IMPACT OF UNCITRAL MODEL ON CORPORATE LAW: A CRITICAL ANALYSIS

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ABSTRACT:

Arbitration was spreading like a fire in Commercial law too both in National and International law. Because as globalization is increasing and even liberalization of markets the need and want for Arbitration is increasing day to day. Many entities are turning to arbitration such as organizations, private law companies, and even "Institutional which are of international level are also turning to Arbitration.

Whenever disputes relating to corporate law, cannot be solved by compromise they need some legal process. The legal process also needs the consent of both the parties and confidentiality among the parties .in this situation it is generally for parties to look towards arbitration for settling their dispute independently and without the intervention of courts.

"Different business and lawful desires, geographical implication, political ramification, and there are many situations during commercial things which play a major role in arising dispute between the parties."

It is also seen that during the last 3 4 decades the Nations are making efforts toward International Commercial Arbitration by making Legislation in their Nation-State. The result of this thing or increase in Commercial litigation is that there is an increment of International Arbitration too in various countries.

KEYWORDS: **Arbitration, UNCITRAL, Corporate sector, Court Intervention.**

As stated by Antonio Monti: -

"Within the corporate sector, therefore, there are frequent cases in which corporate disputes relating to competing interests of shareholders and the company, respectively its structures and its shareholders, are settled by an arbitration tribunal rather than ordinary courts. Some authors are even anticipating that corporate disputes will be dealt with exclusively by such tribunals."[59]

Various sources arise disagreement between the entities such as:

"International and national legislation has certainly played a significant role in the increased awareness and acceptance of arbitration. First, the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 by over 137 Countries."[60]

India is becoming the arbitration hub globally because the international trade law is rising. The reason for this is that many parties do not have the same jurisdiction and also they belong to different countries thus having different jurisdictions and parties, therefore, are not willing to choose the jurisdiction of confronted parties.

For this matter, only India is developing gradually into a "hub for international arbitration".

Thus, various legal relationships arise between the parties of commercial nature. Developing commercial nature within India is also developing itself to the become a global hub it is thus significant that, we should unlock ourselves from the inner shade to the world outside and should do creative work concerning legal procedure and so on. Corporate entities are going towards arbitration and to the courts. Because arbitration somewhere provides a speedy trial.

[59] Antonio Monti, *three essays on "International Commercial Arbitration, arbitration, and corporate law".*

[60] Professor loukas Mitelis, *Internation Arbitration – Corporate Attitudes And Practices Perceptions Tested: Myths, Data and Analysis*, 15 Am. Rev. Int'l Arb., 527, 529 (2004)

(A) ROLE OF ARBITRATOR UNDER CORPORATE SECTOR:

Litigation in our country is not serving for the commercial area, dispute resolution mechanism plays a role in the commercial sector because it gives relaxation to the investor and the shareholder not to engage courts in the commercial matter and so that court can also stay apart in these matter and parties itself can decide the suit according to their wish. Thus, somewhere dispute resolution mechanism is an effective mechanism for Indian investors. There is thus a need for proper ascertainment of the validity of the shareholder.

(B) INDIAN ARBITRATION LAW

"Section 7 of the Arbitration and Conciliation Act", 1996 stated:

"*the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not*".[61]

If the parties give the pre-requisite for the dispute, they shall take their dispute to arbitration for further things. "Section 8 of the Arbitration and Conciliation Act, 1996" as:

"judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists."[62]

It is as well stated that the suit will not refer to the court unless "*the original or duly certified copy"* is given to the court.

Case: "Richa Kar v. Actoserba Active Wholesale Pvt. Ltd"[63]

"Disputes related to corporate law in India are dealt with by a parallel structure of tribunals, established in 2013 by the Companies Act. While these National Company Law Tribunals are quasi-judicial authorities, they are entitled to refer parties to arbitration under this section."[64]

"Afcons Infrastructure ltd v. Cherian Varkey Construction Company Pvt."[65]

The Supreme Court stated that the parties, in this case, cannot be referred for arbitration until and unless the parties do not give their express consent.

