

Scanner on arbitral aspirations

Further development of an alternative dispute resolution system is key to making of an arbitration hub

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The government has been trying hard to give a major push to arbitration, an alternative dispute resolution (ADR) mechanism, for commercial disputes.

This was more evident over the weekend, with the President, the prime minister and the finance minister attending a three-day global conference on the growing importance of arbitration.

While the President and Finance Minister Arun Jaitley pitched for institutional reforms to strengthen the framework in this regard, and to make the country an important commercial arbitral centre, the PM said creation of an ADR eco-system was a priority.

The 2015 amendments to the Arbitration and Conciliation Act of 1996, setting up of the Mumbai Centre For International Arbitration and a plethora of arbitration-friendly judgments have given a push in this regard. Though experts say a lot more needs to be done for India to emerge as a serious player in the global arbitration sweepstakes, currently dominated by London, Paris, Singapore and some other centres.

Corporate India has also been asking for the establishment of an arbitration hub. Sunil Bharti Mittal, chairman, International Chamber of Commerce, says the advent of the Mumbai centre and the one coming up in Delhi are positive signs. Raghupati Singhania, chairman, JK Tyre, says credibility of the system and a change in mindsets are key factors for success of the country's arbitral aspirations. A culture of



Prime Minister Narendra Modi pitched for making India a hub for arbitration at a global conference to strengthen the ecosystem for an alternative dispute resolution mechanism

PHOTO: PTI

challenging any award and frequent interference of the courts in the arbitration process have created a big set of hurdles for the dependability of an Indian ADR regime.

Lack of expertise, plus the time and costs associated with arbitration in India, have added to this international scepticism. Also, enforcement of arbitration awards has long been a thorn in the flesh of Indian arbitral activity. The DoCoMo-Tata Sons controversy is still fresh in the minds of the global community. India needs to make significant efforts in re-assuring international entities if it is to realise its arbitration goals.

The trend of challenging arbitration awards under the grounds

of public policy, though now restricted after the amendment to the arbitration law, remains a worry. "In Singapore, the test of what is against public policy is of a very high standard, seldom ever met. That standard is what is necessary for arbitration to be successful," noted Sundaresh Menon, the country's chief justice.

Experts have urged for specialist arbitration courts (and tribunals) to ensure neutrality in proceedings. These courts will provide further certainty to the applicable laws.

"What India also requires is a combination of legal and technical specialists in the arbitration process," says Rohini Roy, chief of legal and international operations

at Bharat Heavy Electricals. Establishment of such a specialised bar would encourage companies to come to India for arbitration, say experts.

Though the recent amendments to the Arbitration Act have set ambitious timelines for delivery of awards, scepticism remains on India's ability to live up to these. Section 29A of the Act sets a time bar of 18 months for completion of arbitration proceedings. This is difficult to meet, admitted R C Lahoti, former chief justice of India.

Aditya Ghosh, president, IndiGo, says the right balance between practicality and efficiency is vital if India is to achieve prominence in the international arbitration arena.

IN THE MAKING

Steps taken to improve the arbitration regime in India

- Introduction of the Arbitration and Conciliation (Amendment) Act 2015
- Time limit for commencement of arbitration proceedings, appointment of arbitrators by court
- 12 month time-period for conclusion of arbitration – can be extended by 6 months (Section 29A)
- Incentives for making early awards
- Disclosure requirements (and guidelines) to ensure independence and impartiality of arbitrators
- Extension of interim reliefs that can be issued by court even when an arbitration is taking place outside India
- Reduced interference of court for arbitrations currently underway
- Introduction of fast-track procedures with consent of the disputing parties
- Restricting the scope of challenge under grounds of conflict with public policy

Issues that still need to be tackled

- Development of adequate arbitration infrastructure
- Requirement of arbitration specialists
- Feasible time-frame for conclusion of arbitration proceedings
- Issues with enforcement of award