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ROLE OF ARBITRATION IN CORPORATE DISPUTES

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1. Introduction:

Human conflicts are natural part of any society. Similarly disputes are also common among people. It is difficult to imagine a human society without conflict of interests. Being in mortal form with personalities and egos, opinions and sexes, as well as a strong bent towards living in large groups and developing countries. The humans are different, one from the other, but of these differences with some disagreement and conflicts as surely as rain comes from contract. For resolution of such disputes there is a legal system in every human society.

The dispute between the human in a civilized society can be resolved by applying principles of Natural Justice along with the 'Rule of Law' to provide justice. Every aggrieved person is supposed to go to Courts for his remedy from the court. It is the right of every individual to get remedy and plead for justice before the legal system. All the legal systems are trying to attain the legal ideal that wherever there is a wrong there must be a remedy so that nobody shall have to take law into his own hands.

Even in ancient India, justice delivery system was in existence. For this Kings used to conduct Courts in their 'Darbars'. There they provide settlement through judicial dispute resolute after conducting trials and based on evidences. The Indian legal practice is also running on the similar principles with confidentially and flexibly. Indian legal system was based on British rule because the British Government rule Indian for long period of time and to enforce their dominancy the levied different rules and try to tie in a system i.e. Judicial Dispute Resolution.

Thereafter due to complexity and rigidity of the judicial dispute resolution the large number of case were pending before the courts and the rate of gaining justice has reduced. The concept of Alternative Dispute Resolution was already rooted in various cultures and practice aimed to resolving the conflict outside the judicial resolution. The main aim of the research is to whether the Arbitration proceeding can be alternative dispute resolution in corporate disputes. The researcher try to explain and prove whether the arbitration is considered to be as a court and the award passed by the arbitrator is to be as order of civil court.

2. Judicial Dispute Resolution:

Judicial Dispute Resolution is a method that facilitates the resolution of disputes through the court system, often involving a judge. This system was developed during the British period the modern justice delivery system in India. The Britisher came to India for business purpose but thereafter they role the territory for more than 200 years and in that period for the proper

governing and controlling the society they implement certain Charters in which they prescribed rules and enforceable in the territory. The East India Company form courts for the dispute redressal. Thereafter the India got independence the frame and enforce the Constitution of India. But the procedure and courts were remain same from that period with

certain amendments as respect to the development.²⁷³¹

• **Operating Principles of Judicial Dispute Resolution:**

The Judicial Dispute Resolution is done laid down in enactments. The Civil Courts should follow the provisions of the Civil Procedure Code and the Criminal Courts should follow the Criminal Procedure Code. While dealing with the disputes, the Courts have to act according to the provisions of the Evidence Act. Like this there many other procedure were governed by respective act, rules and enactments in Indian judiciary for resolution of dispute with court proceeding.

• **Advantages of Judicial Dispute Resolution²⁷³²:**

The following are the advantage of Judicial Dispute Resolution:

- a) The Judicial Officer will be a highly qualified lawyer with experience, expertise and objectivity;
- b) Established rules and procedures result in cases being presented to the best advantage, including detailed enquiry into the facts;
- c) Principles applied by the Courts are clearly discernible and reasonable;
- d) Courts have dignity, authority and attract public confidence;
- e) Court proceedings can sometimes spur settlement negotiations;
- f) Legal aid is available.

• **Disadvantages of Judicial Dispute Resolution:**

The following are the disadvantages of Judicial Dispute Resolution.

- a) Where the dispute is between individuals regarding matters on which they do not want an acrimony before the public eye the Judicial Dispute Resolution is not desirable as it is open to public viewing or public reporting;

b) Differences are highlighted and parties sometimes take extreme position in the adversarial atmosphere;

c) In many cases of Judicial Dispute Resolution, litigation causes concern, anxiety and stress;

d) Litigations usually end in a winning of a party and losing of another party and compromises are rare in Judicial Dispute Resolution;

e) The delays are endemic and taking into account the appeal procedures, no litigant can expect finality within a reasonable time;

f) The litigation in Judicial Dispute Resolution involves high costs;

3. Alternative Dispute Resolution:

The Alternative Dispute Resolution can be defined as a technique of dispute resolution through the intervention of a third party whose decision is not legally binding on the parties.