(c) ARBITRATION PRACTISE ACROSS INDUSTRIES

Arbitration practice in India is quite a diff rent in India from one country to another country. Growth in the construction industry is growing nowadays very fast. This all is the result of the Indian economy's globalization and rise. Infrastructure industries are investing millions of money in disputes related to construction. Arbitration in constructive industries is developing both in the public and in the private sector both.

"The Indian Council of Arbitration (ICA), which is now considered to be an apex arbitral institution in the country. Alternate Dispute Redressal methods for the IT sector in India's major cyber cities like Bangalore and Hyderabad to create an expert pool of arbitrators specialized in cyber laws."[66]

[61] The Arbitration and Conciliation Act, 1996, section 7, No. 26, Act of Parliament, 1996, (India).
[62] The Arbitration and Conciliation Act, 1996, Section 8, No. 26, Act of Parliament, 1996, (India).

[63] *Richa Kar v. Actoserba Active Wholesale Pvt. Ltd, 2019.*
[64] Avani Agarwal, Mandatory shareholder arbitration: moving the debate to India, KLUWER ARBITRATION BLOG, (June 23, 2020, 11:59 PM), http://arbitrationblog.kluwerarbitration.com/2019/09/01/mandatory-shareholder-arbitration-moving-the-debate-to india/?doing_wp_cron=1592906237.7005100250244140625000#:~:text=Disputes%20related%20to%20corporate%20law,2013%20by%20the%20Companies%20Act.&text=Indeed%2C%20the%20Indian%20Supreme%20Court,see%20%E2%80%93%20Afcons%20Infrastructure%20ltd%20v.
[65] Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. (P) Ltd., 2010 7 SC 616.
[66] Krishna sharma et el, *Development and Practice of Arbitration in India –Has it Evolved as an Effective Legal Institution*, 103 CDDRL STANDFORD WORKING OF PAPER, 12, (2009).

CORPORATE LAW IN INDIA

There are laws that that about the arbitration and have some arbitration provisions which are also beneficial for "mandatory Shareholders".

1. "Companies Act, 2013"

2. "Securities exchange board of India act 1991"

Companies Act: under the company, there are two important documents i.e the article of association, which will include an agreement related to arbitration between the shareholders a separate agreement can also be made among the parties.

"Section 6, of the Companies Act, 2013," says that:

"The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it or any resolution passed by the company in general meeting or by its board of directors, whether the same be registered, executed or passed as the case may be, before or after the commencement of this Act."[67]

Companies act also talk about the "National Company Law Tribunal" to redress the problem of shareholders. Now the question arises whether the jurisdiction of NCLT would override the arbitration proceeding.

***"Booz Allen Hamilton v SBI Home Finance* (2011) 5 SCC 532"[68]**

"There is a test laid down in booze Allen case as to which matters to be referred to arbitration and it was held that the right in rem is not the matter which can be referred to the arbitration and the cases which are related to right in personam should be referred even if the cases which are right in personam cannot be referred which can become right in rem. The right in rem shall be referred to court for litigation."

There it has been held that arbitration cannot be referred to, as winding-up or other instances of injustice and mismanagement. To widen the scope of "Arbitration", it is to be seen that if a matter is brought to court to avoid the arbitration by fraud, After that, the court will refer the case to arbitration even if it is of winding up and mismanagement.

(A) SEBI ACT:

SEBI performs public functions, "a bare analysis of the SEBI Act makes it clear that the SEBI performs public functions – it deals with matters of securities that have a larger impact on public and economic development. It ensures investor confidence, which is beneficial for economic progress."[69]

It is generally seen that there is a bar in arbitration in terms of securities. Sebi itself has formed some arbitration norms which promote arbitration in corporate also. SEBI contains some bye-laws which provide for arbitration between the investors so that grievances of investors can be solved. The provision which SEBI requires for Arbitration, and the matters of arbitration should be arbitral, i.e. they should be right in personam. Thus, from the above facts, we can conclude that if the matter is right in personam that can be referred to Arbitration.

(B) ARBITRATION CLAUSE UNDER ARTICLE OF ASSOCIATION:

[67] Section 6, The Companies Act, 2013, No. 18, Act of Parliament, 2013, (India).

