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International Commercial Arbitration – A Brief Overview

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ABSTRACT:
International Commercial Arbitration (ICA) refers to a commercial lawful relationship in which both or either of the parties is a resident or foreigner, or is a body corporate outside India, or is an organisation, affiliation, or group of people whose main administration or control is in the hands of a foreign body As a result, under Indian law, an arbitration with a seat in India but a foreign element, such as foreign parties or foreign transactions, is also considered an ICA and is thus subject to Part I of the Arbitration and Conciliation Act, 1996 When an ICA is held outside of India, Part I of the Act does not apply to the parties, but they are subject to Part II of the Act International Commercial Arbitration is a type of arbitration in which the issue at hand is a cross-border one and the parties would prefer not to file a case in a national court In this way, International Commercial Arbitration allows the parties to avoid the lengthy and complicated court process International Commercial Arbitration, unlike previously established laws and procedures, deals with the terms and procedures already agreed upon by the parties in the arbitration agreement The entire arbitration procedure revolves around the arbitration agreement already signed by the parties The purpose of this paper is to investigate the concept of International Commercial Arbitration and its applicability in India The Indian arbitral regime has had its ups and downs, with an ever-present cloud of criticism, scrutiny, and widely expressed aversion to the mechanism for resolving ICAs There have been numerous instances in the past where international parties have been victims of excessive court intervention and lengthy delays in reaching a final resolution of their disputes through arbitration In the past, such arbitrations were marred by procedural and substantive gaps in the 1996 Act at every step of the way

- Arbitral regime in India, Arbitration, International Arbitration, Confidentiality, conciliation, commercial, foreign transactions, arbitration agreement, International Commercial Arbitration, Domestic Arbitration

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Introduction

- Globalization is the process of interaction with people, companies, and governments around the world that leads to the integration of markets into the world economy, thereby increasing the networking of economies The increase in cross-border trade in goods, services, technology and investment flows, people, and information has created growing interdependence between the world's economies, cultures, and populations Globalization has led to the creation of business contracts and partnerships between companies and individuals not located in the same place due to this interaction between people at an international level In the event of a dispute, the question of jurisdiction always arises In legal disputes, the competent courts are usually decided based on factors such as residence, place of work, location of the dispute, etc However, in .(ADR) mechanisms, the parties have free choice of procedural resolution and a neutral third party enabling the discussion In arbitration - one of the ADR methods - the contractual agreement between the parties, which will refer any future or existing disputes to arbitration, must include an arbitration clause When this contract is made between parties from all over the world, international commercial arbitration rules come into force

- International commercial arbitration is a means of resolving disputes arising from international commercial treaties and, like other ADR methods, is used as an alternative to legal proceedings Terms of arbitration are usually determined and governed by the guidelines in the arbitration clause rather than in national law or rules of procedure This is especially useful when the contract is cross-border, as it avoids further disagreements over applying federal law and procedures that would delay settlement

- As the world realized that business had to be done quickly, many conventions and protocols were discussed and ratified internationally In 1923, the Geneva Protocol on Arbitration Clauses recognized the arbitration clause's validity, an essential element of arbitration on the international stage and under various domestic laws Three years later, in 1927, the Convention recognized the enforceability and binding type of arbitration award Because domestic arbitrations are recognized and legally enforceable The Convention on the Recognition and Enforcement of International Arbitration Awards, also known as the New York Convention, allows international arbitration awards or international arbitration awards and awards Domestic arbitration or pronounced judgments made in that jurisdiction The New York Convention was a significant

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milestone in international commercial arbitration as it gave equal recognition to international arbitration awards and domestic arbitration awards, making international arbitration awards enforceable in any jurisdiction

- The United Nations drafted and consolidated the guidelines for all these conventions in 1985 with the adoption of the United Nations Commission on International Trade Law (UNCITRAL), a model law for international commercial arbitration, and since then, many countries, including India, have the model recognized in their respective national legal systems

- The advent of international commercial arbitration has created a new way for people with different jurisdictions to resolve disputes more or less on their terms and not be burdened by the backlog of cases that turn the traditional way of settling into a struggle

