Special Issue

Vol. 39 No. 7 December - 2019 Rs. 50/-

KALEIDOSCOPE

STANDING CONFERENCE OF PUBLIC ENTERPRISES

Challenges & Management of Arbitration

Climate Change: Role of PSEs

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KALEIDOSCOPE
STANDING CONFERENCE OF PUBLIC ENTERPRISES

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Message by CHAIRMAN

SCOPE, as an apex body of Public Sector Enterprises (PSEs) is taking proactive and progressive steps to remain relevant to PSEs in their drive to become global entities. Realizing that organizations in the current world scenario have a serious challenge of ensuring sustainability, SCOPE has taken the onus to support the initiatives of PSEs in wide range of areas viz., corporate governance, corporate social responsibility, human resource management, skill development and women empowerment.

Given the dynamics of global economic environment, PSEs are expanding their operations in national and international geographies. With the growth of PSEs, the number of domestic and international contracts is also increasing which has led to increase in commercial disputes. This calls for developing an effective dispute resolution system.

In this context, Arbitration has emerged as the significant method of dispute resolution as litigation in court is a time consuming and expensive exercise. To help PSEs in faster settlement of arbitration cases, SCOPE has created "SCOPE Forum for Conciliation and Arbitration" which provides arbitration services in cost and time effective manner through its empanelled arbitrators/ conciliators. SCOPE has also provided a unique platform to share latest developments in the area of arbitration and conciliation to member PSEs.

Similarly, with growing environmental concerns and radical climate changes, it has become imperative to take suitable measures and approaches to promote the cause of green environment. As a part of the MoU signed with GIZ, Germany, a German public-benefit federal enterprise, SCOPE and GIZ organised a two day National Seminar on 'Climate Change Mitigation & Adaptation, Sustainable Development Goals (SDGs)- Emerging Role of Public Sector Enterprises'. SCOPE has also taken an initiative to come out with a special issue of our monthly journal Kaleidoscope on Arbitration and Climate Change which contains articles from experts in their respective areas.

I hope you will find the magazine very informative and useful. We will continue to come out with similar initiatives which will be of immense importance to PSEs in India.

Rakesh Kumar
Chairman, SCOPE

Director General's Desk

SCOPE has been taking several initiatives in conformity with the changing business environment and to meet the national aspirations of becoming a self reliant and prosperous nation. Realizing that knowledge and skills are vital for any economy to grow and prosper, SCOPE has taken a novel step to ensure skill building of our youths by signing a joint declaration with Ministry of Skill Development & Entrepreneurship (MSDE) for Promotion & Expansion of apprenticeship in Public Sector Enterprises (PSEs). The joint declaration was signed in the presence of Dr. Mahendra Nath Pandey, Hon'ble Minister, MSDE; Mr. R. K. Singh, Minister of State, MSDE & MoS (I/c), Ministry of Power; Dr. K.P. Krishnan, Secretary, MSDE and Mr. Sailesh, Secretary, Department of Public Enterprises (DPE). I am sure, this would prove to be a wonderful opportunity to instil requisite skill sets in our youths.

SCOPE is continuously endeavouring to create a better understanding of Indian and global economic scenario among the top executives of PSEs. SCOPE recently concluded Advanced Global Leadership program which gave global exposure to senior members from PSEs. During the business-cum-study tour, the participants got an opportunity to learn best practices of governance in the world renowned companies in USA and Switzerland.

PSEs, as a role model to Indian Corporate have a transparent system that is unique and praiseworthy. Being accountable to comply with the Right to Information Act, PSEs have a distinct characteristic of ensuring transparency, ethics and trustworthiness. To help PSEs in effective implementation of RTI Act and to acquaint them with recent changes in the RTI Act, SCOPE organized an interactive session of senior executives of PSEs with Chief Information Commissioner, Shri Sudhir Bhargava. The interaction proved to be very fruitful as a range of issues pertaining to recent provisions of the RTI Act and concerns in implementing the amended RTI Act were discussed. Considering that Climate Change has become one of the most crucial issues, SCOPE also organized a Two-day National Seminar on Climate Change, Mitigation and Role of Public Sector Enterprises.

SCOPE has planned a plethora of programmes for ensuring effective functioning of PSEs. The current issue of the magazine is a testimony to it where the readers would find articles from wide range of reputed professionals, academicians on Arbitration and Climate Change. I hope you will enjoy reading this issue and contribute toward the betterment of the magazine.

I am firm believer that Indian PSEs are the best in the world. Together, we shall build a brand 'Public Sector' that would an epitome of excellence.

Atul Sobti
Director General, SCOPE

Programs & Initiatives launched*

- Joint declaration with Ministry of Skill Development and Entrepreneurship (MSDE) to promote apprenticeship in PSEs
- National Seminar on Climate Change, Mitigation, SDGs – Emerging Role of PSEs
- Interactive Session on Recent Changes under the Companies Act 2013
- Interactive meeting of PSEs with Chief Information Commissioner
- Advanced Global Leadership Programme – Business cum Study Tour
- Visit of International Delegation to SCOPE on Gender Issues on World of Work

Programmes Initiatives in offing

- SCOPE-APSE Executive Development Programme
- Lecture Session on Ethical Governance: The Gandhian Way
- Programme on Challenges and Management of Arbitration
- Special Issue of Kaleidoscope on Arbitration and Climate Change
- CFOs meet on ongoing issues

*since last issue of KALEIDOSCOPE

SCOPE to Promote Apprenticeship in Public Sector

In order to tap the potential of young demography of India by promoting Apprenticeship in Public Sector Enterprises (PSEs), a joint declaration was signed between Ministry of Skill Development & Entrepreneurship (MSDE) and Standing Conference of Public Enterprises (SCOPE).

The joint declaration was signed and exchanged between Mr. Atul Sobti, Director General, SCOPE and Ms. Sunita Sanghi, Senior Adviser, Ministry of Skill Development & Entrepreneurship (MSDE) in the presence of Dr. Mahendra Nath Pandey, Hon'ble Minister, MSDE; Mr. R. K. Singh, Minister of State, MSDE & MoS (I/c), Ministry of Power; Dr. K.P. Krishnan, Secretary, MSDE and Mr. Sailesh, Secretary, Department of Public Enterprises (DPE). The joint declaration took place at a National Seminar held to spread awareness and participation in apprenticeship programme organized by MSDE in collaboration with SCOPE and DPE. The aim of the declaration is to sensitize the benefits of National Apprenticeship Promotion Scheme (NAPS) amongst PSEs for active participation and engagement of apprentices. SCOPE and MSDE shall work together toward maximizing the benefit of apprenticeship and also help DPE in creating a database in this regard. Minister, MSDE urged Central Public Sector companies to significantly increase their participation in the government's apprenticeship program. Dr. Mahendra Nath Pandey, Hon'ble Minister said, "Central Public Sector Undertakings (CPSUs) are instrumental in sustaining self-reliant economic growth and play a vital role in generating employment opportunities for skilled professionals. I strongly urge them to come forward, increase their engagement with apprentices and build their potential to be industry ready.''

(L to R): Mr. Atul Sobti, DG, SCOPE; Dr. K.P. Krishnan, Secretary, MSDE; Dr. Mahendra Nath Pandey, Minister, MSDE; Mr. R. K. Singh, MoS, MSDE & Ministry of Power (I/c); and Mr. Sailesh, Secretary, DPE.

Joint declaration being signed and exchanged between Mr. Atul Sobti, DG, SCOPE and Ms. Sunita Sanghi, Senior Adviser, MSDE.

Mr. R.K. Singh, Hon'ble Minister said, "We have a substantial proof of the positive impact apprentices create in the manufacturing and service industry. We want to strengthen the Indian apprenticeship system to impart formal training across sectors in order to rightly skill the youth and provide them opportunities for livelihood."