The term 'Alternative Dispute Resolutions' includes, in narrow sense, only those processes in which the decision finally arrived at is with the consent of the parties, namely, negotiation, mediation and conciliation in which the parties retain their freedom to decide the outcome of their disputes. The conciliator or mediator does not himself decide the dispute. He facilitates its resolution and helps the parties in identifying the common ground that has so far eluded the parties. In wider sense, ADR includes arbitration also along with negotiation, mediation and conciliation because arbitration constitutes an alternative to process settles the disputes outside the Courts it is considered as ADR, as it brings the parties to the negotiating table, identifying problems, establishing facts, clarifying issues, developing the option of settlement and ultimately solving the disputes through award which is binding on the parties.²⁷³³

A method of dispute resolution would be considered as a real alternative only if it can dispense with the adjudicatory process, even if

²⁷³¹ 3rd Edition Dr. S. R. Myneni book *Alternative Dispute Resolution (The Arbitration and Conciliation Act, 1996)* p.5
²⁷³² Id; p.11

²⁷³³ Dr. S. K. Jain, *Arbitration Law in India (ADR) Conciliation, Mediation and Negotiation* p.13

it is not wholly a consensual process. It may be worked by a neutral third person who may bring the gap between the parties by bringing them together through a process of conciliation, mediation or negotiation

4. Need of Alternative Dispute Resolution:

The existing justice system is not able to cope with the ever-increasing burden of civil litigation. Not many in India can afford litigation. Except litigants who stand to gain by delaying the process of justice, others do not enjoy taking recourse to litigation that consumes innumerable number of years and considerable amounts by way of expenses. This state of affair makes people doubting about the judicial process. This phenomenon is not only related to India and almost all the countries have been facing similar situation.

The USA took the lead in refining the legal procedures by evolving new procedures for speedy settlement of disputes. These new procedures practised in the U.S.A. and several other countries have come to be known as 'Alternate Dispute Resolution' or simply 'ADR'. These well-structured procedures have been devised to afford easy access to justice without undue delay and at a lesser cost by which the parties can participate in resolution of their disputes.

The primary object of ADR movement is avoidance of vexation, expense and delay and promotion of the ideal of 'access to justice' for all. The ADR system seeks to provide cheap, simple, quick and accessible justice.

5. Arbitration:

Section 2 (1) (a) defined the term Arbitration²⁷³⁴

"Arbitration means any arbitration whether or not administered by permanent arbitral institution."

Arbitration is a form of alternative dispute resolution (ADR) where disputing parties agree to submit their conflict to one or more neutral third parties are called as arbitrators, whose

decision is final and binding. The process is less formal than court litigation, but it still follows a structured procedure i.e. principle of natural justice. The main attraction of arbitration is its flexibility, allowing the parties to choose the arbitrators, venue, governing law, and procedural rules, which helps tailor the resolution process to their specific needs.

6. Need of Arbitration in Corporate World:

In corporate disputes, arbitration clauses are often included in commercial contracts, mandating that any future disputes be resolved through arbitration rather than litigation. This is particularly common in international contracts where parties wish to avoid dealing with foreign court systems. The use of arbitration clauses can differ depending on the corporate sector, but there are common grounds for its use in many situations. In order to achieve the desired end result in an efficient manner, parties may decide to negotiate an arbitration clause into their contract. Companies may decide that they would like an arbitration clause in their contracts or commercial agreements because it allows them to avoid lengthy and expensive litigation which can cause a huge financial strain or bad public relations. For example, a company may decide to have an arbitration clause in its contract with customers if they wish to avoid a situation where a customer decides to pursue legal action and tarnish the reputation of the company. In theory, the arbitration clause would allow the parties in question to resolve their dispute without having to go through the entire process of court proceedings.²⁷³⁵

Arbitration has become one of the most popular and effective methods of resolving corporate disputes. It offers a flexible, private, and less formal alternative to traditional litigation in courts. Given the complexity, confidentiality, and international nature of many corporate disputes, arbitration often provides a more

²⁷³⁴ S. 2(1)(a), The Arbitration and Conciliation Act, 1996

²⁷³⁵ P. Renuka Sai on Arbitration and Companies in article BIMACC
<https://www.bimacc.org/corporate-arbitration-companies-act-2013-and-arbitration-clauses/>

suitable platform for resolving these issues quickly and efficiently. Corporate disputes can arise from a variety of situations, such as breaches of contract, shareholder disagreements, intellectual property issues, mergers and acquisitions, and more. The increasingly global nature of business means many of these disputes involve parties from different legal systems and jurisdictions. Arbitration offers a mechanism that is both adaptable to various legal systems and enforceable across borders, making it highly attractive to corporations.