[68] *Booz Allen Hamilton v SBI Home Finance* (2011) 5 SCC 532.

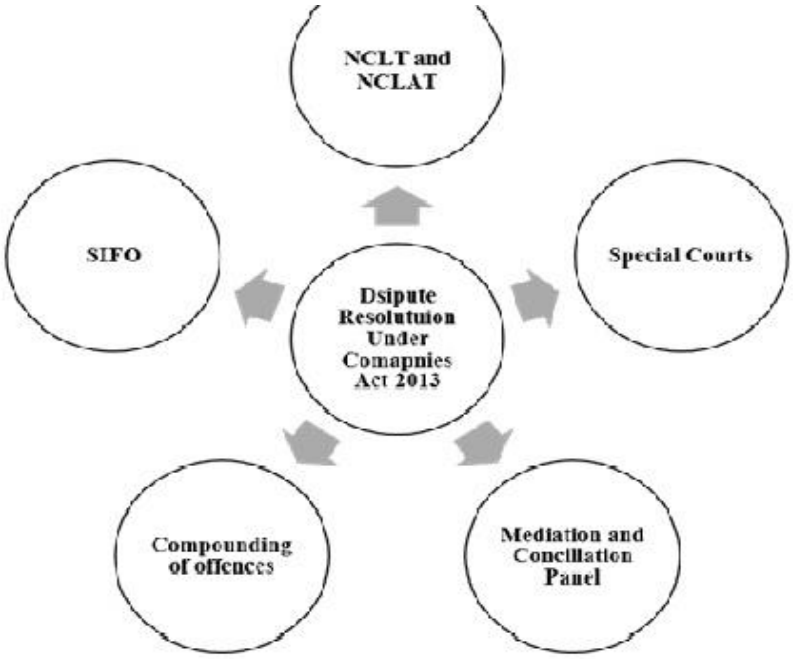
[69] Avani Agarwal, *Mandatory shareholder arbitration: moving the debate to India, KLUWER ARBITRATION BLOG, (June 23, 2020,23:59),* http://arbitrationblog.kluwerarbitration.com/2019/09/01/mandatory-shareholder-arbitration-moving-the-debate-to-india/?doing_wp_cron=1592906237.7005100250244140625000#:~:text=Disputes%20related%20to%20corporate%20law,2013%20by%20the%20Companies%20Act.&text=Indeed%2C%20the%20Indian%20Supreme%20Court,see%20%E2%80%93%20Afcons%20Infrastructure%20ltd%20v.

In the commercial sector, arbitration could be used when the contract terms stipulated in the articles of association are breached. The court in *Khusiram v. Honutmal*[70] supported a view that the arbitration clause can only be used in conflict within the business relationship between members.

The condition for referring the matters to arbitration is as follows:

- The dispute should've been taken before the courts.
- The point in which the dispute is caused by arbitration should be the dispute in the issue.
- Such application should be made by presenting his first statement on the substance of the question no later than that.[71]
- An original or properly approved copy of the arbitration agreement must accompany the application.[72]

In "**P.Anand Gajapati Raju v. P.V.G. Raju**"[73] the court held that *"the language of Section 8 of the Arbitration Act, 1996 is pre-emptory. The Court must refer the parties to arbitration if the arbitration agreement covers all the disputes between the parties in the proceedings before the Court."*



ADR UNDER COMPANIES ACT 2013

According to the "Legal Service Authorities Act, 1987" and the "Arbitration and Conciliation Act, 1996" the parliament made law on the alternative dispute resolution. "The incorporation of ADR mechanisms under Section 89 and Order X Rules 1A,1B and 1C of the Civil Procedure Code, 1908 (CPC) was a radical step towards the promotion of ADR mechanisms in India".[74]

"Code of Civil Procedure, 1908 under Section 89," says that:

"(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same fo:—

[70]Khusiram v. Honutmal, 53 CWN 505 (H)
[71]Section 8, The Arbitration and Conciliation Act, 1996, No. 26, Act of Parliament, 1996, (India).
[72]Id.
[73]P.Anand Gajapati Raju v. P.V.G. Raju, (2000) 4 SCC 539

[74] KPS Kohli, *ADR Under The Companies Act, 2013 - Is India Inc. Ready?*, MONDAQ, (June 26, 2020, 06:27 AM.),https://www.mondaq.com/india/corporate-and-company-law/702928/adr-under-the-companies-act-2013--is-india-inc-ready.

