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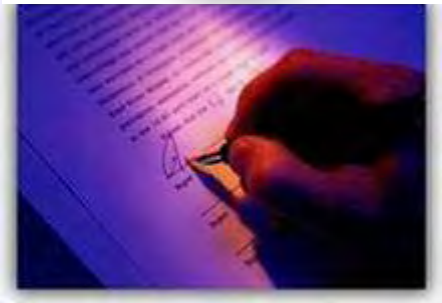

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Mortgages out of purview of Arbitration

Position after the Booz and Allen Judgment

: ROHAN THACKER

In view of the judgment in "Booz Allen and Hamilton Inc.", by the Supreme Court of India, issues relating to enforcement of mortgage can no longer be brought before an Arbitral Tribunal and could only be dealt with by courts. Thus, financial institutions seeking recourse to arbitration for recovery of loans secured by mortgages would be constrained to limit their claims only to the monetary obligations and obtain a money-decree. The author analyses the judgment.

Banks and financial institutions, already constantly daunted by the arduous tasks of recovering their dues from the rising number of unscrupulous and ingenious borrowers once again find themselves at the receiving end of a judgment of the apex court which further restricts their options for recovery.

In a landmark judgment in the case of *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Ors*[1], passed by the Supreme Court last year on 5th April, 2011, the court, while analysing the scope of Section 8 of the Arbitration and Conciliation Act, 1996 ("the Act"), inter alia, laid down that suits for sale, foreclosure or redemption of mortgaged properties could not be tried by an arbitral tribunal and could only be dealt with by courts. Consequently, banks and financial institutions can no longer solely rely upon arbitration as a mechanism for smooth recovery where the loans are secured by mortgages of immovable properties of the borrower or guarantor.

Most loan agreements entered into by banks and financial institutions with their borrowers provide for reference to arbitration in cases of disputes with a view to procuring faster adjudication of claims and quicker recovery of dues. Such arbitration clauses usually provide for arbitration by a sole arbitrator to be appointed by the lending institution. In case of default, a notice of arbitration is sent by the lender to the borrower referring the claim to arbitration. The sole arbitrator or the arbitral tribunal, as the case may be, adjudicates upon the dispute and passes the award against the defaulting borrower and/or guarantor which is then enforced. The terms of reference to the arbitral tribunals would include questions of security enforcement and interim reliefs against disposal or dealings with the property by the borrower.

This process of recovery has been dealt a death blow, in so far as cases involving mortgage of immovable property are

(Footnotes)

[1] Reported in AIR 2011 SC 2507, (2011) 5 SCC 532

concerned. Non-Banking Financial Institutions ("NBFCs") are more greatly affected by this judgment as compared to banks which enjoy additional modes of recovery under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act, remedies whereunder are not available to NBFCs.

The judgment in question arose out of an appeal by special leave filed by Booz Allen and Hamilton Inc. ("Appellant") challenging an order dated 07.03.2002 passed by a single judge bench of the Hon'ble Bombay High Court dismissing an application filed by the Appellant under section 8 of the Arbitration and Conciliation Act, 1996 ("the said Act"). The facts of the case were as under:

Capstone Investment Co. Pvt. Ltd. ("Capstone") and Real Value Appliances ("RV Appliances") had mortgaged their respective flat nos. 9A and 9B at Napien Sea Road, Mumbai as security for loans availed by them from SBI Home Finance Ltd. ("SBI") under two loan agreements dated 03.12.1994. Two leave and license agreements dated 05.04.1996 were also entered into by Capstone and RV Appliances with the Appellant thereby permitting the appellant to use their respective flats for the term 01.09.1996 to 31.08.1996. On the same day, a tripartite deposit agreement was entered into among RV Appliances, Capstone, the Appellant and SBI whereby the Appellant paid a refundable security deposit of Rs. 6.4 crores to Capstone and RV Appliances (at the rate of Rs.3.24 crores for each flat). Of the said deposit amount, a sum of Rs.5.5 crores was directly paid to SBI on the instructions of Capstone and RV Appliances towards repayment of the loans availed by Capstone and Real Value. Consequently, the loan due by Capstone to SBI with respect to flat no. 9A was cleared but the loan availed by RV Appliances remained due and outstanding. Capstone however became a guarantor for repayment of the amount due by RV Appliances and flat No.9A was secured in favour of SBI and a charge was created in the shares relating to flat No.9A belonging to Capstone in favour of SBI, as security for repayment of the loan by R V Appliances.

