

ARBITRATION AND IPR

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ABSTRACT

Industrialization and technology expansion has crossed national frontiers, reaching millions just at the click of a button. As it is rightly said that every invention or discovery has both a bright as well as a dark side, the same holds true for intangible assets, especially intellectual property. Intellectual property more widely known as copyright, patent, trademarks etc. are no less valuable than physical assets, yet cannot be precisely defined. Since its inception, it has grown and developed leaps and bounds, creating a necessity to evolve a regulatory framework for complex IP disputes both at the domestic and international levels. Arbitration on the other hand has been successful on both domestic and global fronts when nearly all major countries signed the New York Convention, in furtherance of establishing a uniform, robust international arbitration mechanism as intended by UNCITRAL Model Law. In the wake of an unprecedented Covid-19 pandemic, the need for arbitration has intensified, since no reasonable person would like to engage in expensive and time-consuming litigation and that too in a cross-border dispute. The Indian law has been amended time and again, in order to keep pace with the novel requirements, yet has clearly excluded certain kinds of disputes to be brought within the purview of arbitration. IP is an ever-expanding, diversified legal discipline that as per need of the hour requires an efficient additional redressal mechanism, in addition to conventional litigation. It is notable that IP is a “negative right”^[3] which qualifies it to be “right in rem”.

Keywords: *Intellectual property, Arbitration, Economy, intangible assets, Legal Structure, WIPO.*

A PROPOSAL FOR ARBITRATION: AN INTRODUCTION

Due to the increase in litigation cases, a different system for resolving disputes was required. The UNCITRAL Model for arbitration was adopted by India. Arbitration was chosen as a quick and alternative method of resolving disputes because of the rise in commercial disputes

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and the length of their pending periods. Numerous developed nations had already adopted the arbitration legislation and, as a result, had a history of successful implementation. The Uniform Arbitration Act, of 1955¹ has been adopted by many nations, and it encourages the use of arbitration processes for business and corporate disputes. This has been embraced and transformed into a global norm throughout time. In order to make arbitration consensual, binding, impartial, and private², it has been implemented. It is considered a hybrid form of dispute resolution that falls in between pure litigation and mediation. The main goal of this Act is to facilitate quick and efficient dispute settlement for domestic and international business arbitration, conciliation, and enforcement of foreign awards in India. According to the Arbitration Act of 1996, "international commercial arbitration" refers to and covers any commercial dispute that arises between an Indian party and an international party. The Arbitration Act of 1996 was recently incorporated into Indian law, and it has since undergone numerous revisions to reflect the needs and expectations of the nation's expanding and rapidly evolving economy.

IPR'S IMPACT ON THE ECONOMY

The rights that are protected with regard to any intellectual product are known as intellectual property rights. This could be any kind of creative effort, such as a piece of literature or a piece of writing. The rules governing intellectual property rights, sometimes known as IPR laws, protect the works of human minds. There are numerous trademarks, copyrights, designs, patents, and geographical indications associated with this. It is crucial to recognise that the basic goal of IPR legislation is to safeguard the works of human brains while simultaneously encouraging further innovation and development. Any such work that is protected eventually develops a brand when it is acknowledged as distinctive in the marketplace. The distinctive marks and inventions are recognised as distinctive and as a signal of particular standards and quality. This aids producers in promoting their goods and related services more effectively. And as a result, the IPR acts as a catalyst for brand building, marketing, and business growth. The economic impact of this is enormous. Nowadays, it is a mandate to obtain specific IPR registration before launching a good or service on the Indian market. For instance, trademark registration is mandatory for any product that needs to be registered under the Legal Metrology Act of 2009. This protects the

¹<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=cf35cea8-4434-0d6b-408d-756f961489af>

²<https://www.international-arbitration-attorney.com/what-is-international-arbitration/>

brand's distinctive name and identity. Similarly to this, a corporate organization's name registered under the 2013 Companies Act cannot take precedence over a name registered under India's trademark rules. Thus, it is fairly clear that different sectors of the Indian market have gradually come to understand not just the significance of IPR laws but also their meaning.