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- To study the concept of international Commercial Arbitration
- To examine the concept of objective arbitrability
- To summarize the position of international commercial arbitration under Indian laws
- To study about the arbitral proceedings in ICA
- Understanding parties of the arbitration
- To examine the difference between ICA and Domestic Arbitration

✞ **RESEARCH METHODOLODY:**

- This is a doctrinal research Only secondary sources have been referred for this study The primary sources which include interviews with people were not possible Secondary sources include books related to the International Commercial Arbitration and research articles on enforcement of foreign arbitral awards were referred Ample websites and blogs have also been referred for the study

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✞ MEANING OF INTERNATIONAL COMMERCIAL ARBITRATION

- Section 2(1)(f) of The Arbitration and Conciliation Act, 1996 defines an ICA as an arbitration relating to disputes arising out of a legal relationship which must be considered commercial,[1] where either of the parties is a foreign national or resident or is a foreign body corporate or is a company, association or body of individuals whose central management or control is in foreign hands Thus, under Indian law, an arbitration with a seat in India, but involving a foreign party will also be regarded as an ICA and will be subject to Part I of the Act However, where an ICA is held outside India, Part I of the Act would have no applicability on the parties (save the stand-alone provisions introduced by the 2015 Amendment Act, unless excluded by the parties, as discussed later) but the parties would be subject to Part II of the Act

[1] 'Commercial' should be construed broadly having regard to the manifold activities which are an integral part of international trade today (RM Investments & Trading Co Pvt Ltd v Boeing Co, AIR 1994 SC 1136)
[2] TDM Infrastructure Pvt Ltd v UE Development India Pvt Ltd (2008) 14 SCC 271

- The 2015 Amendment Act also deleted the words 'a company' from the purview of the definition thereby restricting the definition of ICA only to the body of individuals or association Therefore, by inference, it has been made clear that if a company has its place of incorporation as India then central management and control would be irrelevant as far as its determination of being an "international commercial arbitration" is concerned

- Notably, the scope of Section 2 (1) (f) (iii) was determined by the Supreme Court in the case of TDM Infrastructure Pvt Ltd v UE Development India Pvt Ltd,[2] ("TDM Infrastructure") wherein, despite TDM Infrastructure Pvt Ltd having foreign control, it was concluded that "a company incorporated in India can only have Indian nationality for the purpose of the Act"

- Thus, though the Act recognizes companies controlled by foreign hands as a foreign body corporate, the Supreme Court has excluded its application to companies registered in India and having Indian nationality Hence, in case a corporation has dual nationality, one based on foreign control and the other based on registration in India, for the purpose of the Act, such corporation would not be regarded as a foreign corporation

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- In a recent case, where the Indian company was the lead partner in a consortium (which also included foreign companies) and was the determining voice in appointing the chairman and the consortium was in Mumbai, the Supreme Court held that the central management and control was in India[3]

[3] M/s Larsen and Toubro Ltd SCOMI Engineering BHD v Mumbai Metropolitan Region Development Authority, 2018 SCC OnLine SC 1910 .

✞ **NEED FOR INTERNATIONAL COMMERCIAL ARBITRATION:**

1 Rapid method of resolving disputes: The court process includes broad methods and laws that a party must follow If the parties agree to arbitrate their dispute, they are not required to follow stringent legal procedures As a result, the dispute becomes expedient

2 Enforceability of Arbitral Awards: When compared to court judgments, it is more promptly and quickly implemented

3 Impartial Arbitrator: A neutral third party is appointed to resolve disputes This third party is chosen by both parties to mediate their disagreements

4 Arbitrator may be a specialist: Depending on the issue of arbitration, parties may select a specific arbitrator who has that specific specialized experience and mastery in the matter that is brought to arbitration

5 Arbitration is less expensive than complex litigation procedures because it is a quick remedy that does not include an excessive number of complicated procedures

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- This article examines the fundamental elements of International Commercial Arbitrations between Indian and foreign parties, with the seat of arbitration in London It also addresses the issues encountered by foreign companies seeking relief and remedies in India and England, as well as enforcement mechanisms