Secretary, MSDE in his address highlighted the efforts made by the government to increase apprenticeship in the corporate. Secretary, DPE while appreciating the efforts made by the ministry, ensured that PSEs would enhance their role in promoting apprenticeship. DG, SCOPE in his address said that skilled workforce has the potential of further empowering India's socio economic prowess in the world. The seminar was attended by a large number of senior government officials and delegates from PSEs.

International Delegation visits SCOPE on Gender Issues

(L to R): Mr. S. A. Khan, Group GM (Corp. Affairs); Mr. Atul Sobti, DG, SCOPE and Dr. Shashi Bala , Fellow, V.V. Giri National Labour Institute.

As a part of the International Training Programme on Gender Issues in the World of Work organized by V.V. Giri National Labour Institute (VVGNLI), an autonomous body of the Ministry of Labour and Employment, Government of India, 28 International delegates visited Standing Conference of Public Enterprises (SCOPE) on 9th December, 2019.

Mr. Atul Sobti, Director General, SCOPE welcomed and delivered the opening remarks to the participants wherein he talked about SCOPE initiatives in other countries and importance of public sector in the country. He also spoke about corperate social responsibility, impact of education and skill development in mainstreaming women in the world of work. He informed the initiatives taken by SCOPE through Women in Public Sector (WIPS) and 'Women Champion' Programme on 'Gender Diversity' along with International Labour Organisation (ILO). He mentioned Government of India initiative of having one woman Director at the Board, Maternity benefit Act, Child Care leave for inclusive development. Dr. Shashi Bala, Fellow, V.V. Giri National Labour Institute also addressed the participants on this occasion and briefed them about the affirmative policies of women and initiative on providing maternity benefit by Ministry of Labour & Employment. Flexible working hours, sharing of house responsibilities by the men in the households and implementation of the policies with due concerns and in right spirit will definitely increase the women participation in the labour market post maternity. Choice for work, access to quality education and feeling for inclusiveness is essential for sustainable development. Crèche facilities need to be provided on mandatory basis which should be availed not only by women but also men for reducing the 'M curve'. Increase in the maternity leave should not negatively impact women employment. Hence, the policy makers are working on sharing of financial burden by various stakeholders in line with existing social security provision.

Participants also talked about maternity benefit provisions in the country and importance of this affirmative welfare legislation. Mr. Rishabh Kumar, Officer, Corp. Comm., while proposing the vote of thanks mentioned the importance of policy decisions in improving women active participation in the labor market in a pragmatic manner. The participants were from Bhutan, Ethiopia, Ecuador, Vietnam, Mauritius, Botswana, Tanzania, Kyrgyzstan, Liberia, Nigeria, Armenia, Kenya, Venezuela, Afghanistan, Bangladesh, Maldives, Uzbekistan, Indonesia, Sri Lanka, Uganda, Malawi, Zambia, Namibia, Morocco, Madagascar, Sierra Leone & South Sudan. From SCOPE, Ms. Nisha Sharma, Sr. Manager, Corporate Communication; Ms. Samridhi Jain, Research Analyst and Ms.Hema Kaul, Officer, Corporate Communication were also present on the occasion.

Interactive Session on Recent Changes under the Companies Act 2013

On the 3rd of December, 2019, Standing Conference of Public Enterprises (SCOPE) in association with The Institute of Company Secretaries of India (ICSI) organized an Interactive Program on "Recent Changes under the Companies Act 2013"at SCOPE Convention Centre, New Delhi. Mr. Ranjeet Pandey, President, ICSI, Mr. Atul Sobti, Director General, SCOPE and Mr. S. Sakthimani, Director (Finance) CCI addressed the inaugural session. The session was attended by a large number of senior executives from over 90 public sector enterprises across the country.

Mr. Ranjeet Pandey, President, ICSI discussed the way process for good corporate governance in PSEs. He focused on the usage of artificial intelligence in the compliance management as well as compliance monitoring.

Mr. Atul Sobti, DG, SCOPE mentioned that the new Companies Act makes the corporate as model citizens of the country with equal importance to 'good' profit and governance. He outlined that amendments in the Companies Act attempts to strike a balance between ease of doing business and corporate governance.

Mr. S. Sakthimani, Director (Fin), CCI emphasized on rules and regulations relating to Companies Amendment Act, 2019 including Independent Directors.

The program was divided into four technical sessions and the last being a panel discussion.

(L to R): Mr. Atul Sobti, DG, SCOPE; Mr. Ranjeet Pandey, President, ICSI and Mr. S. Sakthimani, Director (Finance) CCI during the inaugural session.

After the inaugural session, the first session was taken by CS Makarand Joshi, practicing Company Secretary, Founder Partner of Makarand M Joshi & Co. on Recent Amendments in Company Law- An Analysis and Impact on PSUs. He gave a presentation on Company Law Committee Report and other amendments in the Companies Act, 2013.

The second session was presented by CS Anuj Kumar Agarwal, Trainer and Consultant on Cyber Investigation, Cyber Forensics and Cyber Law etc; on Cyber Risk, Board Evaluation, Digital Meetings, Usage of technology for better Corporate Governance.

The third session was presented by CS Sumita Sharma, Company Secretary, National High Speed Rail Corporation Limited, who broadly spoke on Best Board Practices.

The program concluded with a fourth and the last session in the form of a panel discussion. In the session panelists were- CS Nesar Ahmad (Chairman- Session) past president ICSI and Senior Advocate, New Delhi, CS Divya Tandon, Company Secretary & Compliance Officer, Power Grid Corporation of India Limited, CS IP Singh, Ex-Company Secretary, BHEL and CS Shashi Bhushan Singh, Deputy Company Secretary, ONGC Ltd. The participants raised a number of points on company related issues and the same were clarified in a very lucid manner by the faculty.

While concluding the program CMA Saqib Mehdi, Senior Manager (Finance) SCOPE acknowledged the contribution of the faculty of ICAI, the panelists, the entire team of SCOPE and the participants. He also proposed the vote of thanks.

Advanced Global Leadership Programme Concludes

Standing Conference of Public Enterprises (SCOPE) in collaboration with the Indian Institute of Management Calcutta (IIM-C) concluded its much acclaimed Advanced Global Leadership Programme. This was followed by a feedback cum concluding session in which participants shared their key learning during the program. The Global Leadership programme is aimed at capacity building of Top/Senior executives in Public Sector Enterprises (PSEs). The program focused on better understanding of Indian and global economic scenario for creation of effective strategic leaders in PSEs.

The programme was divided into two modules- first one was Indian Module which was conducted at IIM-C and SCOPE and the second module consisted of a study cum business tour to the USA and Europe. The participants visited Washington DC, New York and extensive tour of Switzerland. During the first module, a six day workshop was held at IIM-C. Mr. Atul Sobti, Director General, SCOPE inaugurated the program which was also addressed by Dr. Saugata Ray of IIM-C and senior professionals/academicians. At SCOPE, Mr. Atul Chaturvedi, IAS (Retd.), Former Chairman, PESB spoke on Leadership Challenges of Board Members in CPSEs and Mr. J.S. Mukul, IFS (Retd.) Dean, Foreign Service Institute Ministry of External Affairs interacted with participants on Indian Foreign Policy. The second leg started with a workshop at University of Maryland followed by meeting at Indian Embassy at Washington DC. Participants also visited Indian Consulate at New York and Master Card Data Centre. At Geneva, Switzerland, participants met Mr. J. S. Deepak, Ambassador & Permanent Representative of India to the World Trade Organization (WTO) at Permanent Mission of India to WTO. Meeting was followed by an interactive session at WTO and International Organization of Employers (IOE). Participants also visited Schindler's Vocational Training Centre in Ebikon, Lucern; Swiss parliament and India House in Bern (Indian Embassy) where the delegates met Indian Ambassador, Mr. Sibi George. Followed by the interaction with the ambassador, participants attended the Momentum in India Program with Swiss SMEs at Bern where presentations were made by Swiss Executives & Indian Overview was given by select participants. Participants also visited and had interactions with officials at BUECHI LABORTECHNIK in Flawil; GEOBRUGG Technologies at Romanshorn; DOPPELMAYR at Wolfurt (Austria) and STADLER RAIL at Bussnang, Switzerland. A one day workshop was also organized at St Gallan University. The concluding session took place at SCOPE, New Delhi where participants shared their experience and also gave their feedback of the programme. The program was attended by senior level executives from thirteen organizations such as NTPC, Indian Oil Corporation, Hindustan Petr-oleum Corporation, NMDC, REC, Oil India etc.

