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Mediated Settlements: The Way Ahead for India

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Dispute resolution in India has been the matter of much consternation. One is wary of approaching the courts, due to its lengthy and time-consuming process as well as the infamous delays. The usual alternative to courts, arbitration, has had mixed success. The fact that India remains a strong economy and that disputes are inevitable remains constant. In such a situation, whilst traditional resolution mechanisms are also being improved upon, alternative dispute resolution mechanisms are continuously being evolved and evaluated.

What is mediation?

Mediation is a dynamic, structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. Mediation is a *"party-centered"* and *"consensual"* process in that it is focused primarily upon the needs, rights, and interests of the parties. The mediator uses a wide variety of techniques to guide the process in a constructive direction and to help the parties find their optimal solution. Mediation is not an adversarial process like litigation or arbitration. A mediator is facilitative, in that she/he manages the interaction between parties and facilitates open communication. Mediation is voluntary and non-binding.

Mediation in India

Informal mediation in India is prevalent since time immemorial. It was never unusual for disputes to be resolved before a trusted third-party mediator. Over time, the benefits of mediation have even attempted to be utilized for disputes pending in the courts, however, with mixed success. One of the potential 'grouses' that ails mediation is the lack of recognition accorded to a settlement arrived at in mediation proceedings. Whilst it is true that the compliance rates of a mediated settlement may far exceed compliance rates with an arbitral award or a judicial decree, the fact remains that when a mediated settlement is arrived at, most parties prefer to have it recorded as a consent decree or award before the court or tribunal, as the case may be, so as to accord it the recognition and consequent sanction under law.

The Singapore Convention: Move aside New York and Geneva Conventions!

The United Nations Convention on International Settlement Agreements Resulting from Mediation ("**Singapore Convention**") aims to herald a new world, where mediated settlements are recognized and enforced just as easily as possibly an arbitral award. The convention seeks to provide greater certainty to parties to international transactions who have reached a settlement of their disputes through mediation. After extensive discussions between member states, it will be signed in Singapore on August 01, 2019 and will come into effect six months after at least three states have ratified it.

It is expected that India will sign the Singapore Convention and roll out appropriate legislation to take it forward, whilst maintaining the spirit of mediation. This will usher in mediation as an effective dispute resolution process in India with the sanction of law and a designed framework that guarantees requisites such as confidentiality.

For international dispute resolution, it envisages a world where disputes can be resolved utilizing the power of mediation, at a fraction of the cost of traditional dispute resolution, with the same certainty and efficacy of enforcement, should the need ever arise; The Singapore Convention puts forth the framework for the enforcement of mediated settlement

agreements and will facilitate in bypassing the need to first obtain an enforceable Arbitral Award or a Court Judgement by requiring the direct enforcement of mediation agreements, a very attractive proposition.

Institutional mediation

The power of mediation lies in the mediator. A professional, trained mediator has the ability to alleviate years of bad mouthing and baggage carried by the parties, and train their focus on their own interest and preferred solution. Such a mediator can, effectively, allow warring parties to see through the dust clouds of dispute and show them the route to the land of peace. There are numerous examples where years of litigation have been unsuccessful but just a few sessions of mediation, with an open mind, before a professional mediator, are enough to bring parties to an amicable settlement.

The authors of this article recently had the opportunity to participate in a two-day comprehensive Inaugural India Specialist Mediator Workshop, jointly organized by Singapore International Mediation Centre ("**SIMC**") & CAMP Arbitration & Mediation Practice Pvt. Ltd. ("**CAMP**"). Participants were from all walks of life – practicing disputes lawyers, in-house counsel, corporate trainers, a sitting High Court Judge and even a recently retired Supreme Court Judge!

Over a tight two day schedule, professional mediators Joel Lee and Aloysius Goh of the SIMC, supported by the CAMP team, led the 24 participants into the world of mediation, where it was amply established that no dispute was impossible to amicably resolve. Role play was the order of the day and advanced mediation concepts were introduced and tested. The power of mediation to resolve any dispute, where personal, commercial or even state, was seen.

The way forward

One of the significant advantages of arbitration as an effective dispute resolution mechanism for international disputes is the New York Convention, which permits cross border enforceability. Enforceability for arbitral awards, culminating in the New York Convention, took decades from the time it was conceived and eventually rolled out. Similarly, the Singapore Convention is expected to take its own time to be adopted by member states and rolled out. The framework of international mediation will spread slowly, but surely and it will forge its own place in the world of international dispute resolution, over a period of time, and we hope that the Singapore Convention on mediation will become for mediation what New York Convention is for Arbitration.

Further, adoption of mediation will require creating and propagating a bank of awareness and ensuring that the court system recognizes and leverages the power of mediation; to bring about a peaceful and amicable resolution to a dispute. Perhaps one of the greatest strengths that mediation brings to the table is the ability to continue the relationship even after the

settlement, which is, in most cases, unlike an adversarial dispute resolution system. It is not without reason that the highest court in the country, the Supreme Court of India, has chosen to refer one of the largest disputes in the country (the Ayodhya dispute), to mediation. We sincerely hope that even India comes up with a mechanism soon for enforcing domestic mediated agreement thereby giving a boost to mediation in domestic market. The ability to peacefully co-exist and move forward amicably will be the hallmark of mediated settlements.

About the authors

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