7. Comparing points in resolving corporate dispute in arbitration and court

a) Nature of the Process

- **Court Proceedings:** Court proceedings are formal, public processes governed by strict procedural and substantive laws. A judge or a panel of judges appointed by the state adjudicates the dispute. The process is rigid, with clearly defined stages such as pleadings, discovery, hearings, and appeals.
- **Arbitration:** Arbitration is a private, consensual process where disputing parties agree to resolve their conflict outside of the traditional court system. The parties have the autonomy to choose arbitrators, define the rules of procedure, and customize the process according to their needs. The arbitration process is typically less formal and more flexible than court proceedings.

b) Confidentiality

- **Court Proceedings:** Court cases are usually open to the public, which means that corporate disputes litigated in courts can attract public and media attention. Court judgments and case records are often publicly accessible, which can expose sensitive business information to competitors or the general public.
- **Arbitration:** Arbitration proceedings are private and confidential. The details of the case, including evidence, arguments, and the final award, are not disclosed to the public unless the parties agree otherwise. This confidentiality is a significant advantage for corporations, especially in cases involving sensitive commercial information, intellectual property, or reputational risks.

c) Choice of Decision-Makers

- **Court Proceedings:** In court litigation, parties have no control over the selection of the judge. Judges are assigned to cases based on the jurisdiction and court rules, and their expertise may not necessarily align with the specific technicalities of a corporate dispute.

- **Arbitration:** In arbitration, parties can choose their arbitrators, allowing them to select individuals with specific expertise in the area of the dispute (e.g., finance, intellectual property, or international trade). This is particularly important in corporate disputes, where specialized knowledge of the industry or the subject matter can lead to more informed and relevant decisions.

d) Flexibility of the Process

- **Court Proceedings:** Litigation follows strict procedural rules established by the legal system, with limited flexibility. These procedures include detailed rules on the filing of documents, discovery processes, evidence submission, and courtroom conduct. The timeline of the case is often dictated by the court schedule, and parties have little control over the speed of the proceedings.

- **Arbitration:** Arbitration offers much more flexibility. The parties can agree on the procedure, the rules to be followed, the venue, and the language of the arbitration. This flexibility allows the arbitration process to be customized according to the specific needs of the corporate parties involved, making it more efficient and tailored.

e) Speed and Efficiency

- **Court Proceedings:** Court litigation can be time-consuming, particularly in jurisdictions with overloaded court systems. The process includes multiple stages, from pre-trial motions to discovery, trial, and potentially appeals. Corporate disputes can drag on for years before reaching a final judgment, causing delays and disruptions to business operations.

- **Arbitration:** Arbitration is generally faster than court proceedings because it is designed to be more streamlined. The parties can set their own timelines, avoid lengthy pre-trial procedures, and proceed directly to the hearing and final award. Additionally, arbitration typically allows for only limited or no appeal, providing finality more quickly than the multi-tiered court system.

f) Cost

- **Court Proceedings:** Litigation in courts can be expensive due to prolonged procedures, the extensive discovery process, court fees, and legal representation costs. The longer the case lasts, the more it costs. Appeals and multiple hearings further add to the costs.

- **Arbitration:** Arbitration can also be costly, particularly if the parties choose high-profile arbitrators or conduct proceedings in expensive venues. However, arbitration's expedited process, reduced discovery, and avoidance of prolonged legal battles often make it more cost-effective in the long run. In international disputes, avoiding jurisdictional battles in court litigation also saves considerable expenses.

g) Appeal

- **Court Proceedings:** One of the key characteristics of court litigation is the ability to appeal a decision. Appeals can lead to multiple rounds of litigation, with decisions being reviewed by higher courts, sometimes leading to protracted disputes that can last for years.

- **Arbitration:** Arbitration awards are generally final and binding, with very limited grounds for appeal (usually limited to procedural irregularities or arbitrator misconduct). The finality of arbitration is one of its major attractions, as it provides quicker resolution and less uncertainty about future litigation.

8. Power and Obligation of Arbitrator:

The arbitrators, in exercising their powers, are required to adhere to the principles of natural justice. They must give both parties proper notice of hearing and equal opportunity to present their case. They should be impartial and fair, as well as show no interest in the appointing party. Their conclusions and awards should be based only on the material provided by the parties; their personal knowledge should not interfere with the arbitration proceedings.