RTI is at the Heart of Indian Democracy- Mr. Sudhir Bhargava, CIC

SCOPE ORGANIZES INTERACTIVE SESSION WITH CIC

SCOPE organized an interaction of Chief Executives, Directors and Senior Executives of PSEs with Chief Information Commissioner (CIC), Mr. Sudhir Bhargava on range of issues pertaining to recent provisions of the RTI Act and concerns in implementing the amended RTI Act on 4th December, 2019. In his address to PSEs, CIC said that RTI is at the heart of Indian democracy and it facilitates people's participation in governance. He also answered the queries of PSEs' representatives on range of issues like habitual seeker, clarification on certain sections etc. Director General, SCOPE, Mr. Atul Sobti also addressed the gathering. While appreciating the Act as the most progressive legislation, Mr. Sobti pointed out that PSEs need a level playing field in the current volatile business environment. Director (HR), NTPC and Member, SCOPE Executive Board, Mr. Saptarshi Roy; Mr. O.P. Khorwal, Convener, SCOPE RTI Steering Committee and Mr. Abinash Agarwal, Sr. Associate, MCO Legals also presented their views on RTI Act. The interaction was organized by SCOPE which saw the presence of a large number of representations from PSEs. Around 65 senior executives from 43 Public Sector Organizations attended the event.

(L to R): Mr. Atul Sobti, DG, SCOPE; Mr. Sudhir Bhargava, CIC and Mr. Saptarshi Roy, Director (HR), NTPC during the interactive session.

Interface with Stakeholders


Mr. Rakesh Kumar, Chairman, SCOPE & CMD, NLCIL and Mr. Atul Sobti, DG, SCOPE met Mr. Shailesh, Secretary, DPE to discuss various issues pertaining to PSEs.


SCOPE for the first time organized an informal meet with Chief Executives of PSEs to discuss the roadmap for Indian Public Sector.

SCOPE in Media

CIC addresses PSEs on RTI related issues

The Tribune
GURUGRAM | TUESDAY | 5 NOVEMBER 2019

SCOPE Director General bags Udyog Rattan Award P-12

SCOPE GETS UDYOG RA

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12 The Statesman
NEW DELHI, TUESDAY 10 DECEMBER

PUBLIC SECTOR ROUNDUP

HINDUSTAN TIMES, NEW DELHI
THURSDAY, NOVEMBER 14, 2019

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& ICSI create awareness
ges under Companies Act

Atul Sobti, Director General, Standing Conference of Public Enterprises (SCOPE) has been awarded Udyog Rattan Award by Institute of Economic Studies for his contribution in economic development of the country.

on the usage of artificial intelligence in the compliance management as well as compliance monitoring. Atul Sobti mentioned that the new companies Act makes the corporate model citizens of the country with equal importance to 'good' profit and governance. He outlined that amendments in the Companies Act attempts to strike a balance between ease of doing business and corporate governance.

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MUMBAI | TUESDAY | NOVEM

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THE FREE PRESS JOURNAL
www.freepressjournal.in MUMBAI | THURSDAY | D

SCOPE & ICSI create awareness
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The Tribune
GURUGRAM | TUESDA

RTI at heart of
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SCOPE ORGANISES NATIONAL WORKSHOP

tanding Conference of Public Enterprises (SCOPE) organised
national workshop on 'Succession Planning for Board Level
ositions' in Public Sector Enterprises (PSEs). Public Enter-

SCOPE to promote apprenticeship in Public Sector

A joint declaration for Promotion & Expansion of apprenticeship in Public Sector Enterprises (PSEs) was signed and exchanged between Atul Sobti, Director General, Standing Conference of Public Enterprises (SCOPE) and Sunita Sanghi, Senior Adviser, Ministry of Skill Development & Entrepreneurship (MSDE) in the presence of Mahendra Nath Minister, MSDE; R K and Sailesh, Secretary, Department of Public Enterprises The joint declaration

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The aim of the declara
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मंगलवार, 5 नवंबर 2019

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THE FREE PRESS JOURNAL
BER 12, 2019 www.freepressjournal.in

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THURSDAY, NOVEMBER 14, 2019

FINANCIAL EXPRESS

NOTICE BOARD

WORKSHOP-SCOPE

SCOPE organised a national workshop on 'Succession Planning for Board Level Positions' in PSEs. Chairman, PESB, KD Tripathi, inaugurated theworkshop in the presence of MK Gupta, Member, PESB and Atul Sobti, DirectorGeneral, SCOPE.

P-12

AY | 10 DECEMBER 2019

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SCOPE की ओर से RTI पर मंथन

■ वि, नई दिल्ली : मुख्य सूचना आयुक्त सुधीर भार्गव ने सार्वजनिक उपक्रमों के प्रमुखों और वरिष्ठ अधिकारियों से मुलाकात की और सूचना का अधिकार कानून से जड़े तमाम पहलुओं और मुद्दों पर चर्चा की। इस दौरान उन्होंने कहा कि रटीआई कानून भारतीय लोकतंत्र के दिल के काफी करीब है और इससे ों की गवर्नेंस में हिस्सेदारी होती है। SCOPE के महानिदेशक अतुल वती, एनटीपीसी के निदेशक (HR) और SCOPE एग्जेक्यूटिव बोर्ड के स्य ससर्षि रॉय ने भी अपनी राय रखी। कार्यक्रम में 43 उपक्रमों के ेकारियों ने शिरकत की।

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चीफ इंफार्मेशन कमिश्नर सुधीर भार्गव , स्कोप के महानिदेशक अतुल सोबती और स्कोप एग्जीक्यूटिव बो के सदस्य सप्तऋषि रॉय कार्यक्रम में भाग लेते हुए।

SCOPE FORUM OF CONCILIATION AND ARBITRATION (SFCA)

There has been growing number of litigations with the Courts/ Tribunals relating to commercial transactions between the Central Public Sector Enterprises (CPSEs) CPSEs and private sector/ cooperatives/ Government Departments. The practice of disposal of these cases is expensive and time consuming.

Creation of SCOPE Forum of Conciliation & Arbitration (SFCA)

With a view to expedite settlement of disputes and reduce avoidable expenditure by PSEs, a need was felt by Standing Conference of Public Enterprises (SCOPE) to institutionalize the prevailing system of arbitration which led to formation of SFCA in 2003.

The forum was formally inaugurated by Shri Santosh Gangwar, the then Hon'ble Minister of State for Heavy Industries & Public Enterprises and Parliamentary Affairs at SCOPE Complex on 9th January 2004. Subsequently, SFCA published the SCOPE Forum of Arbitration and Conciliation Rules, 2003. The Rules were last amended up to 2017 to incorporate changes in legal framework and needs of the business community.

WHY SFCA?

Empanelment of more than 400 Arbitrators/ Conciliators

- Retired Judges of Supreme Court, High Courts,
- Retd. Secretaries, Joint Secretaries of Government of India
- Chief Executives, Directors and senior officials of PSEs
- Professionals including Advocates, Chartered Accountants.

Complete services for conducting Arbitration:

- A dedicated Forum administering, overseeing and conducting arbitration and conciliation proceedings.

Cost effective and timely dispute settlement:

- Settling disputes between PSEs and their associates within shortest possible time at more economical and cheaper cost in comparison to other institutions.