(a) Arbitration;

(b) Conciliation;

(c) Judicial settlement including settlement through Lok Adalat: or

(d) Mediation."[75]

The act which covers large numbers of enactment of "commercial dispute" Is the "companies act, 2013".

"Section 442 of the companies act provides for: the ADR mechanism vis-a-vis Mediation and Conciliation as possible options for parties involved at any stage of the proceedings".[76]

National company law tribunal and national company law appellant tribunal

The establishment of the "National Company Law Tribunal and National Company Law Appellant Tribunal" is established to adjudicate disputes relating to companies. It was established under the companies act 2013.[77] the establishment of this tribunal provides "the dispute resolution mechanism" to parties who are having disputes. "Tribunal come in effect from 1 June 2016 in the exercise of the power conferred under section 408 of the companies Act" 2013. NCLT repealed the board made in the old act i.e. CLB

"Sampath Kumar case".[78]

A theory of alternative institutional mechanisms, in that case, referenced that High courts have been burdened with greater pendency as a result of the population explosion and an increase in litigation since independence. "The supreme court also referred to studies conducted towards relieving the high courts of their increase load; the recommendations of the Shah committee for setting up independent tribunals as also the suggestion of the administrative reforms commission for setting up of Civil Service tribunals."[79]

ARBITRATION VS LITIGATION IN THE CORPORATE SECTOR:

Most of the companies when it is asked what kind of dispute resolution mechanism they use, most of the companies had replied with Arbitration. Companies used to avoid litigation due to the most judicial intervention as well as time-consuming process. Companies use arbitration to save time and money. Litigation mostly is not reliconcerningct to – a rigid framework and confidentiality are not secured.

Companies opt for arbitration due to various benefits:

Speedy justice: arbitration is wholly based on party autonomy, and The Arbitration Act did not permit the court to interfere with arbitration matters. Although the Act of 1996, curtails the judicial intervention from the Arbitration. It is convenient and speedier than Arbitration.

Cost-effectiveness: It is considered cheaper to arbitrate than to litigate, this is why most companies choose arbitration over litigation.

Privacy and confidentiality: arbitration maintains privacy and confidentiality between the parties of the corporate sector.

Flexibility: According to companies, one of the reasons for choosing arbitration over any other method of dispute resolution mechanism is flexibility. Most of the majority of the companies choose arbitration due to its flexibility.

ARBITRATION AND COMMERCIAL GROWTH: A RELATIONSHIP

To analyse the relationship between arbitration and commercial growth in India, we need to examine arbitration

[75] Section 89, The Code of Civil Procedure, 1908, No. 5, Act of Parliament, 1908 (India).
[76] Section 442, The Companies Act, 2013, no. 18, Act of Parliament, 2013 (India).
[77] Anubhav Pandey, *Dispute resolution under Companies Act, 2013*, IPLEADERS.IN, (June 26, 2020, 06:55 AM), https://blog.ipleaders.in/companies-dispute-resolution/.
[78] S.P Sampath Kumar v. Union of India1,(1987) 1 SCC 124.
[79] Divesh goyal, NCLT & NCLAT under companies act, 2013,TAXGURU.IN, (June 26, 2020, 06:59 AM), https://taxguru.in/company-law/nclt-nclat-companies-act-2013.html.

across the region. Arbitration and the corporate sector are linked in India with increased commercial activity. Arbitration has grown in cities with industry hubs, such as Delhi, Maharashtra, Tamil Nadu, Karnataka, West Bengal, etc.

Even the skilled arbitrator too works in the commercially developed cities, because there are a large number of arbitration disputes come. Thus, somewhere arbitrators and the commercial sector are proportionally dependent on each other.