Clause 16 of the agreement which was the arbitration clause is reproduced hereunder:

> *"In case of any dispute with respect to creation and enforcement of charge over the said shares and the said Flats and realization of sales proceeds therefrom, application of sales proceeds towards discharge of liability of the Parties of the First Part to the parties of the Second Part and exercise of the right of the Party of the Second Part to continue to occupy the said Flats until entire dues as recorded in Clause 9 and 10 hereinabove are realized by the party of the Second Part, shall be referred to an Arbitrator who shall be retired Judge of Mumbai High Court and if no such Judge is ready and willing to enter upon the reference, any Senior Counsel practicing in Mumbai High Court shall be appointed as the Sole Arbitrator. The Arbitrator will be required to cite reasons for giving the award. The arbitration proceedings shall be governed by the Arbitration and Conciliation Ordinance 1996 or the enactment, re-enactment or amendment thereof. The arbitration proceedings shall be held at Mumbai."*

As the loan amount due by RV Appliances was not repaid, SBI filed a mortgage suit in the High Court of Bombay on 28.10.1999 against Capstone, the Appellant and RV Appliances in regard to the mortgaged property (flat No.9A) seeking, inter alia, a declaration that the amount of Rs. 8,46,10,731 together with further interest and additional interest thereon for delayed payment were secured by a valid an subsisting mortgage on the said flat and for a direction for sale of the said premises in the event of failure by Capstone to repay the dues by the date fixed by the court for redemption of the mortgage.

Thereafter, on a notice of motion taken out by SBI seeking interim relief, the High Court issued an order on 25.11.1999 permitting the Appellant to continue to occupy the said Flat No.9A and garages Nos. 45 to 47 situate at Brighton, 68D, Napean Sea Road, Mumbai while restraining them from creating any third party right or interest of any nature whatsoever in the said flat and from handing over possession of the said flat to Capstone or RV Appliances till further orders.

Subsequently, on 10.10.2001, the appellant took out a notice of motion praying that the parties to the suit be referred to arbitration as provided in clause 16 of the deposit agreement dated 5.4.1996 and consequently the suit be dismissed. The said application which was resisted by the SBI was dismissed by a single judge bench of the High Court against which the appeal by special leave was filed in the Supreme Court.

While deciding on the issue of arbitrability of the disputes referred, the court observed the following:

i) Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

ii) Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to sub-ordinate rights in personam arising from rights in rem have always been considered to be arbitrable.

iii) An agreement to sell or an agreement to mortgage does not involve any transfer of right in rem but create only a personal obligation. Therefore if specific performance is sought either in regard to an agreement to sell or an agreement to mortgage, the claim for specific performance will be arbitrable. On the other hand, a mortgage is a transfer of a right in rem. A mortgage suit for sale of the mortgaged property is an action in rem, for enforcement of a right in rem. A suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by courts of law and not by arbitral tribunals.

iv) Order 34 of the Code does not relate to execution of decrees, but provides for preliminary and final decrees to satisfy the substantive rights of mortgagees with reference to their mortgage security. The provisions of Transfer of Property Act read with Order 34 of the Code, relating to the procedure prescribed for adjudication of the mortgage suits, the rights of mortgagees and mortgagors, the parties to a mortgage suit, and the powers of a court adjudicating a mortgage suit, make it clear that such suits are intended to be decided by public fora (Courts) and therefore, impliedly barred from being referred to or decided by private fora (Arbitral Tribunals).