Dedicated Infrastructure:

- Exclusive Arbitration Hall having sitting capacity of 15 persons.
- Facility of provision of halls with higher capacity in SCOPE Convention Centre at SCOPE Complex, Lodhi Road and SCOPE Minar, Laxmi Nagar, New Delhi.

Facilities and provisions:

- Provision of modern equipments and facilities such as such as projector for live projection of record of proceedings on a large screen, stationery etc.
- Complementary service of mineral water, tea/coffee with arrangements for high tea on request of parties.

Capacity Building:

- Executive development programmes and workshops on various aspects of Alternate Dispute Resolution process (ADR).
- Annual National Seminar on various aspects of Arbitration and Conciliation.

WHO HAS BENEFITTED FROM SFCA?

PSEs namely SAIL, Oil sector Companies such as IOCL and BPCL have adopted/incorporated SFCA clause of Conciliation and Arbitration in their contracts/agreements with private parties.

Associate with us and adopt SFCA Clause for resolving disputes in a cost and time effective manner!

For any queries relating to SFCA, you may contact:

Mr. S. A. Khan, Group General Manager

or

Ms Radhika, Legal Officer

SCOPE FORUM OF CONCILIATION & ARBITRATION (SFCA)

First Floor, Core 8, SCOPE Complex, Lodhi Road, New Delhi-11 00 03

Email: scopesfca@gmail.com • Phone: 011- 24360559, 011- 24361745

Institutional Arbitration: A Novel Alternate Dispute Resolution Approach

Atul Sobti
Director General
SCOPE

India has become one of the world's fastest growing economies and has been gaining attention through its sustainable business reforms. This is evident from the fact that year on year the country has been showing remarkable improvement in its ease of doing business rankings. To highlight, India has moved 14 places to reach at 63rd position out of 190 countries in the World Banks Study on Doing Business 2020 from the previous ranking of 77th position in 2019 and 100th in 2018. Infact, the Report acknowledges India amongst the top ten economies that has shown considerable improvement in a short span of time on various parameters attributed to ease of doing business. However, a lot of work still needs to be done to meet the target of being amongst the top 50 economies in the Ease of Doing Business Report. In order to do so, it is imperative that the country improves on various parameters on which it otherwise lags behind other economies.

Resolution of disputes and contract management is one of the key parameters in which India still need to show considerable improvement so as to reach its target of top 50 economies. In order to do so, arbitration needs to be given its rightful place in the Indian corporate system so as to ensure not only timely resolution of disputes but also reduce load on judiciary for settlement of civil corporate disputes.

Why Institutional Arbitration?

With globalization, companies have engaged in contracts with its counterparts not only within the country but also across borders. Where there has been increase in global business presence, there is also a growth in number of litigations with the Courts/ Tribunals relating to commercial transactions between contracting parties including private companies, Central Public Sector Enterprises (CPSEs) and Government Departments. The practice of disposal of these cases through traditional judicial system has been observed to be expensive due to involvement of advocates and lawyers and time consuming resulting in blocking of resources (both monetarily and human resources) each time hearing or date for the judicial proceeding falls due. Understanding the constraints of judiciary procedures, process of conciliation and arbitration has been developed so as to ensure timely resolution of disputes in the most economical manner. Ad-hoc arbitration refers to an arbitration where the procedure is either agreed upon by the parties or in the absence of an agreement. The procedure is laid down by the arbitral tribunal. Thus, it is an arbitration agreed to and arranged by the parties themselves without seeking the help of any arbitral institution.

However, till recently, it has been observed that ad-hoc arrangement of conciliation and arbitration are not delivering desired results. Key issues being faced in ad-hoc settlements pertains to coordination issues, involvement of High Court or Supreme Court in case of non agreement to nominate arbitrator/arbitrators by consent leading to pressure on judiciary etc.

With a view to expedite settlement of disputes and reduce avoidable expenditure in this regard, a need was felt to institutionalize the prevailing system of arbitration. Thereby leading to creation of new arbitral institutions in a reflection of an increasingly globalized world requiring neutral, but effective, dispute resolution mechanisms.

In an institutional arbitration, the arbitration agreement may

stipulate that in case of dispute or differences arising between the parties, they will be referred to a particular institution which shall settle disputes within ambit of its Rules and Regulations. Institutional arbitration ensures that arbitration proceedings commence at the earliest through qualified arbitrators. Concerns such as administrative assistance, administrative procedure for appointment of arbitrators etc. is taken care of by the Institution enabling the parties to the dispute to concentrate on resolving the matter constructively.

India & Institutional Arbitration

Presently, in India, Institutional Arbitration is offered by a few reecognised institutes such as SCOPE Forum of Conciliation and Arbitration (SFCA), Indian Council of Arbitration(ICA), International Chamber of Commerce(ICC) and Federation of Indian Chamber of Commerce & Industry(FICCI). All these institutions have framed their own rules of arbitration which would be applicable to arbitral proceedings conducted by these institutions. Such rules supplement provisions of the Arbitration Act in matters of procedure and other details as the Act permits. The Arbitral Institutions have fixed arbitrator's fees, administrative expenses, qualified arbitration panel, rules governing the arbitration proceedings etc., which help in the smooth and orderly conduct of arbitration proceedings. Parties are entitled to choose the form of arbitration, which they deem appropriate in the facts and circumstances of their dispute.

In an endeavour to convince the litigants to settle their disputes by institutional arbitration, the Government of India has also enacted the Arbitration and Conciliation (Amendment) Act, 2019 whereby an independent body called the Arbitration Council of India (ACI) shall be made functional for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.

SCOPE Forum for Conciliation and Arbitration (SFCA)

Public Sector in India has undergone a revolutionary turnaround in its role since its conceptualization post independence. Though CPSEs were set up with an aim of partnering with the government in socio economic, over time they have not only fulfilled their social responsibility of national development but also exceeded commercial expectations thereby becoming dominant players in their respective fields. With global access, PSEs need to imbibe international standards and procedures in their respective contracts. In order to ensure smooth execution of contracts and settlement of disputes it is of absolute necessity to include appropriate and well drafted clause pertaining to Arbitration. Given the scale of contracts, it would be in the interest of the PSEs to engage in Institutional Arbitration and Conciliation. SCOPE, being the apex body of CPSEs has been striving to promote efficiency and excellence in the public sector. In line with its vision to facilitate functioning of PSEs, SCOPE has established SCOPE Forum for Conciliation and Arbitration (SFCA) so as to ensure smooth resolution of disputes of PSEs in the most cost effective manner.

Presently, Maharatnas such as SAIL, IOCL and BPCL have incorporated SFCA clause for resolution of their disputes and many disputes have been successfully settled by SFCA.

Way Forward

PSEs play a very critical role in meeting the national agenda of development and progress. New avenues of product innovation, production lines, areas of operation are being explored by PSEs both nationally and internationally necessitating institutionalization of Arbitration. Institutional Arbitration can play a very significant role in making India as a preferred 'business' destination as it will make redressal of disputes both time and cost effective. As a whole, one can say that, institutional arbitration is more suitable as it provides established & updated arbitration rules, support, supervision & monitoring of the arbitration, review of awards and most importantly, strengthens the credibility of the awards. Given the measures taken by the Indian Government in support of the 'Ease of doing business in India' and the demand for a speedy and effective method of dispute resolution, Institutional Arbitration which could position itself as an alternative to endless litigation in courts.

Challenges and Management of Arbitration

Avnish Srivastava
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Disputes can stem from ambiguities or oversights in the contracts as well as issues that emerge during Contract execution. The causes of contract disputes include (but not limited to) defaults on account of fulfillment of obligations of Contractor and/or Employer, Site Conditions & Project Complexity, vague Contract terms, Delays linked to front handing over, Quality & Workmanship etc.

Contractual disputes are time-consuming, expensive and unpleasant. They often affect Employer/Contractor relationships built-up over a period of time and can impact on future works/supplies. They can add substantially to the cost and time overruns of a Project, as well as nullifying some advantages.