Highly developed states tend to have more or fewer arbitrations, in comparison to less developed states, they have more businesses and larger companies, and better administration of reasonableness.[80]

CRITICISM OF UNCITRAL MODEL LAW OF DISPUTE RESOLUTION MECHANISM IN THE INDIAN CORPORATE SECTOR

We know that Arbitration and Conciliation act 1996, depends on the "UNCITRAL Model of International Commercial Arbitration and Commercial". Alternative dispute resolution is an alternative way to resolve the dispute instead of not going to court to solve the dispute by way of Arbitration. ADR is a way to keep the corporation out of the box of the court. And it is also true that in upcoming years ADR is going to work in the whole world.

But ADR is fading day by day, and ADR is increasing in the same way the arbitrators are also taking a lot of fees like lawyers to take in court litigation. At many companies, ADR procedures now typically include a lot of excess baggage in the form of motions, briefs, discovery, depositions, judges, lawyers, court reporters, expert witnesses, publicity, and damage awards beyond reason (and beyond contractual limits).[81]

[80] Krishna Sharma et al., *Development and Practice of Arbitration in India –Has it Evolved as an Effective Legal Institution,* 103 CDDRL STANDFORD WORKING OF PAPER, 12, (2009).

[81] Todd B. Carver et el , *Alternative Dispute Resolution: Why It Doesn't Work and Why It Does,* HARVARD BUSINESS REVEIW, (June 27, 2020, 12:43 PM), http://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does

JUDICIAL PRONOUNCEMENT

Arbitration and Conciliation Act, 1996 is based on UNCITRAL Model Law on International Commercial Arbitration. United Nations General Assembly approved UNCITRAL Model Law in 1985. While enacting legislation for domestic as well as international arbitration, the General Assembly has recommended that all countries should give due consideration to the UNCITRAL Model Law on International Commercial Arbitration.

Thyssen Stahlunion Gmbh Etc v. Steel Authority of India

When this case came into the picture the Act of 1940, was prevailing and the agreement was also set as per the Act of 1940. as we all know the act of 1996 concerning the UNCITRAL Model of 1985 was enacted in that way only. UNCITRAL Model deals with international commercial arbitration. The model law would serve as legislation for all the nations so that they can enact the law for themselves.

In this case, it was held that the proceeding of arbitration started in September 1995, when the old arbitration acts us prevailing at that time. It stipulated that the dispute would be arbitrated by the conciliation and Arbitration Rules of the International Chambers of Commerce, with one Arbitrator appointed by the chairman of the Arbitration Tribunal of the ICC in New Delhi. and it was also mentioned that the case will be governed by the law for the time being in force. Further, the sole arbitrator was also appointed in 1995. The award was given in July 1997. by section 14 of the Indian arbitration act 1940:

"Award was to be signed and filed"[82] and section 17 of the arbitration act 1940 says that:

"The court shall after the time for making an application to set aside the award has expired and the application made and the court refuses it, shall proceed to announce the judgment."[83]

Thus, a petition was filed under both the section mentioned above. It was contented by the thysen that according to

[82] Section 14, The Arbitration Act, 1940 (India).

[83] Section 17, The Arbitration Act, 1940 (India).

section 151 of the CPC Proceeding should stay under sections 14 and 17 and the suit was terminated on September 1997 and the new act would be applicable for the enforcement of the award. It was held by the court:

"It was held that the provisions of the Arbitration Act 1940 shall apply about taboutoceedings which are commenced before coming into force of the 1996 Act. SC has held that it is open to the parties to agree to the applicability of the 1996 Act before the Act came into force."[84]

Marriott International Inc. And……. Vs Ansal Hotels Ltd.&

Another[85]

This case tells about the jurisdiction of the court and the scope up to which *interim relief* can be given by the court. Marioot International Inc. Marriott enters into an agreement with Ansal Hotels Ltd. (Ansal) for the management of hotels, which terminates the contract, leading Marriott to initiate arbitration proceedings in Malaysia against Ansal, as well as seeking interim measures from the Indian High Court under section 9 of the arbitration and conciliation act 1996.