v) If a mortgage suit is referred to arbitration, a person who is not a party to the arbitration agreement, but having an interest in the mortgaged property or right of redemption, can not get himself impleaded as a party to the arbitration proceedings, nor get his claim dealt with in the arbitration proceedings relating to a dispute between the parties to the arbitration, thereby defeating the scheme relating to mortgages in the Transfer of Property Act and the Code. It will also lead to multiplicity of proceedings with likelihood of divergent results.

vi) In passing a preliminary decree and final decree, the court adjudicates, adjusts and safeguards the interests not only of the mortgagor and mortgagee but also puisne/mesne mortgagees, persons entitled to equity of redemption, persons having an interest in the mortgaged property, auction purchasers, persons in possession. An arbitral tribunal will not be able to do so.

Based on the above reasoning, the court concluded that, "A decree for sale of a mortgaged property as in the case of a decree for order of winding up, requires the court to protect the interests of persons other than the parties to the suit/petition and empowers the court to entertain and adjudicate upon rights and liabilities of third parties (other than those who are parties to the arbitration agreement). Therefore, a suit for sale, foreclosure or redemption of a mortgaged property, should only be tried by a public forum, and not by an arbitral tribunal. Consequently, it follows that the court where the mortgage suit is pending, should not refer the parties to arbitration." The court also further opined that even if some of the issues or questions in a mortgage suit are arbitrable or could be decided by a private forum, the issues in a mortgage suit cannot be divided.

In view of the clear position laid down by the Supreme Court, issues relating to enforcement of mortgage can no longer be brought before an Arbitral Tribunal. Thus, financial institutions seeking recourse to arbitration for recovery of loans secured by mortgages would be constrained to limit their claims only to the monetary obligations and obtain a money-decree. Home loan cases would be directly affected by this position. The enforcement of the mortgage can only be by separate proceedings by way of mortgage suits instituted under the provisions of Order XXXIV of the Code of Civil Procedure, 1908. However, financial institutions may, to avoid loss of time, invoke arbitration for the money claim and at the same time file a mortgage suit for enforcement of the mortgage. Once the money claim is adjudicated upon by the tribunal and an award is passed, the relief of enforcement of mortgage can be sought based on this award which would have the force of a decree.

The Transfer of Property Act, 1882, vide section 69, confers on the mortgagee, in certain cases, the right to sell the mortgaged property without the intervention of the court where the mortgage deed expressly confers such power on the mortgagee. This is another provision financial institutions can resort to for obviating the necessity of approaching courts for enforcement of mortgage by including suitable provisions in their mortgage documents.

(Author: Rohan Thacker is a LL.M Student from India)

Think ... Life

Every day somewhere in Africa a gazelle wakes up
It knows it must run faster than the fastest lion around
Lest it be eaten

Every day somewhere in Africa a lion wakes up
It knows it must run faster than the slowest gazelle around
Lest it starve to death

Every day it does not matter
Whether you are a lion or a gazelle
Because you must run faster than the chores of life!

Article

Industrial Disputes - Arbitration a Better Remedy

: MEENAKSHI AGRAWAL

Arbitration appears to be the best method for the settlement of all industrial disputes. The disputes can be resolved speedily and in less than a year, typically in a few months. The greatest advantage of arbitration is that there is no right of appeal, review or writ petition. Besides, it may as well reduce a company's litigation costs and its potential exposure to ruinous liability, apart from redeeming the workmen from frustration.

Conflict resolution is an essential part of any well-functioning labour market and industrial relations system. Where there are labour relations one inevitably finds labour disputes and the need to resolve them efficiently, effectively and equitably for the benefit of all the parties involved and the economy at large. The framework put in place to deal with such disputes is a crucial component of any country's industrial relations system. The options available to the social partners and to governments are numerous and range from informal negotiations all the way to formal litigation and may even include government intervention to resolve certain labour disputes in the public interest. While the range of choices for resolving labour disputes is broad, the present article focuses only on the extra-judicial method of arbitration – that is, solutions which do not involve going to court or appearing before a labour tribunal.