Dispute Avoidance, therefore, in the first place is of utmost importance with emphasis on improving relationships between the Employer and Contractor through partnering and regular interactions. However, disputes do occur and when they do, the importance of a fast, efficient and cost-effective dispute resolution process cannot be overstated.

The Indian Arbitration Act, 1940 & The Arbitration & Conciliation Act , 1996

Arbitration, a form of Alternative Dispute Resolution (ADR) mechanism was formally enacted in India vide Indian Arbitration Act, 1940. Subsequently, the same was amended and Conciliation was also included in the 'The Arbitration & Conciliation Act, 1996' for resolution of disputes outside the courts, where the parties to a dispute refer it to Mediation or Conciliation, wherein a third party facilitates resolution of disputes. However, if the same fails or parties do not choose to exercise Mediation or Conciliation, the disputes can be referred to Arbitrators, by whose decision they agree to be bound. It is a mechanism in which parties to the Contract agree to a third party examining the case in details and conveying a decision that is legally binding on both sides and enforceable. To achieve the objective of speed and

economy, the Legislature thought it worthwhile to provide limited grounds for review and appeal of Arbitration awards in higher courts.

Subsequent Amendments in 'The Arbitration & Conciliation Act,1996'

The 2015 and the 2019 Amendments to 'The Arbitration & Conciliation Act, 1996' have resulted in a paradigm shift towards minimizing judicial intervention in the arbitral process both in case of interim reliefs and in appeal matters. Hence the system is heading towards an international compliant system and accordingly our contract processes including the conduct of Arbitration should also be in line with such systems.

Challenges of Arbitration

The major challenges, generally faced in Arbitration, are as under:

- No. of cases with huge claims, pending for many years & large number of hearings, as there are no timelines specified for the Arbitration commenced prior to 23.10.2015.
- PSUs are often at the receiving end of Arbitral Awards and suffer both in terms of money and time and in most of the cases end up in Courts.

While, the Courts play a vital role in giving finality to Civil,

Criminal & other cases; in respect of Arbitration cases, The Arbitration & Conciliation Act envisages the minimum judicial intervention and curtails this power of the Higher Courts and provides very limited grounds for setting aside the Arbitral Award (Section 34).

- Pleadings, Witnesses and Evidences of both the parties not given equal weightage many a times by Arbitral Tribunal (AT).
- Unwillingness by parties to switch to the Amended Act, 2015 with defined time- lines for finalization of Arbitral Award. Switching to Amended Act presently is consent based, as per The Amendment Act, 2015. Recently introduced Amendment, 2019 further reinforces the same. Under the circumstances, the objective of Speed is not met.
- Section 28(3) & Section 19(4) allow Tribunals to even interpret the terms of the Contract between the Parties and deciding the relevance and weights of the evidences, resulting in AT going contrary to Contract provisions and/or ignoring vital evidences, many a times.

It is worthwhile to mention that the Statement of Objects and Reasons for the

Amendment Act, 2015 also mentioned that India has been ranked at 178 out of

189 nations in the world in contract enforcement, it is high time that urgent steps are taken to facilitate quick enforcement of contracts,…….

However, Section 28(3) provisions viz. "…… in accordance with the terms of the contract……" were modified vide 2015 Amendment to "……take into account the terms of the contract……", thus further allowing AT to go contrary to the agreed provisions of the Contract between the parties.

Arbitral Tribunal's Fee – Varying norms being followed by ATs

Various ATs follow varying norms like "As per Contract" or "as per Fourth Schedule of The Act" or "as decided by the Arbitral Tribunals themselves". Hon'ble Supreme Court vide their Order dated 10th July,19 have held that the fee is to be as per Contract between the parties, if provided therein.

Experiences of Arbitration

- The Arbitration & Conciliation Act mandates the appointed Arbitral Tribunal in an Arbitration proceedings, inter-alia, to interpret the terms of the Contract between the two parties {Section 28(3)}, and to determine the admissibility, relevance and weight of any evidence {Section 19(4)}. With these provisions, it has been observed that Arbitral Tribunal at times have gone contrary and beyond the terms of the Contract, while finalizing the Arbitral Award and/or ignoring vital evidences. While there are very limited grounds under the provisions of the Act (Section 34) to challenge the said Arbitral Award and Higher Courts not mandated to re- appreciate and re-assess the evidences {Section 34 (2A)} and correcting the Arbitral Award, the entire Arbitration System needs to be fool proof to ensure that the justice is

delivered. The same assumes greater importance in view of large number of Arbitrations, with one of the parties being PSUs, involving huge Public Money.

- Needless to mention, minimum judicial intervention and speedier justice, envisaged in the 246th Law Commission Report leading to the many provisions in the Amendment Act, 2015 may not have intended Speed at the cost of Justice. Further, in the matter between PSU/ Govt. Department and any Private Party, the possibility of Arbitrator(s) being influenced may not be ruled out, resulting in the Arbitral Awards against the PSU, not merely on merit.
- The Arbitration & Conciliation (Amendment) Act, 2015 and 2019 have introduced many welcome modifications including Neutrality of Arbitrators (Impartiality & Independence), Time-lines for Arbitral Award (to curtail the long arbitral proceedings resulting in delays of number of years, even up-to ten years) and Structural changes like formation of Arbitration Council of India, including promotion of Institutional Arbitration with

additional provisions (Eighth Schedule) for Qualifications & Experience of Arbitrator & General Norms applicable for Arbitrator, these structural changes may take some time for complete implementation.

Issues w.r.t. Section-34 Petitions for Setting-aside the Arbitral Award

- Limited grounds available under the Act for setting aside the Arbitral Award.
- Courts generally do not intervene in the Arbitral Awards, from the perspective of minimum judicial intervention.
- Grounds like "against Public Policy of India" & "Patent Illegality" are not defined and there is a possibility of subjectivity in interpretation of these terms.
- There are cases where decisions of Arbitral Tribunals and/ or High Court have been reversed in Hon'ble Supreme Court and, therefore, Finality in a case is attained only after Special Leave Petition in Hon'ble Supreme Court. PSUs, therefore, tend to go up-to the Supreme Court, thus defeating the objective of Alternate Dispute Resolution mechanism and Arbitration.

Issues w.r.t. NITI Aayog Guidelines for payment of 75% of Arbitral Award Amount

- Not binding on the Contractor and, therefore, not being claimed by them generally.
- Parties not consenting for receiving payments, as per guidelines or not furnishing stipulated Escrow Agreement and/or BG, however, interest continues to accrue for the PSUs.
- Guidelines for payment of 75% of Arbitral Award amount to Contractor only. Not applicable, if Award in favour of PSU.

Contractual disputes are time-consuming, expensive and unpleasant. They often affect Employer/ Contractor relationships built-up over a period of time and can impact on future works/ supplies.

Issues for consideration for better Management

Few issues of concern are required to be addressed, keeping in view the best interest of the PSUs, involving huge amounts of Public Money in the Arbitration and Litigation.