AN ACTUAL SCENARIO

As has been seen, the Indian market's commercial and economic components are steadily beginning to incorporate IPR. IPR currently has a solid foundation in every company contract, venture development, and legal obligation. There is an IPR clause in every business contract. The transfer of intellectual property rights is a major topic covered in confidentiality and non-disclosure agreements. The recent growth in IPR³ has also led to complex situations which haven't been dealt with before. Any such complicated circumstances that could result in a dispute over a breach of confidentiality, a breach of a franchisee agreement, a breach of an assignment agreement, an infringement or passing off, a misrepresentation of IPR, a theft, or other issues need to be resolved. We are aware that an arbitration agreement is any agreement or clause that, pursuant to the Arbitration Act of 1996, binds both parties to choose arbitration as the primary dispute resolution procedure. For any party to move on with the arbitration procedure, this is a must. To achieve the sole purpose of arbitration law, this must be mutually agreed upon and must bind both parties jointly. The agreement must be either corporate or commercial, which is the second crucial component. Arbitration processes cannot be used to resolve marriage problems, non-commercial disagreements, testamentary issues, or any other issues. Criminal law, civil litigation, and contractual issues all have fairly clear legal pathways for handling such other conflicts. This is how conflicts are typically resolved.

LEGAL STRUCTURE FOR IPR DISPUTES

Disputes arise due to conflicts in 'Right in rem' or 'Right in personam'. It's crucial to understand that arbitration law deals with rights-in-personam issues as well as rights-in-rem ones. Numerous precedents have demonstrated this. The apex court has emphasised this concept in *VidyaDrolia v. Durga Trading Corporation*⁴. Disputes that are not arbitrable by

³<https://economictimes.indiatimes.com/news/economy/policy/ipr-plays-important-role-in-strengthening-growth-focus-on-development-fm/articleshow/89849765.cms>

⁴*Vijay Drolia v. Durga Trading Corporation*, MANU/SC/0939/2020.

nature are exempted under Section 2(3) of the Arbitration and Conciliation Act, 1996. Furthermore, Section 34(2)(b)(i) stipulates that in cases where the dispute's subject matter could not have been resolved by arbitration, courts may annul arbitral verdicts. The power of the court is emphasised in this section. These clauses indicate that there are disputes that are not subject to arbitration law. To understand what commercial conflicts are and what kinds of commercial disputes arbitration law can handle, we may turn to the definition of the phrase "commercial dispute" in the Commercial Courts Act, 2015. It is crucial to understand that issues involving intellectual property are particularly covered by this term. Additionally, the Commercial Courts Act's Section 10 gives arbitration cases involving business disputes jurisdiction. Any IPR issues are not expressly excluded or given an exception under this clause. Last but not least, nothing in the Arbitration Act prohibits the enforcement of judgements involving intellectual property rights, including claims of infringement or validity. It's crucial to recognise that the Indian Patent Act of 1970 expressly permits the arbitration of disputes in which the government is the only party. Every trademark, patent, and copyright is granted by a government authority, and any infringement or illegality of these rights can be seen as a negative reflection on the government in a wide sense. However, this statement specifically suggests that no patent dispute will be arbitrable where both parties are private individuals. As a result, it is unclear whether IPR is subject to arbitration under the terms of this legislation. Australia, Germany, Japan, and Canada are nations that have ratified UNCITRAL law, and they are all in favour of arbitration for patent infringement and, in some cases, patent validity. The ICC Commission has stated arbitration to be the "most desirable method for settling disputes arising out of intellectual property transactions."⁵ In *A. Ayyasamy vs. A. Paramasivam and Ors.*⁶, patents, trademarks, and copyright issues may not be subject to arbitration, according to the courts. IPR dispute resolution is therefore in doubt and still lacks a clear-cut solution, and the pendulum is still swinging in both directions.