Ansal objected to Marriott's request for interim orders, claiming that sections 9 and Part I of the 1996 Act do not apply to arbitrations with a seat outside of India. Part II of the Act, the top court noted in reaching this result, deals with the execution of foreign awards granted under the NYC or Geneva treaties. The court defined "foreign awards" as an arbitral award on a disagreement that is considered commercial under Indian law, issued under an agreement in NYC, and rendered in the jurisdiction of a state other than the one seeking recognition and enforcement. The fact that one of the parties to the arbitration agreement was not an Indian nation was also taken into account by the court in determining that the award was a "foreign award."

Held that: "However, the Division Bench of Delhi High Court in Marriott International Inc. vs. Ansal Hotels Limited, where arbitration proceedings were held at Kuala Lumpur in Malaysia, held that Part I of the Act shall apply to all arbitrations where the place of arbitration is in India."[86]

M/S S.B.P and Co vs M/S Patel Engineering Ltd. and Anr[87]

This lawsuit primarily concerns section 11(6) of the Arbitration and Conciliation Act, 1996, which governs the Chief Justice's nomination of arbitrators. The chief justice's appointment is the court's judicial duty. The case was criticized because of the courts' involvement in the arbitration process.

The Supreme court overruled the decision of the Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd[88] and *"held that a three-judge bench of the Supreme Court held that the powers of the Chief Justice under Section 11(6) of the 1996 Act are administrative in nature and that the Chief Justice or his designate does not act as a judicial authority while appointing an arbitrator."*[89]

As stated by Balasubramanyan, J, the Supreme Court held that *"the power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not administrative. It is a judicial power."*

The court appointment of an arbitrator will be done only after checking all the essential elements of the arbitration proceeding. If we say about essential elements then we

[84] Anchit Oswal & Akshay Mahajan, *Supreme Court Rules On The Applicability Of Amendments To Arbitration And Conciliation Act: What Is Still Not Clear?*, MONDAQ.COM, (June 27, 2020, 02:35 PM), https://www.mondaq.com/india/trials-appeals-compensation/686352/supreme-court-rules-on-the-applicability of-amendments-to-arbitration-and-conciliation-act-what-is-still-not-clear

[85]Marriott International Inc. And Vs Ansal Hotels Ltd.&Another, (2002) 4 S.C.C. 105.

[86] Barcelona Panda, *Interim Measures under the Indian Arbitration Act*, 3(5), IAM, 6, 2011, (June 27, 2020, 20:02 PM), https://www.arbitrationindia.com/pdf/tia_3_5.pdf

[87]M/S S.B.P and Co vs M/S Patel Engineering Ltd. and Anr, (2002) 2 SCC 388 405 (India).

[88]Konkan Railway Corpn. Ltd. v. Mehul Construction Co., (2000) 7 SCC 201 (India).

[89] Manisha Dembla. *Scope of Enquiry by the Court as to Existence of an Arbitration Agreement at the Pre-Arbital Stage: An Indian Arbitration Law Perspective*, WORLDSERVICEGROUP.COM, (June 27, 2020, 09:06 PM), https://www.worldservicesgroup.com/publications.asp?action=article&artid=12172.

should see arbitration agreement, qualification of arbitrators, and other jurisdictional or territoriality matters.

The court concludes that:

1. It creates an absurdity in the law.

2. It is in the exercise of judicial legislation.

It was ruled that the order was a judicial order as the Chief Justice's power was final. Several considered by the Chief Justice or the Chief Justice's designate, including the existence of an arbitration agreement and the validity of the agreement.

Union of India Ministry Of …. vs Hardy Exploration and Production[90]

The facts of the cases are:

A production sharing contract (PSC) comes into contract with hardy exploration and production (India) Inc. And the government of India for the extraction and production of hydrocarbons in southeast India. There was a dispute arise between the parties as per the requirement of the contract. HEPI started the proceeding of Arbitration. The venue or the seat of arbitration was decided was "Kuala Lumpur, Malaysia". The award was given by the arbitration panel in favor of Hardy exploration.

The award rendered was challenged by the UOI under High court "u/s 34 of Arbitration and Conciliation Act, 1996"[91]. there was a revert contention by the Hardy Exploration that the high court has no jurisdiction to entertain the application under sec 34 of the Act. Because part 1 is not applicable when the arbitration seat is outside India. As well as hardy sought enforcement of the award it was further held that jurisdiction was not there in India.