- Specialized Arbitrators for PSUs, to be treated as public servants for ensuring accountability.
- Switching to the Amended Act may be considered to be made mandatory at least w.r.t. time lines to reduce the time in finalization and in turn Interest on Arbitral Award Amounts & other administrative cost.
- Section 28(3) provisions may be considered to be modified to bring back the earlier provision "…… in accordance with the terms of the contract……" from the one modified vide 2015 Amendment viz. "…… take into account the terms of the contract……".
- Limited grounds for setting aside Award under Section 34, may be revisited and terms like "Public Policy" & "Patent Illegality" be defined to avoid subjectivity in interpretation. If subjectivity in interpretation be removed, reversal of Arbitral Awards from High Courts & Supreme Court might reduce and litigations going up to Supreme Court might end, resulting into huge savings of Litigation time, associated costs and Interest thereon.
- Niti Aayog Guidelines may be made binding so that objectives of the same i.e. "Revival of Construction Sector" and "Repayment of Lenders' dues" are met. Many contractors may not be willing to opt for the same, since proceeds have to go to their Lenders first and then to be utilized in the same project of the same PSU and so on. Further, in case the Contractor is not consenting to receive payments as per the guidelines, Interest on Arbitral Award amounts should not continue to accrue on the PSU. If made binding, the same may also be beneficial to the PSUs wrt Interest accrual.
- While effort should be on Dispute Avoidance, once dispute has arisen, Mutual Consultation, Mediation and Conciliation should be exercised in right earnestness before resorting to Arbitration, which has not served the envisaged purpose completely. It has neither remained economical nor speedier nor final. PSU's in most of the cases go to Litigation and as such, ADR has practically become Additional Dispute Resolution Mechanism, in most of the cases, rather than Alternate Dispute Resolution.

Arbitration Proceedings
Making it a Speedy and Cost effective Process

R.Madhavan
CMD, HAL

Arbitration is an alternate dispute resolution mechanism wherein the Parties to a dispute agree to refer the dispute to be settled by an Arbitrator/Arbitral Tribunal instead of going to the Court for dispute settlement. But the question is why anyone would go for arbitration when there are Courts to decide the disputes. The answer lies in the object and spirit behind the arbitration process. The object of arbitration is to resolve the dispute between the parties through an Arbitrator/ Arbitral Tribunal, within shortest time possible and with less costs. However, the question to be looked into nowadays is whether this object is actually getting achieved. Especially in an Organization, whether this type of dispute resolution is actually speedy and cost effective is a big concern. Hence, through this article we would like to place before the readers some measures which would help Organizations in addressing these issues to some extent.

Legislative measures taken to reduce Duration and Cost involved in Arbitration Process

In the recent past, the Arbitration and Conciliation Act, 1996 ("the Act") was amended twice vide Arbitration and Conciliation (Amendment) Act, 2015 & Arbitration and Conciliation (Amendment) Act, 2019 ("the Amendment Acts"). These amendments were primarily brought in with the aim of making arbitration process a speedy process with less costs involved. It is with these objects, interalia, the following amendments have been made vide the Amendment Acts:

- Under Sec-9 of the Act, the arbitral proceedings shall be commenced within a period of ninety (90) days from the date

of Court order for any interim measure of protection or within such further time as the Court may determine.

- Under Sec-12 (1)(b), when a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing, interalia, any circumstances which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve (12) months.
- Under Sec-23 (4), the statement of claim and defence shall be completed within a period of six (6) months from the date the arbitrator or all the arbitrators, as the case may be, received notice in writing, of their appointment.
- Under Sec-24, the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis and not grant adjournments without sufficient cause, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.
- Under Sec-29A(1), other than in international commercial arbitration, the arbitral tribunal shall make award within 12 months from the date of completion of pleadings under section 23(4). However, in international commercial arbitration matter, the award shall be made by the arbitrator as expeditiously as possible and endeavor may be made to dispose the matter within a period of twelve (12) months from the date of completion of pleadings under section 23(4).

Further, Sec-29A(2) provides that if the award is made within a period of six (6) months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fee, as the parties may agree. If the award is not made within such time then the mandate of the arbitrator shall terminate unless extended by the Court under Sec-29A(4). Also, while extending the period under Sec-29A(4), if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal then it may order reduction of fees of the arbitrator not exceeding five per cent (5%) for each month of such delay.

- Under Sec-29B, Parties can agree in writing to have their disputes resolved by fast track procedure at any stage either before or at the time of appointment of the arbitral tribunal. Also, for conducting the fast track arbitration, the arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing. However, the tribunal shall have the power to call for any further information or clarification from the Parties. Further, the arbitral tribunal may hold oral hearing if the Parties make such a request for clarifying certain issues. If oral hearing is held, then the arbitral tribunal may dispense with any technical formalities, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

Usually any contract entered between a Company and a Vendor would include an Arbitration Clause for dispute resolution. Normally, whenever a dispute arises under the contract, the aggrieved Party take recourse to arbitration. As a result of the same, most of the time Parties end up in spending more time and money in Arbitration than Litigation through Courts.

Suggestive measures to reduce Duration and Costs involved in Arbitration Process

Usually any contract entered between a Company and a Vendor would include an Arbitration Clause for dispute resolution. Normally, whenever a dispute arises under the contract, the aggrieved Party take recourse to arbitration. As a result of the same, most of the time Parties end up in spending more time and money in Arbitration than Litigation through Courts. To avoid the same, below are some suggestions:

- Whenever a notice is served by the Vendor to refer the dispute to arbitration and also to appoint an arbitrator, the first step could be to actually verify whether the claims made by the Vendor are genuine or not.

After analyzing the facts & documentations, if it appears that actually the Company is at default or in breach of the terms of the Contract (e.g. if the raw materials were not provided by the Company to the Vendor or if the site was not handed over by the Company to the Vendor due to which the Vendor could not start the work and delay happened), an attempt should be made to settle the dispute through mutual discussions by offering a reasonable settlement proposal.

The interesting thing to be noted in this regard is that section 31A (3)(d) of the Act states that while determining the costs, the Court or tribunal shall have regard to certain circumstances including the fact that whether any reasonable offer to settle the dispute is made by a party and refused by the other party. Hence, if a reasonable settlement offer was proposed by the Company but refused by the Vendor and eventually the award is passed against the Company, then the liability of the Company may be reduced considering the attempts made by the Company to settle the matter.

- If the Vendor is claiming certain amount to be paid by the Company in the Claim Statement then the Company before defending the entire claim amount, may verify whether the entire claim amount is disputed. If there are undisputed or admitted amount of the entire claim against which the Company has no dispute then the same may be paid and arbitration proceedings may continue for the disputed amount of the claim

only. It may be noted here that Sec 31(7) of the Act empowers the arbitral tribunal to impose interest, at such rate as it deems fit, while giving award for payment of money, unless the Parties agree otherwise. Hence, if arbitration is conducted for the entire claim amount then during passing the award the arbitrator will impose interest on the whole claim amount. However, if undisputed claim amount is already paid by the Company then interest would be payable only on the disputed claim amount (if award is passed against the Company) and it would save costs of the Company.

Usually any contract entered between a Company and a Vendor would include an Arbitration Clause for dispute resolution. Normally, whenever a dispute arises under the contract, the aggrieved Party take recourse to arbitration. As a result of the same, most of the time Parties end up in spending more time and money in Arbitration than Litigation through Courts.

- It is usually seen that once a Claim Statement is filed in the arbitration proceedings, the Opposite Party not only defends the said claim but also put its counter claims against the Claimant, which is fine. However, unnecessary and unjustified counter claims should not be put as it would only drag the proceedings unless the Opposite Party has sufficient evidence to prove the said Counter Claims. In this regard, it may be noted that section 31A (3)(c) of the Act also provides that while determining the costs, the Court or tribunal shall have regard to certain

circumstances including the fact whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings.

- In order to save time, Parties could agree for procedures to be adopted while conducting the Arbitration. This may include agreeing upon the number of hearings, documentary or oral evidence alone, inspection of documents, written arguments etc. The Parties with the acquiescence of the arbitrator may agree upon the number of hearings for closure of the entire arbitration proceeding. Once agreed, the Parties shall make its endeavors to complete the arbitration proceedings within those agreed number of hearings. This way Parties would also get an idea about the approximate amount of fees to be paid to the arbitrator before beginning of the proceedings itself. Also, unnecessary cost of arbitrator fee due to repeated and indefinite hearings could be saved.

Alternative Mechanism for Resolution of CPSEs Disputes (AMRCD)

The Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises, Government of India vide OM F No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 has notified AMRCD mechanism for settlement of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se and CPSEs and Government Department(s) / Organization(s) (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments). The objective of the AMRCD is to bring about a time bound settlement of commercial disputes.