LABOUR AND INDUSTRIAL DISPUTES – MEANING AND TYPES

An industrial dispute is defined as any dispute or difference between employers and employers, or between employers and workmen, or between workmen and which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person.[1]

In simple words, an industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing, etc.[2]

(Footnotes)

[1] Section 2(k) of the Industrial Disputes Act, 1947

[2] Industrial Relations, *Industrial Disputes* http://industrialrelations.naukrihub.com/industrial-disputes.html; (March 3, 2012)

Employment disputes are divided into two categories:[3]

- *Individual disputes* are those involving a single worker whereas collective disputes involve groups of workers – usually represented by a trade union.

- *Collective disputes* – further be divided into two sub-categories:

  (i) *Rights dispute* arises where there is disagreement over the implementation or interpretation of statutory rights, or the rights set out in an existing collective agreement.
  (ii) *Interest dispute* concerns cases where there is disagreement over the determination of rights and obligations, or the modification of those already in existence. Interest disputes typically arise in the context of collective bargaining where a collective agreement does not exist or is being renegotiated.

Arbitration may be compulsory or voluntary, binding or advisory, depending on the legal circumstances or the choice of the parties. In any case, arbitration involves the intervention of a neutral third party who is empowered to examine legal arguments and evidence from both sides and to make a binding decision in the case.[4]

WHEN TO REFER TO ARBITRATION IN CASE OF LABOUR DISPUTES

Under the Industrial Disputes Act, 1947, a dispute may be referred to arbitration, under following conditions:[5]

(i) an industrial dispute exists or is apprehended in an establishment;
(ii) the employer and the workmen of that establishment agree, in writing, to refer the dispute to arbitration;
(iii) arbitration agreement is in the prescribed form and signed by the parties to it in the prescribed manner;
(iv) the agreement must be accompanied by the consent, in writing, of the arbitrator or arbitrators;
(v) the dispute must be referred to arbitration at an time before it has been referred to a Labour Court or Tribunal or a National Tribunal;
(vi) the arbitration agreement set forth the issue/issues to be decided by the arbitration procedure and a copy of the agreements is forwarded to the Government and the Conciliation officer.

Where any industrial dispute exists or is apprehended and the employer and the workmen agreed to refer the dispute to arbitration, they may refer the dispute to arbitration and the reference is to such person or person (including presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator of arbitrators as may be specified in the arbitration agreement.[6]

(Footnotes)

[3] H.L. KUMAR, WHAT EVERY BODY SHOULD KNOW ABOUT LABOUR LAW, p 104
[4] *Ibid.*
[5] *Supra* at 1, Section 10 A
[6] *Ibid.*

Where arbitration provides for a reference of the disputes to an even number of arbitrators, the agreement shall provide for the appointment of a third person who shall enter upon the reference. If the arbitrators are equally divided in their opinions, the award of the third arbitrator shall prevail and shall be deemed to be the arbitration award.[7]

TYPES OF ARBITRATION FOR LABOUR AND INDUSTRIAL DISPUTES

There are two types of Arbitration:[8]

1. Voluntary Arbitration is a binding, adversarial dispute resolution process in which the disputing parties choose one or more arbitrators to hear their dispute and to render a final decision or award after an expedited hearing. Voluntary arbitration appears to be the best method for the settlement of all industrial disputes.[9]

Voluntary arbitration implies that the two contending parties, unable to compromise their differences by themselves or with the help of mediator or conciliator, agree to submit the conflict/ dispute to an impartial authority, whose decisions they are ready to accept. In other words, under voluntary arbitration the parties to the dispute can and do they refer voluntarily and dispute to arbitration before it is referred for adjudication. This type of reference is known as "voluntary reference", for the parties themselves volunteer to come to a settlement though an arbitration machinery.[10]

The essential elements are:[11]

- Voluntary submission of dispute to an arbitrator.
- Subsequent attendance of witnesses and investigations.
- Enforcement of an award may not be necessary and binding because there is no compulsion.
- It may be specially needed for disputes arising under agreements.