IPR AND ARBITRATION LAWS IN CONNECTION

The issue here is that IPR laws are an essential component of the business element today, as was described above regarding the significance of intellectual property rights in commercial agreements and the expansion of the economy. Additionally, the only foundation for business transactions is IPR. Examples of business models that are purely dependent on IPR include

⁵International Chamber of Commerce. Final Report on Intellectual Property Disputes and Arbitration. International Chamber of Commerce [online]. International Chamber of Commerce.2016, p. 23 [quotedSeptember11, 2018].

⁶*A. Ayyasamy vs. A. Paramasivam and Ors.*, MANU/SC/1179/2016

franchisee business models, licences, and assignments. IPR cannot be kept apart from the "commercial" in such situations. The second viewpoint on it also relates to the contracts and transfers that are often common in the sector and whose primary subject matter is IPR. Such contracts are difficult to categorise as commercial contracts, IPRs, or other types of contractual arrangements. Even if a dispute involves copyright or trademark infringement, it may still be resolved by arbitration because it is right in personam if it arises out of the terms of the contract between the parties and falls within the scope of the arbitration clause of the contract. According to Section 89 of the CPC, the courts have broad discretion to determine whether or not a dispute is under their purview and whether or not arbitration is appropriate. There is no prohibition on IPR matters when this article is read in conjunction with the provisions of the Arbitration Act and the Commercial Courts Act. The arbitrability of IPR matters can be understood by the courts from a wider angle. "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," the Supreme Court stated in a ruling.⁷ In a similar vein, the Delhi High Court ruled in Hero Electric Vehicles Private Limited v. Lectro E- Mobility Private Limited that a trademark issue might be arbitrated because the plaintiffs were attempting to defend their brand rights against a certain group rather than the entire world. IP disputes are generally regarded as arbitrable in the majority of common law nations, subject to specific restrictions⁸. IP disputes between private parties are often regarded as arbitrable in jurisdictions under civil law. This is especially true in IP arbitrations involving obligations and claims arising from contracts. For the very specific reason of resolving disputes, WIPO has a specialised mediation and arbitration centre. The UNCITRAL MODEL expands on the same. Contract provisions that include an arbitration clause that refers the dispute to the WIPO are the cause of the majority of intellectual property disputes at the WIPO⁹.

CONCLUSION

On this subject, there have been differing opinions. Numerous national and international court decisions and rules have weighed in favour of and against arbitration in IPR issues. Whether a case involves a right in rem or a right in personam may be contested before the judges of India. This might make things easier, and courts could decide whether the

⁷Booz Allen and Hamilton Inc.V SBI Home Finance Ltd. (2011),CivilAppealNo.5440of2002.

⁸<https://www.acerislaw.com/international-arbitration-and-intellectual-property-ip-disputes/>

⁹WIPO Caseload Summary WIPO Arbitration, Mediation, Expert Determination Cases and Good Offices Requests.

alternative dispute resolution method in an IPR issue is sufficient and effective. This industry cannot be preserved as a separate field since IPR laws are expanding and becoming an essential part of every industry. Instead, they are an essential component. IPR issues will steadily increase, however, not all of them will fall under civil jurisdiction or the litigation process. It could combine with commercial elements. It will be challenging to keep arbitration out of IPR legislation in such circumstances. It may be necessary to follow a particular procedure or make some adjustments to better incorporate IPR regulations, but it is impossible to ignore the utter disregard for IPR laws by arbitration as a method of resolving disputes. And now, returning to the goal of arbitration, it is still possible to develop a binding, open, and quick alternative dispute resolution process. Arbitration has demonstrated to be effective and to lessen the workload on courts. Confidentiality is also guaranteed through arbitration, which strengthens the fundamentals of IPR. Bringing all IPR matters under the purview and jurisdiction of arbitration statutes would be a wise move. It makes sense and is expected that IPR conflicts will include arbitration. It is anticipated that it has increased as a result of conflicts and IPR issues. Arbitration centres would be a wonderful step forward in order to minimise protracted legal disputes and their strain on the courts.

