standards among the arbitral institutions. Even though Arbitration is a private dispute resolution mechanism, it requires a regulation as well as efficient supervisory courts. ACI is expected to Act as a regulator for Arbitral Institutions as well as Arbitrators. There is no institution in the world except Chartered Institute of Arbitrators (CIRAB), London doing any kind of certification on the knowledge and skills of the arbitrators. In India, arbitration is considered to be an

opportunity for retired technocrats and Judges and in way it is a strength for us. If a proper accreditation system is created in India, it will surely encourage many others to take up arbitration as a profession.

New Delhi international Arbitration Centre (NDIAC): NDIAC is proposed to be government supported flag ship institution to be promoted as an International Arbitration Centre of India. The said center is going to take over the assets of ICADR Indian Council of Alternate Dispute Resolution. It is going to create a Chamber of Arbitrators and an Arbitration academy. These institutions will train, certify and empanel arbitrators. It is proposed following the model of Singapore International Arbitration Centre (SIAC). Many countries have similar International arbitral institutions CIETAC China International Economic Trade Arbitration Commission, KLRAC Kuala Lumpur International Arbitration Center, recently named as Asian International Arbitration Centre (AIAC), Hong kong International Arbitration center (HKIAC), Dubai International Arbitration Center (DIAC) etc., All these institutions are also the designated authorities to appoint arbitrators in those countries, for the adhoc arbitrations.

Model of NDIAC seems to be Singapore International Arbitration Center (SIAC): The Government sources are inspired by the success story of SIAC and hence the model is SIAC. Among the above said institutions the success story of SIAC is not just because of the efficient management and support of the Government. It is also because of the efficient supervising courts of Singapore and smart legislative support of Singapore Parliament. The courts in Singapore are able to dispose the cases faster because Singapore has sufficient number of Judges but in India three crore cases are pending before 30,000 judges. Even the recently formed commercial courts in India are having more than 50 cases every day and it is humanly impossible to handle and dispose that many cases in a day. The Singapore Government is smart because they respond to each and every requirement of the arbitration community and incorporate the required changes in the legislations without any delay. Because of the efficiency of the supervising courts and the Government, now Singapore has become a hub for international Arbitration and all Global arbitral institutions like ICC are handling large number of arbitrations keeping Singapore as the seat. Hence, the success of Singapore seat is a very important reason for the success of SIAC. Let us hope, Government of India also considers the long pending request of multiplying the



number of judges by 10 times to bring in speed in disposal of cases in India. Let us hope for a better future.