It is a two level mechanism wherein at first level the dispute will be referred to a Committee comprising of the Secretaries of the Administrative Ministries/ Departments to which the disputing CPSEs/Parties belong and the Secretary of the Department of Legal Affairs. In case the dispute remains unresolved, it will be referred in the second tier to the Cabinet Secretary, whose decision will be final and binding on all the parties concerned.

In the recent case of Mahanagar Telephone Nigam Ltd. Vs Canara Bank and Ors. (Miscellaneous Application Nos. 2034-2037 of 2019 in Civil Appeal Nos. 6202-6205 of 2019) decided by Hon'ble Supreme Court (SC) on 17.10.2019, the SC allowed the Application of Party for reference of the disputes between the parties to the AMRCD in substitution of the arbitral tribunal. SC observed that the objective of the AMRCD is to bring about a time bound settlement of commercial disputes between CPSEs inter se and CPSE and Government Departments/Organizations.

Hence, SC directed that an attempt must be made if the disputes between the two CPSEs could be settled through AMRCD and stated that if any settlement is brought through such an attempt, it will not only save public funds, but will ensure the true spirit of coordination amongst different public bodies.

Hence, two Public Sector Organizations have this new mechanism of settlement of dispute which should be included in all the contracts in order to save time and cost.

Conclusion

Though Arbitration procedure is an alternate to the litigation process, its purpose would not be served unless the efforts are made by the Parties as well as the arbitrators to make it a speedy and cost effective remedy. It is with this aim only several amendments have been made in the Act though promulgation of the Amendment Acts. However, though these statutory amendments have to be followed by the Parties infallibly, but walking an extra mile by the Parties might help to a great extent in serving the purpose of the arbitration process.

The Undervalued Conciliation

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"If someone sues you, come in terms with him promptly when you are both on way to court."
- Sermon on the Mount

Whether it be complex, time consuming, atrociously expensive courts proceedings or whether it be unending prolixity of famous arbitration, their contribution in delivering justice doesn't seem to make much of a difference. From the heavy onerous process of pleadings, trial proceedings andjudgement in a civil suit or to the technical process involved in Arbitration starting from appointment of arbitrators to pleadings to publication of awards and lastly recourse to court against award, ultimately making the total expenses of arbitration even more than the claim/ value of property involved in the dispute, finally making the idea of dispute resolution veryless effective.

Therefore, to protect the justice system, it was felt desirable to develop and introduce alternative mechanisms having the capability to resolve complex issues between the parties without knocking the doors of the Court, so that the parties can be saved of the harassment being faced by them soon upon initiation of any dispute. Conciliation is one such mechanism which does not involve adjudicatory or adversarial method of settlement of dispute and purely based on the settlement between the parties with the help of a conciliator.

Surprisingly, the concept of new day Conciliation is not new, it is as old as the Indian history. Time and again Conciliation had been used in Mahabharata, one such instance was when both Pandava's and Kaurava's were determined to resolve the conflict in battle field, Lord Krishna made efforts as a conciliator to resolve it outside the battle field. Even the present day panchayat system works on the same concept of Conciliation in villages.

Conciliation as a Concept!!!

Guilelessly, it can be said that Conciliation means any neutral third party assisted alternate dispute resolution. The neutral third party that is the conciliator discusses the details of the dispute

with the parties and proposes a fair and reasonable solution, which is non-binding in nature, unless the parties agree to treat it as binding. In short, it is an ADR process of settling disputes outside the Court.

The process involved in Conciliation is flexible & informal. When through Conciliation parties reach onterms of settlement of dispute, the agreement so reached has the same effect and status as of an Arbitral Award.

In the year 1984, the Himachal Pradesh High Court, under the leadership of then Chief Justice P.D. Desai, had evolved a project for disposal of pending cases by conciliation, insisting on pre-trial conciliation in fresh cases and this model was widely acclaimed. It was based on the Michigan Mediation of USA, and was also widely appreciated by the Law Commission of India in their 77th and 131st reports .

Later, the Arbitration and Conciliation Act, 1996 was enacted by repealing the 1940 Act, wherein, detailed provisions relating to conciliation was incorporated under Part-III of the Actso as to define the law relating to conciliation and for matters connected therewith or incidental thereto.

Peculiarities of Conciliation!!!

The main characteristics of conciliation under the Arbitration and Conciliation Act, 1996 are as;

- Conciliation mechanism is non-binding and voluntary in nature and purely depending on the parties to agree or not to agree with the settlement terms drawn up by the conciliator.

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- Conciliation is non-adversary in nature.
- Conciliation is fairly flexible, speedy & less expensive as it allows the parties and the conciliator to have discretion in deciding the procedure to be adopted.
- Conciliation process can be initiated at any stage of the dispute, whether it is yet to be initiated or pending before the court/ arbitration or even after pronouncement of the decision/ award.
- Conciliation mechanism (in India) is not bound by CPC and Indian Evidence Act, 1872
- The Settlement Agreement has the same status and effect as of an arbitral award (under the Arbitration & Conciliation Act, 1996)

Conciliation Process Chart:

How is Conciliation better?

Conciliation is far better than the adversarial form of dispute resolution in many ways, to prove its relevance the points can be broken down as:

- Conciliation a viable substitute as it encourages win-win opportunity for both the parties: At times, resorting to the adversarial mechanism for resolution of the dispute, it ruptures the relationship between the parties. Especially for commercial organizations litigation with the stakeholders can prove to be fatal for the organizational growth, as their important dealers, vendors, customers, agents, etc. may stop dealing with them. Therefore, the goal should be to create a mutually beneficial association with all its stakeholders and thus for resolution of disputes, the organization adapts a process which creates a win-win situation for both. Conciliation enhances the prospect of the disputing parties to continue their business relationship during and even after the proceedings as it fosters long term relationships. Therefore, preference should be given to the conciliation mechanism where the intent of the parties is to preserve their existing commercial and contractual ties.
- Conciliation is time & cost

efficient: Due to the informal & flexible nature of conciliation proceedings, they can be conducted in a time and cost-efficient manner.The cost involved in the Conciliation method simply includes (i) The reasonable fees of the conciliator (ii) The travel and other out-of-pocket expenses of the conciliator and (iii) the cost of arranging the meeting venues. Moreover, these costs are also normally shared between the parties in an equal proportion. The entire cost involved in conciliation proceedings is much lesser than cost involved/incurred in litigation and arbitration proceedings.

Whereas, in a court case the parties are required to pay court fees while filing the case and then advocate fee and senior advocate fee (if engaged) for years together till the conclusion of the matter. Since, a case normally prolong for number of years altogether, the travelling and other petty expenses involved in attending the hearings accumulate to the huge cost.

Similarly, in an arbitration matter, the parties are required to shell out money in the way of Arbitrators Fee, Advocate Fee, Venue charges (ad-hoc arbitrations)/ Administrative expenses (Institutional arbitration) during the lifetime of the arbitration matter, which most likely lands into the court of law by way of a challenge to the arbitral award. Such a challenge, again involve fresh cost as a court litigation. Thus, arbitration simply surges the entire cost of litigation by including the cost of arbitration in the cost of court case.

- **Expeditious:** The Hon'ble Delhi High Court judgement in the case of Rakesh Kumar v. Cideas Investment India Pvt. Ltd. dealt with the issue of delay in arbitration matters. The arbitration award was published on 09.12.2000. The award was challenged in District Court under Section 34 of the Act and the judgement was rendered on 05.10.2015. Subsequently, this judgement of the district court was challenged before the Hon'ble Delhi High Court, which was dismissed by Hon'ble High Court on 11.12.2015. Thus, it took nearly 15 years for the arbitration matter to finally be concluded.

Whereas, in a court case the parties are required to pay court fees while filing the case and then advocate fee and senior advocate fee (if engaged) for years together till the conclusion of the matter. Since, a case normally prolong for number of years altogether, the travelling and other petty expenses involved in attending the hearings accumulate to the huge cost.

