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Vibrant dispute resolution key to inspiring confidence

A strong legal framework to ensure the timely resolution of commercial disputes will help attract foreign investments in India. Commercial disputes in India can be resolved either through litigation or alternative dispute resolution (ADR) methods.

Indian law originated from common law principles and civil litigation is based primarily on the adversarial system of dispute resolution, whereby two parties present their case before a neutral person in a courtroom, who decides the truth on the basis of the parties' submissions and evidence.

ADR has gained popularity among the business community globally over the past two decades as a means to resolve commercial disputes in a limited time frame and at minimal cost. Arbitration, mediation, conciliation and lok adalats are ADR methods that are statutorily recognized in Indian law.

Arbitration is a process by which disputes are heard by a third neutral person, appointed by parties to the dispute by mutual consent or through court intervention. The dispute is resolved on the basis of claims and evidence submitted by the parties. The arbitration process starts with insertion of arbitration clauses in commercial contracts, which specify venue, language, governing law, jurisdiction, etc. The arbitrator's decision in the form of an award is binding and final unless challenged in an appeal or set aside by a court.

Mediation is a means by which parties consent to resolve disputes with the assistance of a third person who has knowledge and experience in the field of the dispute. Court-annexed mediation is facilitated by every court in India at both the pre- and post-litigation stage. Discussions during mediation are

not recorded or binding. Under section 89 of the Code of Civil Procedure, 1908, courts may also refer matters for mediation.

In conciliation any party can ask another party to appoint a conciliator to try to resolve their disputes. Once the parties are on the verge of settlement, the conciliator suggests terms of settlement.

Lok adalats are statutory bodies created under the Legal Services Authority Act, 1987. The lok adalat is a quasi-judicial institution which facilitates mediation between the parties. The lok adalat's decision is binding and executed like a decree of a civil court.

Parties can opt for any of the above ADR methods without approaching the courts. Parties may also opt to resolve their disputes amicably through negotiation. This method avoids bitterness and paves the way for future dealings between the parties.

The traditional justice delivery system in India has not been speedy. Recently the arbitration law has been amended and separate courts have been constituted under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, to expedite the resolution of commercial disputes of a specified value.

The Code of Civil Procedure Code has also been amended to streamline the trial procedure and expedite the proceedings for trial and appeal in commercial disputes.

The National Company Law Tribunal has been given power under the Insolvency and Bankruptcy Code, 2016, to adjudicate corporate insolvency and bankruptcy cases.

In current scenario, it is advisable to focus on arbitration to resolve disputes because the arbitration law requires the arbitrator to

give a final award in 12 months, which could be extended by six months with the consent of the parties. In cases of international commercial arbitration, only a high court is competent to adjudicate on all disputes and differences. Further, all applications or appeals filed in a high court are heard by the commercial division.

Parties can seek interim measures before Indian courts even if the seat of the arbitration is outside India. Arbitrators' fees are fixed to some extent and arbitrators have to be fair and impartial. The parties to a dispute can opt for the fast-track procedure, before or after the commencement of the arbitration, which requires the arbitral tribunal to conduct the hearing on a day-to-day basis.

To avoid the cumbersome procedures of civil litigation, parties are advised to include an arbitration clause when negotiating terms of a contract. Courts must refer disputes to an arbitrator if there is a valid arbitration clause. Arbitration is faster and cheaper than litigation. Further, parties are advised to build strong evidence in writing, where possible, as proving one's case is necessary under India's adversarial system.

The Make in India initiative's success could be said to rely on a strong and effective dispute resolution process that creates a reliable and efficient platform for speedy justice in India.

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