

Keynote Address by Hon'ble Minister of Law and Justice, Government of India on July 05, 2022, at London, United Kingdom at the Conference on “Arbitrating Indo-UK Commercial Disputes”

Hon'ble Mr. Justice N.V. Ramana ji, Chief Justice of India, Rt. Hon. The Lord Mayor Vincent Keaveny, Shri Arun Chawla ji, Director General, Federation of Indian Chambers of Commerce and Industry and Advisor, ICA, Shri N.G. Khaitan ji, President Indian Council of Arbitration, and Ms. Geeta Luthra Vice President, ICA, Ladies and Gentlemen.

A very Good Morning to (i) Justice Shri Krishna (ii) Justice Shri Nageshwar, all the distinguished guests and the august audience present.

2. First of all, I would like to thank the Indian Council of Arbitration, duly supported by the Federation of Indian Chambers of Commerce and Industry for inviting me to address this eminent congregation. The Indian Council of Arbitration provides world class arbitration at its facilities in cost effective manner and has been a leading arbitral institution at the forefront of supporting institutional arbitration in India. The Council has been providing arbitration services for both domestic and international commercial disputes and provides requisite administrative support in the smooth conduct of arbitral proceedings.

3. The Federation of Indian Chambers of Commerce and Industry, of which the ICA is a part, is a body representing the corporates and industry in India. It has been actively participating and associating itself in providing inputs and suggestions for policy discussions *inter-alia* relating to improvement in dispute resolution mechanisms in India. The successful functioning of the Indian Council of Arbitration is largely due to active support of the Federation.

4. As we know, trade, industry, commerce and investment can only thrive when the State policy provides a conducive business environment to the stakeholders along with a robust dispute resolution mechanism. Both the areas have been accorded due priority by the Government of India under the able

leadership of Hon'ble Prime Minister Shri Narendra Modi ji. In this regard, Hon'ble Prime Minister in one of his speeches, specifically highlighted the role and importance of Arbitration, which I quote,

“Businesses seek assurance of the prevalence of rule of law in the Indian market. They need to be assured that the rules of the game will not change overnight, in an arbitrary fashion. And that commercial disputes will be resolved efficiently. A robust legal framework backed by a vibrant arbitration culture is essential.”

The theme for the present conference “*Arbitrating INDO-UK Commercial Disputes*”, in this background is most topical and relevant.

5. Before speaking about the reforms that have been undertaken by the Government of India in strengthening the ADR mechanisms, I would first like to recall about India's role in laying the foundation of giving due recognition to foreign arbitral awards. India was amongst the only six Asian nations to have signed the Geneva Convention on Execution of Foreign Arbitral Awards of 1927. Later, it was amongst the ten original signatories to the New York Convention on the recognition and enforcement of foreign arbitral awards and ratified the convention in 1960. Thus, we have since long committed ourselves to keep pace with global developments in the field of arbitration.

6. Therefore, to carry forward this legacy the Government of India, under the able leadership and guidance of the Hon'ble Prime Minister, has taken various steps and measures towards revitalizing and strengthening the contract enforcement and commercial dispute resolution regime, to enable ease of doing business and boost investor confidence. Thus, the present requirements and future needs have guided the reforms in ADR regime with an objective which *inter-alia* includes:

- (i) To make ADR as the preferred mode for dispute resolution especially commercial disputes.
- (ii) To facilitate a paradigm shift from *ad hoc* arbitration to institutional arbitration.

- (iii) To minimise court intervention and to facilitate arbitration friendly approach amongst the Courts.
- (iv) To bring India at par with other jurisdictions in the arena of ADR mechanisms.
- (v) To change foreign investors perception about India's arbitration regime and to develop India as a hub of international commercial arbitration.

In pursuance of the vision, major legislative initiatives have been taken by the Government of India during the past 8 years..

Enactment of the Commercial Courts Act, 2015

7. To fast track adjudication of commercial disputes, the Commercial Courts Act, 2015, was enacted which facilitated establishment of the Commercial Courts and the Commercial Appellate Courts at District levels and Commercial Division and Commercial Appellate Division in the High Courts. The special jurisdiction relating to commercial disputes, is aimed at ensuring timely disposal of commercial disputes without straining the resources and capacities of the stakeholders. The subsequent amendment, in the year 2018, to the Commercial Courts Act, 2015, introduced mandatory Pre-Institution Mediation and Settlement (PIMS) for suits which do not contemplate any urgent interim relief. The introduction of compulsory pre-institution mediation is aimed at providing an opportunity to the parties at dispute to resolve the commercial disputes outside the ambit of courts through mediation. I would like to state before this august gathering that as of December 2021, there are more than 1000 Commercial Courts in India. Establishment of these courts has facilitated faster resolution of disputes. For instance, in Delhi High Court petitions challenging arbitral award are being disposed of in approximately 400 days which is far less in comparison to earlier period of 1445 days and efforts are on to reduce this period further.