- For example, a clause requiring a London seat and arbitration under Indian law might look like this:

"Any disputes arising out of or in connection with this contract, including any question regarding the existence, validity or termination, shall be referred to and finally resolved by arbitration to be conducted by a Sole Arbitrator under the LCIA Rules, which rules are deemed to be incorporated by reference into this clause"[4]

[4]https://singhaniain/blog/international-commercial-arbitration-for-parties-in-india-and-uk?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

- A growing number of international contracts provide for the resolution of disputes through arbitration In response to this trend, several countries (including India) have accelerated the expansion and development of their arbitral law in order to make it more accessible and flexible to foreign investors Because one of the goals of arbitration is to give parties more autonomy, parties are generally freer to agree on the procedures governing their arbitrations, including the location of the arbitration The substantive law of India would be the contract's governing law

- In the absence of any other contract provision, the proper law is the law that the arbitral tribunal will apply In the absence of a contrary intention or stipulation, the same holds true for the lex arbitri and the law governing recognition and enforcement Unless there is clear contrary intention in the contract, the seat of arbitration is generally determined by the seat of arbitration specified in the contract

- Under the Arbitration and Conciliation Act 1996 (the Indian Act), an International Commercial Arbitration is defined in the Indian legal system as an arbitration arising from a legal relationship that must be considered commercial, where either of the parties is a foreign national or resident, a foreign body corporate, or a company, association, or

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body of individuals whose central management is located in India An International Commercial Arbitration can be held in India or in a foreign country

- The Indian Act governs the courts' ability to grant interim relief in India It is based on UNCITRAL Model Law Article 9[5] Section 9 of the Indian Act allows a party to apply to an Indian court for certain interim measures in support of an Indian (or, to a lesser extent, London-seated arbitration) before, during, or after the tribunal's award The law in this area has recently changed to include foreign-seated arbitrations in the scope of interim relief Interim relief is only available under the amended Indian law if the arbitration begins after October 23, 2015

[5]https://singhaniain/blog/international-commercial-arbitration-for-parties-in-india-and-uk?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration .

✞ DIFFERENCE BETWEEN INTERNATIONAL COMMERCIAL ARBITRATION & DOMESTIC ARBITRATION:

- In many jurisdictions, there are relatively few substantive differences between pursuing international arbitration or domestic arbitration proceedings This Practice Note identifies when differences may arise and considers the impact of such differences on the conduct of the arbitration

- You may also be interested in Practice Notes: Arbitration—an introduction to the key features of arbitration, Institutional arbitration—an introduction to the key features of institutional arbitration, Ad hoc arbitration—an introduction to the key features of ad hoc arbitration and International arbitration—an introduction to the key features of international arbitration

- The term "domestic arbitration" refers to a dispute that is solely domestic in nature meaning within the national borders This means that all components of the arbitration procedures are linked to a single jurisdiction in general The parties' nationality, the contract's controlling law, the contract's location of execution, and the events giving birth to the conflict, for example, will all fall under the same jurisdiction

- An international arbitration, on the other hand, will extend beyond the jurisdictional boundaries of a single country In general, there are three ways to assessing whether an arbitration is genuinely international:
• The substance of the issue—if the dispute involves international economic activity, the arbitration is deemed international
• The nationality of the parties is taken into consideration
• The parties involved are connected with different jurisdiction
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- Domestic arbitration has essentially two primary characteristics, which are as follows:
• If a dispute arises, the disputing parties should agree to resolve it through arbitration

Consider the following scenario: A and B sign a commercial sales agreement As a result, the parties should include an arbitration clause in this Sales Agreement at the time of execution to avoid any additional uncertainty regarding the kind of arbitration to be used by the disputing Parties
• • The parties to the dispute should file a claim for the start of proceedings in India, in accordance with Indian law

Domestic arbitration can also form the basis of Ad-hoc arbitration, in which the parties choose the arbitrators and settlement procedures, or Institutional Arbitration, in which the parties to the dispute must follow the pre-specified instructions outlined in the agreement between the disputed parties

