

DOMESTIC AND INTERNATIONAL ARBITRATION: PART II PRACTICAL ASPECTS OF INTERNATIONAL ARBITRATION

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

ADV. MIHIR NANIWADEKAR
(mihir@mcnaniwadekar.in)

**“International
commercial
arbitration”
- s. 2(1)(f)**

- Section 2(1)(f) of the A&C Act, 1996
- *TDM Infra v UE Development*: company incorporated in India but directors/shareholders were Malaysian
- Significance: Jurisdiction for s 11 appointments, time limits, applicability of Part II, etc.
- “Commercial”

The “seat” and applicable laws

- “Seat” or arbitration
- Different types of laws applicable
- What law governs the substance of the dispute?
- What law governs the validity of the arbitration agreement?
- What law governs the procedure of the arbitration?

Institutional arbitration

- The major institutions: ICC, SIAC, LCIA, MCIA etc.
- The significance of institutional rules

Applicability of Part I to arbitration outside India

- The *Bhatia* controversy (implied exclusion) and the *BALCO* judgment
- Significance of seat post-BALCO
- Effect of recent amendments
- Interim relief and “emergency arbitration”

The mechanism of the arbitration

- Timelines
- Procedural discretion and influence of IBA guidelines and international practices
- IBA Rules on taking of evidence, etc.

The mechanism of the arbitration: a typical procedure

- Notice of Arbitration
- Constitution of the Tribunal
- Procedural Steps
- Exchange of Memorials/Pleadings
- Document Production
- Evidential Hearings
- Post-Hearing Briefs
- Award
- Impact of COVID and the move to remote hearings

Enforcing awards: Foreign awards and enforcement in India

- New York Convention
- Applying for enforcement: procedure under s 47 A&C Act
- Refusal of enforcement under s 48
 - Invalidity of arbitration agreement
 - Arbitrability concerns
 - Lack of due process
 - Limited merits review
 - Challenges in 'seat' jurisdiction

Enforcing awards: Awards in India- seated ICA

- If place of arbitration is in India: Part I applies
- Challenging the award under s 34: different standards for domestic and international commercial arbitration
- Enforcing an award in India under s 36
- Enforcing an award outside India

Drafting effective arbitration clauses

- Arbitrability, choice of law, seat etc.
- Where is any potential award likely to be enforced?
- If institutional: ensure comfort with institutional rules
- UNCITRAL Model clause, Model clauses in institutional rules

Some emerging issues and concerns

- Anti-arbitration injunctions
- Investment treaty arbitration
- Third-party funding in international arbitration

THANK YOU

Study Circle Session arranged by V.P. Shintre & Associates, Advocates
Contact details

Website : www.vaishalibhagwat.com

Office: 1204/13 Namaskar Apartments,
Ghole Road,
Shivajinagar, Pune

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