Amendments to the Arbitration and Conciliation Act, 1996

8. To keep pace with current developments in the arbitration space and to enable arbitration as a viable dispute resolution mechanism, the Indian arbitration law has undergone significant amendments in the years 2015, 2019 and 2021. The changes in law signal a paradigm shift for ensuring timely conclusion of arbitration proceedings, minimizing judicial intervention in the arbitral process and enforcement of arbitral awards. The amendments are further aimed at promoting institutional arbitration, updating the law to reflect best global practices and resolve ambiguities thereby establishing an arbitration ecosystem where arbitral institutions can flourish.

9. I would like to highlight certain significant amendments carried out in the Act, which include:

- Legislative framework has been enabled to promote institutional arbitrations *inter-alia* by the proposed establishment of Arbitration Council of India (ACI) which would grade arbitral institutes in the country. The parties can approach ACI graded arbitral institutes directly for appointment of an arbitrator.
- Provisions have been incorporated relating to confidentiality of arbitral proceedings along with immunity to Arbitrators for any action taken in good faith.
- Grounds for challenge to arbitrators have been detailed out and specified as per prevalent international practice to uphold independence and impartiality of arbitrators.
- Statutory framework for time bound completion of arbitration proceedings and separate provisions for fast track arbitrations have been introduced.
- Interim orders that can be passed by the courts or arbitral tribunals, as the case may be, relating to arbitral proceedings have been detailed out to

enable protection of the value of the subject matter of dispute during the pendency of the arbitration proceedings.

- Grounds for challenge to arbitral awards have been limited. This would to a large extent enable finality to arbitral awards.
- Time period has been laid down for courts to decide petitions relating to challenge to arbitral awards.
- The provision of automatic stay on the enforcement of arbitral awards, on filing of an application for setting aside an arbitral award has been omitted and a provision has been included that a stay on the enforcement of an arbitral award may be granted by the Courts upon imposition of some conditions including deposit of award amount.

Pro arbitration Judiciary:

10. Indian courts have on several occasions highlighted the importance of ADR and their pro arbitration stand. In the presence of CJI, I take this opportunity to inform that Indian judiciary is playing a pivotal role in promoting ADR mechanisms particularly arbitration and mediation. The courts in India have consistently adopted arbitration friendly approach. Recently, the Supreme Court of India paved the way for enforcement of emergency arbitral awards in India seated arbitrations in the *Amazon-Future Group case*. Thus, the Indian judiciary has always been proactive in promotion of ADR mechanism and this has strengthened the confidence of the stakeholders.

Establishment of the New Delhi International Arbitration Centre

11. India has a number of arbitral institutions and there is space for many more. In its endeavour to establish a world class arbitration institute, the Govt. of India has proposed setting up the New Delhi International Arbitration Centre (NDIAC) which will come up shortly. The Centre will be equipped with necessary infrastructure and professional management offering quality legal and administrative expertise and empanel reputed arbitrators for conduct of arbitration under its aegis.

12. The NDIAC is to be an independent and autonomous body facilitating institutional arbitration in India and will also be an institute of national importance. NDIAC is set to compete with leading arbitral institutes like Singapore International Arbitration Centre, London Court of International Arbitration and will hopefully attract the best arbitrators to be on its panel, and become a major arbitration hub.

13. Besides the NDIAC will work for:

- Setting up of an Arbitration Academy to train arbitrators in India who would be at par with expected global standards.
- Promote studies in the field of alternative dispute resolution and related matters, and to suggest reforms in the process of settlement of disputes.
- Co-operate with other bodies, institutions and organisations, national or international in the area of alternative dispute resolution.

Introduction of the Mediation Bill, 2021

14. While arbitration has been the main stay of alternative dispute resolution in India the ADR ecosystem is undergoing change from time to time to keep pace with global trends.

15. As we know the ADR mechanisms of Conciliation and Mediation are more informal and party centric modes of dispute resolution. In this regard Mediation has a high potential in achieving amicable settlement of a variety of disputes including family disputes. As we understand Mediation is more informal and facilitates negotiations between the disputant parties, which may culminate in a settlement. Mediation thus allows parties to look beyond a culture of adversarial litigation and offers a win-win outcome for all the parties.