International Arbitration's Characteristics

The following are some of the characteristics of international arbitration:
• • Consensual- International Arbitration processes are consensual, which means that both parties must agree to submit a matter to arbitral courts for resolution Unlike the court proceedings, no third party is allowed to enter into dispute resolution procedure
• • Neutral- International arbitration courts sometimes contain or consist of arbitrators of diverse nationalities, which aids in the provision of an impartial judgement in any dispute The arbitrators are solely responsible for determining the method to be pursued and the merits of the disputes It can provide a neutral platform for conflict settlement
• • Choice- The parties to an arbitration have a lot of say in how, where, who decides, and what language their dispute is settled in The decision-choice maker's is very important to the parties Unlike commercial litigation, where disagreements are decided by state-appointed judges, arbitration allows parties to choose their own

• arbitrator This is especially useful when dealing with a technical issue that necessitates specialised knowledge, or when the parties are from separate jurisdictions and each wants to choose an arbitrator from their own

• • Privacy and Confidentiality- The privacy of the dispute is preserved in such arbitration since the procedures are held in secret The arvitrator also maintains the evidence and documents secret based on the choice of both parties While this level of anonymity cannot be maintained in court proceedings, they are frequently made public

• • Finality- Except under extremely restricted situations, most arbitral statutes do not enable the award to be appealed Furthermore, the parties' ability to appeal the award may be further limited if specific institutional norms are chosen This saves parties money by avoiding the expense of lengthy appeals

• • Enforceability- Arbitration's main benefit is the ease with which arbitral awards may be enforced The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958, makes enforcement easier (the New York Convention) Arbitration rulings must be recognised as binding and enforced in line with the procedural norms of the contracting state

- "In the case of Dominant offset Pvt Ltd Vs Adamouske Strojerny AS, the parties entered into two agreements The Agreements contained an Arbitration clause stating that the place of Arbitration shall be London The parties on having dispute referred to this Arbitration clause and the petitioners sought for the enforcement of the arbitral awards in the Delhi High Court The Court properly studied the provisions of Part I, to see whether this matter falls under Part I or not It was held by the Court that the statement in section 2(2) which states that the "Part I shall apply where the place of arbitration is in India" is an inclusive statement and it does not exclude the applicability of Part I to those matters where the Arbitration is not held in India So, the following matter was held to be within the limits of the Court But the Court said that there is a requirement to be cautious in grant of reliefs where both the parties are foreigners and the place of Arbitration is outside India"

- "Bhatia International v/s Bulk Trading in which it was held that Indian courts have the right to use their jurisdiction to test the significance of an arbitral award made in India, even if the actual law of the contract is foreign The court recognized that Part 1 of the Arbitration and Conciliation Act, 1996 gives effect to UNCITRAL Model Law allowing courts to grant interim relief even when the seat of international commercial arbitration is outside India"

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- India is on its way to becoming a more arbitration-friendly and foreign investor-friendly country Depending on the nature of the arbitration procedure, Indian and English courts play different roles in assisting London-seated arbitrations The parties must first agree on the location of the arbitration, after which the established frameworks described above can be built The most important thing to remember is that a comprehensively drafted clause that considers the relevant advantages and disadvantages of respective legal systems is essential

- International business and international transactions are growing rapidly as a result of modernization Such a development has resulted in numerous disputes concerning international commercial transactions Arbitration is preferred over traditional litigation for resolving these types of disputes because it is faster and less expensive Thus, International Commercial Arbitration occurs when two parties agree to resolve their dispute arising from commercial transactions through arbitration It also provides the parties with a sense of security when entering into international agreements International arbitration is a private and efficient means of resolving disputes And, in general, it is an .(ADR) method chosen voluntarily by the parties It is now the preferred method for resolving disputes in the international business community

- This research has presented what it means to be an international commercial arbitration when it comes to resolving commercial disputes that arise between parties with international status; we also mentioned a significant linguistic and idiomatic matter in relation to this It has informed us that the agreement is to refer disputes relating to international trade matters arising between adversaries to an independent body rather than the courts to resolve the dispute, and the decision of the arbitration is binding on them We have also discussed the benefits of this method of resolving disputes, which include speed in resolving the conflict and justice

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