The Arbitration and Conciliation Act, 1996 grants the arbitrators a comprehensive set of powers to oversee arbitration proceedings. These include:

- Power to rule on jurisdiction and validity of the arbitration agreement;
- Administer an oath to parties and witnesses involved in the arbitration;
- Pass interim measures (Section 17);
- Decide on the admissibility and influence of the evidence presented;
- Power to proceed ex-parte (Section 25);
- Settle the dispute based on merits keeping in mind the governing law, and determine the rules of procedure and terms of the contract (Section 19);
- Power to appoint experts (Section 26);
- Support settlement even through other methods such as conciliation are available;
- Determine and apportion the costs of the arbitration between the parties;
- Deliver a reasoned and just award and a duty to interpret or correct the award (Section 33);

9. Arbitral Tribunal and Arbitrator:

The arbitration tribunal is considered as a court and the arbitrator acts as a judge who conducts proceedings and passes an award. As we discussed above that for fast and fair dispute resolution the corporate use the arbitration proceeding. But the tribunal constituted under the A & C Act, 1997 was considered as a civil court because it resolve dispute the rule prescribed by law. The Arbitrator play a third party role in the proceeding who examine the pleadings of the both parties issue award was consider as judge in this said Act. The Arbitrator with hold some powers and obligation provided the said Act.

• Arbitration Tribunal as a "Court":

While arbitration is technically an alternative to litigation, in practice, the arbitration tribunal functions in many ways like a court. It serves as a neutral forum where legal disputes are resolved, evidence is presented, and arguments are made by both parties. In essence, the arbitration tribunal takes on the role of a court in the dispute resolution process. It follows a structured procedure similar to that of a court, including hearings, the examination of

evidence, and the issuance of final decisions, known as arbitral awards.

• Arbitrators Acting as Judges :

Arbitrators are appointed to adjudicate the dispute, and they perform roles similar to judges. They ensure that the proceedings are conducted fairly, manage the hearings, interpret and apply relevant laws or contractual provisions, and finally, issue a binding award. Arbitrators have the authority to make determinations on procedural and substantive legal issues, just like judges. However, unlike judges, arbitrators are usually selected by the parties involved, based on their expertise in the subject matter of the dispute.

10. Case laws:

a) Wescare (India) Ltd. v. Indowind Energy Ltd. (2010) 5 SCC 306²⁷³⁶

- **Facts:** Disputes arose from a sale agreement involving Wescare and its subsidiary, Indowind. Wescare sought arbitration after Indowind claimed it was not a party to the agreement.

- **Issue Raised:** Whether Indowind could be compelled to arbitrate despite not signing the agreement.

- **Judgment:** The Supreme Court ruled that there was no valid arbitration agreement between Indowind and Wescare, emphasizing that merely having common directors did not establish a basis for arbitration.

b) National Highways Authority of India v. Sayedabad Tea Estate (2019) SCC OnLine SC 1102²⁷³⁷

- **Fact of Case:** The National Highways Authority of India (NHAI) acquired land from Sayedabad Tea Estate for highway construction. Dissatisfied with the compensation awarded, Sayedabad Tea Estate sought the appointment of an arbitrator under Section 3G (5) of the National Highways Act, 1956. After the Central Government failed to appoint an arbitrator within 30 days, Sayedabad approached the Chief Justice for

²⁷³⁶ *Wescare (India) Ltd. v. Indowind Energy Ltd. (2010) 5 SCC 306*

²⁷³⁷ *National Highways Authority of India v. Sayedabad Tea Estate (2019) SCC OnLine SC 1102*

arbitration under Section 11 of the Arbitration and Conciliation Act, 1996. The Calcutta High Court ruled that the right to appoint an arbitrator by the Central Government was forfeited due to its inaction.

- **Issue raised:** Does the provision for appointing arbitrators in the National Highways Act override the provisions in the Arbitration and Conciliation Act?

- **Judgment:** The Supreme Court held that the National Highways Act is a special law with overriding effect on general arbitration laws. It ruled that since the Central Government failed to act within the stipulated timeframe, its right to appoint an arbitrator was forfeited. The Court set aside the Calcutta High Court's order and directed NHA1 to appoint an arbitrator as per Section 3G(5) of the National Highways Act.

c) BCCI v. Kochi Cricket Pvt. Ltd. (2018) 6 SCC 287²⁷³⁸

- **Facts of the Case:** The dispute arose between the Board of Control for Cricket in India (BCCI) and Kochi Cricket Pvt. Ltd. regarding a franchise agreement. Kochi Cricket invoked arbitration under the agreement, and the arbitrator issued awards in favor of Kochi. BCCI challenged these awards under Section 34 of the Arbitration and Conciliation Act, 1996, before the Bombay High Court.

