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Title of the Ph.D. Thesis: Dispute Settlement Mechanism under International Trade Law with Special Reference to International Commercial Arbitration

Summary

With the introduction of new economic policy of 1991, there is advent of liberalization, privatization and globalization of Indian economy and its integration with the world economy, which resulted in rapid growth in international trade and commerce. Like commercial trade, disputes are likely to arise between the trading parties, which would be diverse in nature and complex, involving big sums of money. These disputes must not be permitted to drag on for a long period of time since unsettled disputes do not only affect the goodwill and standing of traders but also having reflect on the whole business class of the country concerned. Legal action in Courts of other countries is an expensive method of arriving at commercial understanding. It is felt that international trade disputes require quick and amicable settlement, and cannot wait and tolerate the prolonged legal process in Courts, appeal, review and revision. There has to be settlement of disputes outside the judicial system and international commercial arbitration seems to be the best option available to the parties.

International commercial arbitration is a necessary adjunct of international commerce and indispensable catalyst for promoting world trade. International commercial arbitration is a convenient and natural form of dispute settlement mechanism under international trade law which is a more acceptable method than recourse to the Courts to resolve international trade dispute. For the settlement of these disputes and differences, international commercial arbitration is preferred to International commercial litigation in the Courts since there is no international Court to deal with international commercial disputes. It is sometimes described as a hybrid form of dispute resolution, which permits the parties a broad flexibility in designing arbitral procedures.

During the course of study it was endeavored to achieve the objectives regarding ascertainment of the different proper laws, determination of the jurisdiction of Courts and arbitral tribunals over foreign litigants and recognition and enforcement of foreign arbitral awards.

To conclude the present study, it is submitted here that barring few blips here and there, India has clear pro-enforcement policy underlying the various conventions, treaties and judicial decisions. Apart from that, India has not come up as a jurisdiction which carries an anti-arbitration bias or an anti foreigner bias. It has been noticed that the Courts in India constrain themselves from interfering with arbitral awards notwithstanding their interventionist instincts and expanded judicial review. All these factors tend to ensure that arbitration continues to gain popularity in India as a method of dispute-resolution which ultimately provides peace of mind to contracting parties. In fact, it results in the increase in the volume of trade and commercial transactions across Indian boundaries requiring for arbitration as a means of resolving disputes in manifest preference of international commercial litigation. If we judge India on this touchstone, it qualifies as an arbitration-friendly jurisdiction.

In this thesis, certain suggestions have been incorporated. Firstly, separate law should be made for the conduct of international commercial arbitration. Secondly, parties must make careful exercise regarding choices of proper laws in order to avoid difficulties in ascertaining the proper laws. Thirdly, the arbitrators and practitioners involved in the international commercial arbitration must endeavor to sort out the differences and should expeditiously and pragmatically resolve the dispute with skill and due diligence according to the governing laws and make the award. Fourthly, judges should resist temptation to intervene in arbitration proceeding and adopt the ‘hands off approach’ rather than the ‘hands on approach’. Fifthly, it is also required on the part of the parties to actively pursue and honour their mutually agreed choice of dispute settlement by international commercial arbitration. Sixthly, it is also suggested for setting up of specialized Courts or benches in different High Courts especially in Metropolitan cities for handling and supervising arbitration proceedings. Seventhly, the provisions should be made in the Arbitration and Conciliation Act, 1996 regarding time bound arbitration proceeding within which the tribunal shall have to complete the proceeding. Lastly, it is also suggested that steps should be taken to minimize the costs and expenses of arbitration proceedings.