

DISRUPTIVE PRACTICES AND FEATURES OF INTERNATIONAL COMMERCIAL ARBITRATION

Devansh Chaudhary*

ABSTRACT

International commercial arbitration is a developing field of education for a lot of people especially young law students arbitration and alternative dispute resolution have become mainstream practices in today's world where a lot of people go for mediation, negotiation, or arbitration rather than choosing litigation so in today's world doing about international commercial arbitration has become crucial as we all coming into law know about arbitration or at some point of our careers are going to study the Arbitration and Conciliation act of 1996 but we also need you look into the bigger picture and understand what International commercial arbitration is because ultimately International commercial arbitration was the one that inspired and give us a model for the formation of the Arbitration and conciliation act of 1996 in India.

INTRODUCTION

Looking into the progressions and the advancement of exchange and worldwide arrangements all around the world it is certain that a part of the exchange and diverse trade and financial relations have moreover raised among the nations and these exchange and financial relations might too deliver birth to a few debate among the people and the companies, to dodge the long Case handle the choice that individuals presently see upto is ADR i.e (Alternative Dispute Resolution) as the title recommends ADR is a strategy that stands interchange to case and individuals presently pick for this strategy to dodge the long and time-consuming case prepare. Worldwide commercial discretion itself is something that comes beneath the wide umbrella of discretion when we attempt to characterize discretion concurring with the definition given by WIPO (World Mental Property Organization) at that point Arbitration is a method in which a debate is submitted, by the understanding of the parties, to one or more authorities who make a authoritative choice on the dispute. In basic terms, it is a preparation where any debate is settled by designating an impartial party who looks into the matter and makes an authoritative

*BA LLB, THIRD YEAR, ASIAN LAW COLLEGE.

choice for both parties. Encourage, an exact definition of discretion was given in a judgment of Collins vs. Collins, 1858 that in loose terms means that if any choice that has been taken by one or more individuals that as well with or without an umpire (moreover alluded to as an adjudicator) on a specific matter can be watched by the court (moreover alluded to as a discretion office) where the debated parties can resolve their debate in the nearness of an impartial advisor (moreover alluded to as an adjudicator) will be known as discretion.

WHAT IS INTERNATIONAL COMMERCIAL ARBITRATION?

If we attempt to look at what International Commercial Arbitration is in exceptionally layman's terms, we can characterize it as a preparation for the arrangement of all the debate happening in any universal commercial contract without including the court or selecting a case. By entering into contracts, parties, by and large, put an arbitration clause into the understanding so that no party can approach the court in case any debate emerges and can specifically summon an arbitration continuing to agree with the intervention clause. International Commercial Arbitration is not distinctive from domestic arbitration as the strategy fundamentally remains comparative and takes put including a third party, who acts as the referee(Arbitrator). The advanced Discretion clause in the International Chamber of Commerce (ICC) is just a run-show that says that all the debate that emerges out of or in association with a contract that exists between two parties should be settled beneath the rules of assertion of the ICC by one or more referees as designated beneath the said run the show. The International Commercial Arbitration framework has existed in the universal debate determination framework for some time presently. Originally its history can be followed back to the Jay Settlement of 1794 which was marked between Great Britain and The United States It drove the foundation of 3 arbitral commissions to settle questions and the debate that emerged amid the American Insurgency, their was assisted improvement in the same where enactment on universal commercial assertion (1958) was passed in the UN conference and The New York convention assisted and fortified the International Commercial Arbitration framework, concurring to the tradition The central commitment forced upon Parties is to recognize all arbitral grants inside the conspire as official and implement them, if asked to do so, beneath the lex fori. Each Party may decide the procedural instruments that may be taken after where the Tradition does not endorse any necessity. The Tradition characterizes five grounds upon which acknowledgment and authorization may be denied at the ask of the party against whom it is conjured. The grounds incorporate inadequacy of the parties, weakness of the intervention assertion, due handle, scope

of the arbitration understanding, ward of the arbitral tribunal, setting aside or suspension of a grant in the nation in which, or beneath the law of which, that grant was made. The Tradition characterizes two extra grounds upon which the court may, on its movement, deny acknowledgment and requirement of a grant. Those grounds relate to arbitrability and an open approach and The Tradition looks for to empower acknowledgment and authorization of grants in the most prominent number of cases conceivable. Along with this, the International Commercial Arbitration framework is represented by different worldwide traditions and laws the essential of which being the United Nations Commissions on International Trade Law (UNCITRAL), and the International Chamber of Commerce as a wing institution that makes a difference in the settlement of worldwide commercial debate. Right now, it comprises of a add up to of 142 part nations and around 25,000 cases other than the part nations 85 other nations to advantage from all the administrations given by the International Court of Arbitration that works beneath the ICC and a few of the other choices of case practiced by the Worldwide court of arbitration are – Assertion, Intercession, Mastery, DODEX.