16. Mediation and conciliation find references in various statutes in India but there is no standalone law dealing with Mediation as a viable mode of alternative dispute resolution. To have a consolidated law on mediation the

Government of India has introduced the Mediation Bill, 2021 in the Parliament in December last year and the same is likely to be passed soon.

17. I firmly believe that the mediation law will prove to be an pivotal reform towards providing comprehensive recognition to mediation and enabling the growth of a culture of amicable settlement of disputes out of court. A successful settlement not only helps in preserving the relationship amongst the parties offering ease of living but also contributing in the growth of the economy. I would like to inform that presently we have more than **16000 trained mediators** available with the National Legal Services Authority (NALSA) who are conducting mediation across the country and during the period 2021-2022 **39351 cases** have been settled through mediation.

18. In the Indian context I would like to emphasize that -

- A standalone law on Mediation shall facilitate accessibility to justice dispensation by reducing burden on the judiciary, through recourse to compulsory pre-litigation Mediation.
- The resolution of disputes through mediation in a time bound manner will bring in savings of time and cost for parties.
- The provisions of the Mediation law will promote, encourage and facilitate institutional mediation for resolution of commercial as well as other disputes.
- Online mediation through the use of computer resource and internet has been recognised to be an acceptable mode of conduct of mediation thereby removing distance barrier for parties.
- A robust and effective mediation process, which includes conduct of international mediation in India under the provisions of the Bill, will improve the country's attractiveness as a destination for investment and collaboration.

Reforms for facilitating Ease of Doing Business and Ease of Living:

19. Besides the above-mentioned reforms in the field of dispute resolution, various reforms have been undertaken by the Government of India to improve the related business regulatory environment in the country. The focus of these reforms has been on streamlining the existing regulations and processes and eliminating unnecessary requirements and procedures.

20. An exercise is also undertaken to reduce compliance burden for improving overall business regulatory environment in the country. The objective of this exercise is to improve Ease of Doing Business and Ease of Living and make Government to Business and Citizen interface hassle-free.

Closing Remarks

21. Currently, India is celebrating Azadi Ka Amrit Mahotsav an initiative of the Government of India to celebrate and commemorate 75 years of independence and the glorious history of its people, culture and achievements. The 75 week ongoing celebrations is dedicated to the people of India who have not only been instrumental in bringing India thus far in its evolutionary journey but also hold within them the power and potential to enable Prime Minister Narendra Modi's vision of activating India 2.0, fuelled by the spirit of ***Aatmanirbhar Bharat*** i.e. self-reliant India. The official journey of Azadi Ka Amrit Mahotsav commenced on 12th March 2021 and will culminate on 75th anniversary of Independence i.e. 15th August 2023.

22. Thus, while India has made a great progress in areas of development and governance at domestic level it has left a mark in encouraging cooperation amongst the countries at a global level. In this context, I would like to inform that India for the first time will assume the **Presidency of the G-20** from 1st December 2022 to 30th November 2023 culminating with the holding of G-20 Summit in India in 2023. As we know the G-20 nations, of which India is a founding member, hold a strategic role in securing future global economic growth and prosperity. To achieve this objective, a continuous exercise is

required in respective jurisdictions *inter-alia* to strengthen enforcement of contracts and related alternative dispute resolution mechanism. Such measures will promote increased economic and financial cooperation amongst the various countries.

23. In this background I am confident that Indo-UK relations, especially in areas of trade and commerce are bound to take a leap forward in the coming years. The foundation for the same has been laid down by both sides with the launch of **Roadmap 2030**. The Roadmap 2030 is a dynamic vision which lays the way forward for the bilateral trade between India and the United Kingdom which is projected to witness tremendous growth by the year 2030. Also, India and UK, by the end of this year, are likely to finalise the Free Trade Agreement. A necessary corollary to it is to have in place efficient and effective mechanisms for quick and easy dispute resolution thereby facilitating speedy enforcement of contracts and its awareness amongst the investor and business community and leaders to assure that commercial disputes, would be resolved effectively in time bound manner in respective jurisdictions.

24. I am sure various reforms undertaken by the Indian Government, including in the field of dispute resolution, will further act as incentive for investors and a stimulus for increasing cooperation in various sectors and take India-UK relations to new heights.

25. I would like to end by once again thanking the ICA and FICCI for inviting me to this event and wish that the discourse and discussions that happen during the Conference will leave the participants enriched and equipped with the confidence that dispute resolution mechanisms in India and the United Kingdom are vibrant, efficient, consistent. I wish all the participants of this conference a happy learning and deliberation!

Thank you