The appeal was preferred by UOI, and urged that the court should stay the enforcement proceedings under "Article VI of the New York Convention[92]". US district court denied the application made by Indians for the stay of enforcement of the proceeding.

"In assessing whether to grant a stay of proceedings, the District Court looked to *Europcar Italia, S.p.A v. Maiellano Tours, Inc.* [93]which set forth six factors to be considered by courts when assessing whether to stay an enforcement proceeding, namely (1) the expeditious resolution of disputes, (2) the estimated time for foreign proceedings to be resolved, (3) whether the award will receive greater scrutiny in the foreign proceedings, (4) the characteristics of the foreign proceedings, (5) a balance of the hardships of the parties, and (6) any other circumstance that could shift the balance in favor of or against granting the stay."[94]

"The Hon'ble Supreme Court in the case of ***Union of India v Hardy Exploration and Production*** *held that the clause stipulating Kuala Lumpur as the venue of arbitration did not impose a choice of juridical seat on the parties."*[95]

Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.[96]

this is a historical case, both the parties of the dispute go to the agreement for the purchase of cooper. Award was given under the Indian Council of Arbitration (ICA) rules which were NIL. After is conveyed by the ICA M/s Centrotrade went for another arbitration which was under ICC (International chamber of commerce) in Feb 2000.

The case is of history, both parties come to the contract for the sale of copper concentrate. Award was given under the Indian council of arbitration (ICA) rules and given an award which is NIL. After the award was delivered by the ICA

[90] Hardy Exploration & Production (India) Inc v Government of India v India Infrastructure Finance Company (UK) Limited, (2018) EWHC 1916 (Comm).
[91] Section 34, the Arbitration and Conciliation Act, 1996, (India).
[92] Article 6, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

[93] Europcar Italia, S.p.A v. Maiellano Tours, Inc., 156 F.3d 310 (2d Cir. 1998).
[94] Thomas Snider, *HEPI v. India: Stay Denied but Public Policy Prevents Enforcement*, KLUWER ARBITRATION BLOG, (2018),(June 28, 2020, 12:25 P.M.), http://arbitrationblog.kluwerarbitration.com/2018/08/28/hardy-exploration-production-india-inc-v-government-india-ministry-petroleum-natural-gas-civ-action-no-16-140-d-d-c-7-june-2018/?doing_wp_cron=1593324170.1821351051330566406250
[95] SS Rana & Co., *India : Supreme court settles the law with regard to seat vs venue of Arbitration*, LEXOLOGY, (June 28, 2020, 12:40 PM), https://www.lexology.com/library/detail.aspx?g=399cec21-6525-4b17-8bfb e3041ffbe3ae#:~:text=The%20Hon'ble%20Supreme%20Court,juridical%20seat%20between%20the%20parties.
[96] Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd., (2006) 11 SCC 245 (India).

M/S Centrotrade invoked the second arbitration before the international chamber of commerce dated Feb 2000. ICC passed its award on 29th Sep 2001.

Application for a foreign award was made by the M/ s. Centreotrade under section part II of the Arbitration and Conciliation under section 48 of the act. An appeal was filed by Hindustan Cooper ltd. Against the decision before the division seat on July 2004. court towards the end pronounced that the award of ICC was not executable as long as the award made by ICA stood this judgment was given by the bench of three members.

"The court held that parties by contract can decide to have two tier arbitration proceedings. The court held that there is no prohibition against such arbitrations in the A&C Act, and such a procedure does not violate the public policy of India. Therefore, two round arbitration procedure is permissible under the laws of India. The court further stated that two-tier arbitration can ensure quick redressal for parties to an arbitration and protects parties' autonomy."[97]

[97] Krishna Hariani, *RECENT ARBITRATION CASES*, hiarani and co., THE LEGAL SPREADSHEET, 2017, (June 28, 2020, 02:58 PM),http://www.manupatrafast.in/NewsletterArchives/listing/Hariani/2017/Apr/RECENT%20ARBITRATION%20CASES.pdf