2. Compulsory Arbitration is a non-binding, adversarial dispute resolution process in which one or more arbitrators hear arguments, weigh evidence and issue a non-binding judgment on the merits after an expedited hearing. The arbitrator's decision addresses only the disputed legal issues and applies legal standards. Either party may reject the ruling and request a trial de novo in court.[12]

Compulsory arbitration is one where the parties are required to accept arbitration without any willingness on their part. When one of the parties to an industrial dispute feels aggrieved by an act of the other, it may apply to the appropriate government to refer the dispute to adjudication machinery. Such reference of a dispute is known as "compulsory" or "involuntary" reference, because reference in such circumstances does not depend on the sweet will of either the contending parties or any party to the dispute. It is entirely the discretion of the appropriate govt. based on the question of existing dispute, or on the apprehension that industrial dispute will emerge in particular establishment.[13]

The parties are forced to arbitration by the State when:[14]

(Footnotes)

[7] *Ibid.*

[8] Ashwini Kumar Bansal, Arbitration & ADR (2009 ed.)

[9] *Kamal Leather Karamchari Sangathan (Regd)* v. *Liberty footwear Co (Regd),* 1990 Lab IC 301, 307 (SC), per Jagannathan Shetty J.

[10] *Supra* at 8

[11] John W. Cooley, "*Arbitration Advocacy*" (2nd ed.); (March 3, 2012) http://books.google.co.in/books?id=TIGlRZr9gjkC&pg=PA8&dq=voluntary+arbitration&hl=en&sa=X&ei=9-RRT6eaDI6urAeyttC1DQ&ved=0CD0Q6AEwAw#v=onepage&q=voluntary%20arbitration&f=false

[12] Richard A. Bales, *Compulsory Arbitration: The Grand Experiment In Employment*; (March 3, 2012) http://books.google.co.in/books?id=D9Oh5C_8pegC&printsec=frontcover&dq=compulsory+arbitration&hl=en&sa=X&ei=4-RRT_7CFsXnrAf4ntnFDQ&ved=0CDUQ6AEwAA#v=onepage&q=compulsory%20arbitration&f=false

[13] *Ibid.*

[14] P N Singh, *Employee Relations Management*, (March 3, 2012) http://books.google.co.in/books?id=uP3m2X3OJR8C&pg=PA284&dq=compulsory+arbitration+-parties+forced+by+government&hl=en&sa=X&ei=LeZRT89KkcqsB5es4ZQF&ved=0CD0Q6AEwAg#v=onepage&q=compulsory%20arbitration%20-%20parties%20forced%20by%20government&f=false

- The parties fail to arrive at a settlement by a voluntary method
- When there is a national emergency which requires that the wheels of production should not be obstructed by frequent work-stoppages
- The country is passing through a grave economic crisis
- There is a grave public dissatisfaction with the existing industrial relations
- Public interest and the working conditions have to be safeguarded and regulated by the state.

Compulsory arbitration leaves no scope for strikes and lock-outs; it deprives both the parties of their very important and fundamental rights.

The only difference between voluntary arbitration and compulsory adjudication is that in the former case, the parties have the liberty to make, by mutual agreement, a reference to a private 'arbitrator' or 'arbitrators' of their choice, apart from the presiding officers of labour courts, industrial tribunals and national tribunals. Once the reference is made, there is no difference between the so-called 'voluntary arbitration' and the 'compulsory adjudication'.[15]

PROCEDURE FOR REFERRING TO ARBITRATION FOR RESOLUTION OF INDUSTRIAL AND LABOUR DISPUTES

Section 10 A of the Act provides for *voluntary reference* of dispute to arbitration.[16]

(Footnotes)

[15] Report of *The Second National Commission on Labour, Conclusions And Recommendations*, Chap 13, p 45, Para 6.92 and 6.93

[16] *Supra* at 1

The Lighter Side

One day, Joe, Bob and Dave were hiking in a wilderness area when they came upon a large, raging, violent river. They needed to get to the other side, but had no idea of how to do so.