- **Issue Raised:** The main issue was whether the amendments introduced by the Arbitration and Conciliation (Amendment) Act, 2015, particularly concerning Section 36, applied retrospectively to arbitral proceedings that commenced before the amendment.

- **Judgment:** The Supreme Court held that the amendments would not apply to arbitral proceedings that had commenced before October 23, 2015, but would apply to related court proceedings initiated afterward. The Court clarified that there was no automatic stay on enforcement of arbitral awards pending a challenge under Section 34, thereby affirming the rights accrued prior to the amendment. This judgment is significant as it delineates the applicability of amendments in arbitration law

and reinforces the principle of party autonomy in arbitration proceedings.

d) TATA Sons Pvt. Ltd. v. Siva Industries and Holdings Ltd., reported in 2023 (SC) 39²⁷³⁹

- **Fact of Case:** The dispute arose from an Inter Se Agreement involving TATA Sons, Siva Industries, and TATA Tele Services Ltd (TTSL), where Siva Industries was obligated to purchase shares from TTSL. Following a ruling in favor of TATA Sons by an arbitral tribunal regarding a related matter with NTT Docomo, TATA Sons sought to enforce the agreement against Siva Industries. Arbitration proceedings were initiated in February 2018, with a mandate set to expire in August 2019. During this period, insolvency proceedings against Siva Industries led to a moratorium, which was lifted in June 2022.

- **Issue raised:** Whether the amended provisions of Section 29A are applicable to international commercial arbitrations.

- **Judgment:** The twelve-month time limit under Section 29A is directory for international commercial arbitrations, meaning it provides guidance rather than imposing strict deadlines. The amendments to Section 29A apply retrospectively to all ongoing arbitration proceedings as of the effective date of the amendment (August 30, 2019). Consequently, international commercial arbitrations are exempt from the mandatory timelines that apply to domestic arbitrations, allowing for greater flexibility in complex cases.

II. Conclusion:

In the conclusion, the arbitration is a form of alternative dispute resolution in which the dispute were settled outside the court without intervention of the court. In arbitration proceeding the parties make arrangements for the same i.e. arbitration agreement or arbitration clause without which the arbitration is not conducted. The corporations today operate in a highly competitive, globalized environment where disputes are inevitable, whether they arise from contractual

²⁷³⁸ BCCI v. Kochi Cricket Pvt. Ltd. (2018) 6 SCC 287

²⁷³⁹ TATA Sons Pvt. Ltd. v. Siva Industries and Holdings Ltd., reported in 2023 (SC) 39

disagreements, mergers and acquisitions, shareholder conflicts, or intellectual property issues. There were many complexities of corporate disputes and the potential damage they can cause to a company's finances, reputation, and operations, corporations increasingly seek efficient and effective means to resolve conflicts through the court. Arbitration has emerged as a preferred method for resolving disputes in the corporate world, offering several significant advantages over traditional litigation.

Therefore, the companies nowadays make compulsory arrangements of arbitration agreement for the future security if the dispute or inconvenience arises between the parties. In which the parties decided the mode of arbitration proceeding, to appoint or they suggest specific name of arbitrator who will act in accordance with the both parties. The separate agreement of arbitration consist mode of payment and liability of payment to the arbitrator.

The Arbitration and Conciliation Act, 1996 was very essential step towards the development of the concept of Alternative Dispute Resolution. The present act replaced the all arbitration acts as discussed above. It had ample of rules and regulation regarding the commencement, procedure, and disposal of tribunal along with the appointment, tenure, cost, liability, power and obligation of the arbitrators. With the help of some landmark judgments the act was amended for the betterment of the dispute resolution i.e. fast track process etc.

The arbitration also play as important role in the corporate sector because the corporation nowadays have very ample of business all over the world. It was fact that the judiciary of India was over burden and involving the corporate dispute in that complex process was impossible to get remedy from the court. Therefore the Alternative Dispute Resolution was one of the process from which the corporate disputes can amicably settled with concern to the parties in dispute in a very fast and fare mode.

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