DISRUPTIVE PRACTICES FOLLOWED TO DISRUPT ARBITRATION

We all know that arbitration is a process alternative to Litigation and is a quicker process than litigation to prevent time but there are some tricks and methods that are followed by the parties involved in the arbitration so that either they can disrupt the award or delay the award or challenge the award in case they don't see a favorable outcome or award in the arbitration these malpractices that have been followed for so long in the arbitration process not only delay the process of arbitration and but further delays the process of justice can also lead to miscarriage of justice and may lead to people losing there trust in the process of arbitration some of the practices that are followed by the parties are as follows –

Declaring The Contract Void

One of the most fundamental practices that are followed to disrupt the process of arbitration internationally is a trick that goes back to the 1960s, stating that the underlying contract itself is void and the arbitrators cannot decide before prejudging the matter and are dragged to follow the court proceedings, that indirectly challenges the autonomy and the supremacy of the arbitration agreement whereas an arbitration agreement is autonomous of the main agreement and as a result even if the main agreement is void the arbitration agreement is autonomous, but

the defense pleaded by the parties in the instant matter remains that even if the arbitration agreement is autonomous but its autonomy is not absolute.

Challenging The Arbitration Agreement

Another attempt to challenge or disrupt the arbitral proceedings is that of challenging the arbitration agreement stating that there are issues in either the arbitration agreement is void, or is an issue if the interpretation of the arbitration agreement, or the parties try to make an excuse that they don't know what ICC is or what is the procedure of the arbitration or there is an issue with the document like the agreement is signed by the wrong person or is missing the signature of some important people like one of the directors or the CFO or that the arbitration clause does not have the jurisdiction to deal with the issue in hand.

Approach The Court

Another common practice of disrupting the arbitral proceedings is that either of the parties before even invoking the arbitration clause approach the court may even lead to a stay in the arbitration process or in the end lead to a delay in the process as the arbitration clause couldn't have been invoked during the pendency of the suit that can cause a grave delay in the process of justice or many cases the court allows the arbitration to happen and once the award is prescribed they then take up the award and start the proceedings.

Challenging The Arbitrator

Another popular practice followed to disrupt arbitration is challenging the arbitrator upon the grounds that the arbitrator lacked independence and impartiality, this practice is followed all around the globe but is predominantly followed in the South Asian region, In INDIA The Arbitration and the Conciliation Act of 1996 allows under section 34 to file an application for setting aside the arbitral award upon various grounds but most of the times such applications are filed upon the grounds that the arbitrator lacks independence and impartiality.

FEATURES OF INTERNATIONAL COMMERCIAL ARBITRATION

Flexibility

One of the most premium and landmark features of international commercial arbitration is its flexibility unlike litigation in international commercial arbitration the parties are not bound to

follow any set or any certain rules or procedures as it is challenging on an international commercial level because the different part is might come from a different jurisdiction and different regions opting for arbitration is the best way the parties can get resolution of the problems and their disputes most quickly and reliably and that's it makes International commercial arbitration of more suitable and convenient procedure as compared to litigation also it International commercial arbitration the parties are free to decide the governing rules laws and procedures along with that the parties are free to choose the arbitration institution of their choice where they won the disputes to get settled

Privacy And Confidentiality

Privacy is one of the key natures and feature of arbitration it is one of the distinct feature that provides an edge to arbitration when compared to litigation specially in international commercial arbitration is many arbitration rules of the main International commercial arbitration institutions require privacy or non public hearing of the procedure and the award therefore if not all but a maximum number of commercial issues get resolved in a non public hearing because arbitration is a matter where a lot of confidential details are submitted to the arbitrators by both the parties and a lot of data about the company and the insights of the companies are given to the arbitrator therefore privacy comes out as one of the biggest concerns when solving a dispute to International commercial arbitration and therefore privacy and confidentiality comes out one of the essential and key features of international commercial arbitration as the data and the information serve remains restricted to the arbitrator only.

Speed And Cost-Effectiveness

Is that it is faster than the traditional litigation process where the coat presiding can take up to years to resolve one single dispute which is a big hit on individual resources on the contrary international commercial arbitration takes only a few months to complete where it also provides the companies with flexibility of setting their timeline for the arbitration for the more International commercial arbitration is more cost-effective than traditional litigation as sometimes the court proceedings might be quite expensive due to the elongated litigation process which is in the case in international commercial arbitration.

CONCLUSION

The Universal Commercial Intervention framework presents a complex scene molded by different components, counting legitimate systems, regulation rules, and social contrasts. Through this inquiry and investigation, there are a few understandings of what should be famous. Firstly, whereas discretion offers adaptability, privacy, and nonpartisanship to the parties, its viability is still disturbed by the judgment of the arbitral prepare and the enforceability of the grants over wards. Challenges such as procedural delays, the need for straightforwardness, and the constrained asset components by one means or another weaken the framework. The expansion of Worldwide Commercial Discretion and the improvement of particular rules have moreover upgraded the procedural benchmarks and given parties prominent choices for debate determination. It guarantees, consistency and coherence. Further, the expanding complexity of commercial exchanges and the rise of unused advances raise novel issues for discretion counting cyber security concerns. At this point, collaborative endeavor between the courts and the arbitral teacher are fundamental to maintaining the judgment of the intervention assertions. In light of these, policymakers and specialists must lock in nonstop exchanges and talk. It is critical to fortify the Universal Commercial Assertion framework over the globe.