Joe prayed to God, saying, "Please God, give me the strength to cross this river."

Poof! God gave him big arms and strong legs, and he was able to swim across the river in about two hours, although he almost drowned a couple of times.

Seeing this, Dave prayed to God, saying, "Please God, give me the strength and the tools to cross this river. "Poof! God gave him a rowboat and he was able to row across the river in about an hour, after almost capsizing the boat a couple of times.

Bob had seen how this worked out for the other two, so he also prayed to God saying, "Please God, give me the strength and the tools, and the intelligence, to cross this river."

Poof! God turned him into a woman. She looked at the map, hiked upstream a couple of hundred yards, then walked across the bridge.

The difference between school and life:
In school, you are taught a lesson and then given a test.
In life, you are given a test that teaches you a lesson.

Processes involved in reference of a dispute to voluntary labour arbitrator-

1. Section 10(A)(1) of the ID Act authorizes the parties to make reference to the voluntary arbitrator. Before it, four conditions must be satisfied –

   (a) The industrial dispute must exist or is apprehended
   (b) Agreement must be in writing
   (c) Reference must be made before a dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal
   (d) Name of arbitrator must be specified

2. Proceedings before an arbitrator under section 10A shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17A.[17]

3. Arbitration agreement shall be signed by the parties thereto in such manner as prescribed by the appropriate Government.

4. Section 11 makes the procedure to be followed by the arbitrator, in the arbitration proceedings, the same as is to be followed the adjudicatory authorities, viz the labour court, a tribunal or a national tribunal, in connection with adjudication proceedings.[18] This provision also vests the arbitrator with similar powers as those of the adjudicatory authorities. The duties of the arbitrator are also the same as those of an adjudicatory authority.[19]

5. The award of the arbitrator is to be communicated to the 'appropriate government' and has to be published.[20] The commencement of such award is subject to the provisions of section 17 A, like the award of an adjudicator under section 10.

6. Furthermore, section 10A(5) makes the provisions of the Arbitration Act 1940, inapplicable to proceedings under section 10A. In other words, the machinery of the Arbitration Act is not available to the parties.

It was held in the case of *Rohtas Industries Pvt. Ltd.* v. *Rohtas Industries Staff Union*[21] that the High Court has the Power of superintendence (Article 227 of the Constitution of India) over Voluntary Arbitrators. In the same case, it was held that the application of Article 136 of the Constitution (i.e. for relief from Arbitration Award), is extended to an award of an arbitrator under Section 10A.

The Apex court in case *Kurnal Leather Employess Union* v. *Liberty Footwear Co.*[22] has held that the remedy under section 10A is voluntary and alternative for settlement of industrial dispute but if the parties to the dispute have agreed in writing for settlement of their disputes through arbitrator, then the Government cannot refer the dispute to the Tribunal for adjudication.

POSITION IN INDIA

As per Jagannatha Shetty J, **"***Voluntatry arbitration is a part of the infrastructure of dispensation of justice in industrial adjudication.***"**[23]

(Footnotes)

[17] *Supra* at 1, Section 20(3)
[18] *Supra* at 1, Section 11
[19] *Supra* at 1, Section 15
[20] *Supra* at 1, Section 17
[21] (1976) 1 LLJ 272 SC
[22] A.I.R. 1990 S.C. 247
[23] *Kamal Leather Karamchari Sangathan (Regd)* v. *Liberty footwear Co (Regd),* 1990 Lab IC 301, 307 (SC)

