

**SPEECH OF HON'BLE MINISTER OF LAW AND JUSTICE
AT THE NATIONAL CONFERENCE ON
"EFFECTS AND IMPLICATIONS OF RECENT
AMENDED ADR/COMMERCIAL COURT LAWS"
ORGANIZED BY ASSOCHAM
ON 5TH APRIL, 2016 AT NEW DELHI.**

Ladies and Gentlemen,

It gives me great pleasure to be part of this National Conference on "Effects and Implications of Recent Amended ADR/Commercial Court Laws", organized by the Associated Chambers of Commerce and Industry of India.

Arbitration is a method of adjudication of disputes between the parties by non-judicial process in which Arbitrators are appointed by the parties themselves under a contract whereby the parties agree for adjudication of such disputes by way of Arbitration proceedings. The arbitral process has been implemented in India so that the number of pending cases can be reduced in the courts. India being a nation of varied diversities, disputes are bound to arise among different sections of the society. Sometimes it appears to be an impossible task for the courts to take up matters and provide justice to the individuals. Due to these circumstances, the concept of Arbitration has emerged which will ultimately help minimize the burden of courts.

In catena of cases it has been held by the Apex Court that an arbitration clause in a contract is mandatory and it stands apart from the rest of the contract and it must be construed according to its language and in the light of the circumstances in which it was made.

(K. Sasidharan vs. Kerala State Film Development Corporation (1994 (4) SCC 135). The Hon'ble Supreme Court has also observed that in case any contractual dispute arises between the parties, the same need to be settled by arbitrator or umpire of their own constitution or by an arbitrator to be appointed by the court in an appropriate case. [**M. Dayananda Reddy vs. A.P. Industrial Infrastructure Corporation, 1994 (4) SCC 135**],

To attract the confidence of International Mercantile community and the growing volume of India's trade and commercial relationship with the rest of the world after the new liberalization policy of the Government, Indian Parliament was persuaded to enact Arbitration and Conciliation Act, 1996 based on UNCITRAL model.

Government of India has signed Bilateral Investment Promotion Agreements (hereinafter BIPAs) with 82 countries since 1994. These agreements are within the framework of our domestic laws and, *inter alia*, provide for dispute resolution between foreign investors and the Government of India. Of late, Government of India has received some notices of dispute and arbitration from foreign investors invoking provisions of various BIPAs not necessarily signed with the resident country of such an investor. Further, Government of India also received an adverse arbitration award (dated 30th November, 2011) in the case filed by M/s White Industries Australia Limited under the BIPA with Australia. These disputes, awards/notices and other developments in the area of BIPA have led to a decision not only to review the Model Text of BIPA, which is used as the negotiating text but also to evolve an effective dispute resolution mechanism. A need has therefore been

felt for evolution of a new law and also to bring amendments in the Arbitration and Conciliation Act, 1996.

Delay in conducting the legal procedure and want of timely disposal of investment related cases/applications lead to international arbitration involving huge expenditure to the State exchequer. Hence, streamlining our legal and judicial system to ensure speedy resolution of commercial disputes is the need and a necessary requirement. In order to streamline disposal of commercial disputes involving foreign investments and expeditious hearing, a proposal for enactment of a law for constitution of 'Commercial Benches' in the High Court is being examined by the Law Commission of India (LCI). Based on the Report/Recommendations of the Law Commission of India vide its 253rd Report, the Government examined and decided to enact the 'Commercial Courts law' for resolution of commercial disputes.

The establishment of commercial courts in India is widely seen as a stepping stone to bring about reform in the civil justice system in India. The new commercial courts law recommends the establishment of Commercial Courts, and Commercial Divisions and Commercial Appellate Divisions in the High Courts in order to ensure speedy disposal of high value commercial suits. While formulating this law substantive procedural changes in the form of amendments to the Civil Procedure Code, 1908 are suggested. These suggestions are aimed at ensuring disposal of cases expeditiously, fairly, and at reasonable cost to the litigants.