In *Kamal Leather Karamchari Sangathan (Regd)* v. *Liberty footwear Co (Regd),*[24] accentuating on the advantages of voluntary arbitration, speaking for the Court, Jagannathan Shetty observed: **"***Voluntary arbitration, as envisaged by section 10A is arbitration in name only. In reality, it is more than adjudication than arbitration. The parties may make a reference of an industrial dispute, by a written agreement, to the presiding officer of a labour court or tribunal or a national tribunal, as an arbitrator. The parties also have the liberty to choose any other person or persons as arbitrator, by specifying it in the arbitration agreement. Such arbitration, after the reference is made, partakes the character of adjudication.***"**

But, the efficacy of arbitration is largely buttressed by reliance upon state intervention.[25] No wonder that 'this method does not appear to have much attraction for the Indian industry.[26]

In India, the emphasis is mainly on the compulsory adjudication and 'voluntary arbitration' has not taken root in spite of the influencial advocacy for it in different policy making forums.[27]

Now, to make 'voluntary arbitration' more acceptable to the industrial employers and workers and with a view to coordinate the efforts for its promotion, the Government of India has set up a National Arbitration Promotion Board (NAPB) with a tripartite composition.[28] The function of this board will be to examine and review the factors inhibiting the wider acceptance of this procedure and to suggest measures to make it more popular. The NCL observed: **"***The NAPB is also to evolve principles, norms and procedures for the guidance of arbitrators and parties. It would look into the causes of delay and expediate arbitration proceedings wherever necessary and also specify from time to time, the type of dispute which would normally be settled by arbitration, in the light of tripartite decisions.***"**[29]

(Footnotes)

[24] *Ibid.*

[25] Indian Law Institute, *Labour Law And Labour Relations* (1968 ed.), (March 3, 2012) http://books.google.co.in/books?id=cRs9AQAAIAAJ&q=Indian+law+institute,+labour+law+and+labour+relations,+1968+edn&dq=Indian+law+institute,+labour+law+and+labour+relations,+1968+edn&hl=en&sa=X&ei=tudRT4O6EcPXrQeo65TlDQ&ved=0CDkQ6AEwAA

[26] Mary Sur, *Collective Bargaining* (1965 ed.), (March 3, 2012) http://books.google.co.in/books?id=7iAEAAAAMAAJ&q=Mary+Sur,+collective+bargaining,+1965+edn&dq=Mary+Sur,+collective+bargaining,+1965+edn&hl=en&sa=X&ei=9udRT8vbAsrIrQe-5dC7DQ&ved=0CDAQ6AEwAA

[27] Report of the *National Commission on Labour,* Chap 23- *Industrial Relations*-1, p 324, para 23.25. (The commission, on the basis of the evidence before it, has recorded the following factors which have contributed to the slow progress of arbitration in India: (i) east availability of adjudication in case of failure of negotiations; (ii) dearth of suitable arbitrators, who command the confidence of both parties; (iii) absence of recognized unions which could bind the workers to common agreements; (iv) legal obstacles; (v) the fact that in law, an appeal is competent against an arbitrator's award; (vi) absence of a simplified procedure to be followed in voluntary arbitration; and (vii) cost to the parties, particularly workers).

[28] *Id.*, p 324, Para 23, 25

[29] *Ibid.*

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IIAM Community Mediation Service Committee formed

IIAM Community Mediation Service Committee has been constituted for implementing Community Mediation Service in Kerala, India. The Patron / Chairman Emeritus of the Committee is Mr. Justice K.T. Thomas, former Judge, Supreme Court of India. The Vice-Chairmen are Mr. Justice T.V. Ramakrishnan, former Judge High Court of Kerala and Mr. Hormis Tharakan IPS, former Director RAW. The Institutional members include Rev. Fr. Jose Alex, CMI, Provincial General, Rajagiri Group of Institutions, Mr. Anil Xavier, President, Indian Institute of Arbitration & Mediation, Mr. George Poothicote, Director, IIAM, Mr. Anil Joseph, Director, IIAM, Prof. (Mrs.) Madhulekha Bhattacharya, Dy. Director, National Institute of Heath and Family Welfare (NIHFW), Mr. Ismayael Rawther K.A, Director, NORKA Roots, Mr. G. Shrikumar, President, India International ADR Association (IIAA), Mr. D. Dhanuraj, Chairman, Centre for Public Policy Research (CPPR) and Mrs. Sandhya Raju, Director Kerala, Human Rights Law Network (HRLN).