The Impact of Commercial Courts law can be seen in the following areas :-

- Defines commercial disputes arising out of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents; joint venture and partnership agreements; intellectual property rights; insurance and other such areas.
- Setting up of Commercial Divisions by the Central Government in High Courts that are already exercising ordinary original civil jurisdiction, such as Calcutta, to take up commercial disputes with a specified value of Rupees One Crore or more.
- Commercial Courts are to be set up in (i) States and Union Territories where the High Courts do not have ordinary original civil jurisdiction, such as Bangalore and (ii) in those regions to which the original civil jurisdiction of High Courts (already having original civil jurisdiction) does not extend, such as Pune or Madurai.
- Pecuniary jurisdiction of the High Courts having original jurisdiction to be raised uniformly to Rupees One Crore and Commercial Divisions should be set up only when the pecuniary jurisdiction has been so raised.
- No jurisdiction with Commercial Divisions or Commercial Courts to adjudicate matters relating to commercial dispute, where the jurisdiction of the civil court has been either expressly or impliedly barred under law.

- Constitution of a Commercial Appellate Division to hear the appeals against the orders and decrees passed by the Commercial Divisions or Commercial Courts.
- Commercial Courts are to be manned by specially trained judges appointed by the High Court from advocates and judges with demonstrable expertise and experience in commercial litigation.
- All pending suits and applications relating to commercial disputes above Rupees One Crore in the High Courts and Civil Courts will be transferred to the relevant Commercial Division or Commercial Court as the case may be.
- Streamlined procedure to be adopted for the conduct of cases in the Commercial Division and in the Commercial Court by amending the Code of Civil Procedure, 1908 so as to improve the efficiency and reduce delays in disposal of commercial cases.
- Introduction of new procedure for “summary judgment” to be introduced to permit the Courts to decide a claim pertaining to any Commercial Dispute.
- Introduction of a new costs regime of “costs to follow event”.
- Elaborate procedures for case management hearing, including consequences for non-compliance with orders to be introduced.
- Time bound delivery of judgment, within ninety days from the conclusion of arguments, introduced.

As per the existing provisions of the Arbitration and Conciliation Act, 1996, an award can be challenged under Section

34 of the Act. The Amendment made in Section 34 vide Ordinance on the ground of being in conflict with public policy, has been tightened by giving restrictive meaning to the term 'public policy of India'. Before filing an application under this provision a notice to the other side need to be served. In a way, the scope of interpreting the term 'public policy of India' has been restricted by the amendment.

As per the amendment made in Section 36 of the Act, where an application to set aside the award is not filed within the stipulated time, then the award can be enforced like a decree under the provisions of the C.P.C. As per the amendments made in Section 17 (regarding interim measures ordered by the arbitral tribunal) a party at any time after making the award but before it is enforced under Section 36 can seek interim measures for securing the amount in dispute in the arbitration.

Provisions of Section 28 (3) (regarding rules applicable to substance of dispute) are applicable only to pending cases before the arbitral tribunal and may not have any bearing on the cases where the arbitral tribunal has made the award before the amendments were made in the law.

The decision to bring in amendment of the Arbitration and Conciliation Act, 1996 and enacting a law for establishment of Commercial Courts are based largely on the recommendations of the Law Commission of India and also after consulting all the concerned stake-holders and the inputs received. This is one of the important steps for legal reforms to ensure expeditious enforcement of the contracts and upgrade the ranking of the country in the World

Bank rankings for doing business in India. This will enable improvement in the investment climate of the country.

The development of trade and business also raises several disputes not only relating to trade but also involving monetary commitments for settlement or adjudication. On realizing the need of Alternative Disputes Resolution mechanisms and also as per its international commitments, India enacted Arbitration and Conciliation Act, 1996 for effective and expeditious settlement of trade related disputes. But law being a living organ has to grow in order to satisfy the needs of the fast changing society and to keep abreast with the economic developments taking place in the country. As new situations arise, the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms, which would adequately deal with the new problems, which arise, in a highly industrialized economy. (***M.C. Mehta vs. Union of India (Shriram - Oleum Gas)***, (1987) 1 SCC 395, at page 420).

With these words, I conclude and once again thank the organizers and each one of you for giving me this opportunity.