IIAM Community Mediation Service was officially launched by the Chief Justice of India in 2009 at New Delhi. IIAM and Rajagiri would partner in establishing Community Mediation Clinics in various parts of Kerala. Community Mediators from various walks of life would be trained by IIAM to act as Community Mediators. For more details, see: www.communitymediation.in. If you interested to partner with the program or would like to become a community mediator, please mail to dpm@arbitrationindia.com

President of India recommends Alternative Dispute Redressal mechanisms

With government being the biggest litigant amid a huge pendency of cases, President Pratibha Patil suggested settlement of disputes through alternative redressal mechanisms like mediation. As the courts, including the Supreme Court and 21 High Courts, battle over 3.5 crore pending cases before them, the government has been identified as the largest litigant.

Patil stressed that mediation should be available at every level, most particularly at the district level to enable easy access to this option for contesting parties. “In the rapidly changing contemporary world, the methods adopted to resolve increasingly complex issues will determine the maturity and stability of the system,” she said addressing a national seminar on mediation.

Best Young Author 2012

With a view to promote and support students in developing the qualities of legal research and presentation, IIAM is providing opportunity to law students to publish original, innovative and thought provoking articles on arbitration, mediation, conciliation, dispute resolution and similar topics and critiques on judgments relating to the same topics. Selected articles will be published in the “Indian Arbitrator”. From amongst the submitted articles, every year one student author will receive the “Best Young Author” certificate from IIAM.

Mediation best in Corporate cases - CJI

Chief Justice of India S.H. Kapadia on Saturday favoured resolution of high-stake corporate and commercial disputes, including those related to pricing of scarce natural resources like gas and oil, by resorting to alternate dispute redressal mechanism of "mediation". He said such disputes should be handled through "facilitative mediation" as judges lack expertise in complex issues of pricing of natural resources and there are chances that the judgment by them could hit the economy of the country and a particular sector.

Justice Kapadia addressing a national Seminar, said mediation is a better way to maintain a balance between economic and corporate interest. "When such commercial matters come before us, entire world watches us. Therefore in complicated commercial matters, facilitative mediation should be resorted to balance the economic interest and natural resources on one hand and on the other hand profit of corporates", he said.

Asian-Pacific Mediation Conference 2012 - Hong Kong

Conference titled "Mediation and its Impact on National Legal Systems", scheduled on 16 and 17 November 2012 is being organized and hosted by the City University of Hong Kong with the support of UNCITRAL (United Nations Commission on International Trade Law). The conference will promote the modernization and harmonization of the law and practice of mediation in the region and the expansion of the role of mediation and mediators both within Asian-Pacific and internationally.

The objective of the conference is to provide a collegiate platform where different experiences and ideas can be shared and exchanged. The conference will bring together international legal scholars and experts from around the world to promote a better understanding of the current social, political and legal realities and how mediation law and practice has been developing over time to meet the changing needs and aspirations in the Asian-Pacific region and internationally. For details and registration, see http://www.cityu.edu.hk/slw/APMC2012

Certificate in Dispute Management (CDM)

CDM is a distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment.

You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded. For more details on CDM, mail to training@arbitrationindia.com

Interested to start ADR Centre?

Indian Institute of Arbitration & Mediation is looking for parties interested to start IIAM Chapters in various states and cities.

If you have a passion for dispute resolution and you are interested to start a Dispute Resolution Centre, please mail your details to: dir@arbitrationindia.com

For details of IIAM activities visit www.arbitrationindia.org