An effort has been made by the Arbitration & Conciliation (Amendment) Act, 2015 by incorporating Section 29A in the Act, which provides for stricter timelines for making the award in the matter. However, considering the impracticability of the imposed timelines for the conclusion of the arbitration matters, an amendment has been made by 2019 Amendment Act which made the said timeline effective from the date of completion of pleadings, thereby, increasing another six months.

On the contrary, Conciliation process is very fast paced as against litigation/ arbitration.

The matter is settled at the threshold of the dispute, avoiding protracted litigation efforts at the courts. As conciliation can be scheduled at an early stage in the dispute, a settlement can be reached more quickly than in litigation. Parties save money by cutting back on unproductive costs such as traveling to court, legal costs of retaining counsels and litigation and staff time.

- Conciliation ensures party autonomy & Confidentiality: The parties can choose the timing, language, place, structure & content of the conciliation proceedings and are also free to select their neutral conciliator, who is not required to have a specific professional background. The conciliator should be impartial & independent. The parties usually agree on confidentiality, therefore disputes are settled discretely and business secrets are kept confidential.

- Finality: Another significant feature of Conciliation is the fact regarding the signing of conciliatory agreement which provides some grade of satisfaction on the psychological level of the parties so that they are more readily, easily and comfortably adhered by them than those decisions which have been imposed by an arbitrator/ judge in adjudicatory mechanism. This is one of the most remarkable and striking characteristic of Conciliation as it brings finality to the litigation, which all other methods of dispute settlement fails to achieve.

Conclusion

Appreciating the utility of Conciliation, Supreme Court in M/s Misra and Co vs Damodar Valley Corporation, observed that:"Public Sector institutions should not enter into prolonged litigation and spend considerable sums of public money in cases which should have been adjusted by conciliatory and wise attitudes.'

Even GAIL(India) Limited adopted Conciliation mechanism way back in 2010 and implemented GAIL(India) Limited Conciliation Rules, 2010. The adoption of Conciliation mechanism proved to be very fruitful as the same helped in settling various disputes more quickly and in a cost-efficient manner. The success of Conciliation process depends upon the factors affecting it. It is necessary for both the parties to accept the conciliation process with open mind and have to put up the issues accordingly. An essential factor for success in the conciliation proceedings is the personal appearance of the parties, or their representation by someone having full power to reach agreement.

It has been observed that the scheme of things does not encourage participation of legal counsel during the conciliatory process. In fact, organisations do not encourage engagement of legal professionals to act as conciliators so as to avoid getting the process completely legalistic. Also, one of the most important aspects in case of Conciliation is the signing of the conciliatory agreement thereby considering the settlement as full and final, binding on the parties. This is one of the most striking and remarkable feature of Conciliation (as an effective ADR mechanism) as it brings an end to the litigation. It is open to any party to apply for execution of the settlement agreement by filing an execution petition before the civil court. The expeditious enforcement of a conciliation settlement agreement in a summary manner i.e. by way of execution proceedings in a civil court is the principal advantage attached with conciliation.

Therefore, it is the pressing need of time to appreciate its utility by taking measures of propagating, advocating, popularizing and thoroughly utilizing Conciliation as an ADR.

Corporate Insolvency Resolution Process - Operational Creditors Isolated in the Middle of No-Where

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The very rationale for enactment of the Insolvency and Bankruptcy Code, 2016 (in short "Code") was to provide with a mechanism to initiate a Insolvency Resolution Process in the event a corporate debtor was unable to pay its debts to its creditors with maximum efforts channeled toward attempts at revival of the corporate debtor instead of its death in the form of Liquidation. The Code makes a distinction between the types of Creditors being Operational Creditors and Financial Creditors. A Financial Creditor is the one whose relationship with the corporate debtor is a pure financial contract, where an amount has been provided to the corporate debtor against the consideration of time value of money (in short "Financial Creditor")[1]. On the contrary, an Operational Creditor is a creditor who has provided goods or services to the corporate debtor, including employees, Central or State Governments (in short "Operational Creditor")[2]. Though the Code had been somewhat effective towards realization of the Non-Performing Assets/ Bad Loans by the Banks, however, the same had resulted in devastating effect towards recovery of outstanding amount by the Operational creditors, who has been at all times tossed to the backwoods.

Over reaching the Powers by Resolution Professional with regard to the Rejection of the Claims submitted by the Creditors

The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (herein after referred to as "CIRP") throws light on the process of determination of the amount claimed by the creditors. The claims have to be made in accordance with the Forms specified in the Schedule of the Regulations[3]. These claims are proved on the basis of the records available with the Information Utility and other relevant documents like financial statements of the corporate debtor as evidence of debt, an order of a Hon'ble Court that adjudicated on the non-payment of the debt, Contract for the supply of goods and services to the corporate debtor, or invoice demanding payment for goods and services provided to the corporate debtor etc. The Resolution Professional may call for other evidence or clarification for the substantiation of the whole or part of the claim[4]. The Resolution Professional verifies the claim within a period of seven days from the last date of the receipt of claims and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them and the amount of their claims admitted[5]. This list of creditors is displayed on the website of the Corporate Debtor and the same is also filed with the Adjudicating Authority and needs to be presented in the first meeting of committee of creditors[6]. However, where the amount claimed by any of the creditor is not precise, Resolution Professional shall make the best estimate of the amount based on the information available to him. As and when the additional information with respect to the determination of claims is brought to the notice of the Resolution Professional, he can revise the amount of claim depending on the information[7]. Thus, it is

[1]Section 5(7) of the Code • [2] Section (20) and 5 (21) of the Code • [3]Regulation 7, 8, and 9 of the Code • [4]Regulation 10 of the Code • [5]Regulation 13(1) of the Code • [6]Regulation 13(2) of the CIRP • [7]Regulation 14 of CIRP

amply clear that the Resolution Professional is only empowered to collate all the claims.

However, one of the important aspects of the Code is that the Resolution Professional has not been provided with the powers for the rejection of the Claims of the Creditors like those that have been provided to the Liquidator[8]. The Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors[9]. on the issue whether a Resolution Professional, being a non-adjudicatory authority under the Code or has been given powers of adjudication under the Code, clarified that Resolution Professionals are merely given administrative powers as opposed to quasi-judicial powers and as such no power of adjudication of the claims of the Creditor submitted to him.

The Supreme Court on comparative analysis of the power of a Resolution Professional vis-à-vis that of a liquidator emphasized that while the liquidator determines the value of claims admitted under Section 40 of the Code, the determination of which is a decisionis quasi-judicial in nature and can be appealed against to the Adjudicating Authority[10]. On the contrary, no appeal lies against rejection of claims by resolution professionals save and except to file an application under the residuary section 60(5) of the Code against such rejection.

Further, unlike the liquidator, the Resolution Professional cannot act, in most circumstances, without the approval of the Committee of Creditors, which retains the power to replace one resolution professional with another, by way of two-thirds majority. Thus, the Resolution Professional has been recognized only as a facilitator of the resolution process, whose administrative functions are overseen by the Committee of Creditors and by the Adjudicating Authority. Infact the scope of the powers of the Resolution Professional is curbed to such extend that he is not empowered to take any decision with regard to the rejection of the Claims filed by the Creditors more so take any decision with regard to the resolution plan submitted to him save and except to examine and conform as to whether the Resolution Plan is according to the Code and place it before the Committee of Creditors[11].

Remedies Available to the Operational Creditor against rejection of claim by the Resolution Professional

Once Insolvency process is initiated, claims are invited by Resolution Professional from creditor(s) for ascertaining the actual liability pertaining to such corporate debtor so that such creditor(s) may recover their dues upon revival or liquidation of such corporate debtor to the extent allowed. Upon receipt of such claims, the Resolution Professional is required to verify the same from books of account of the corporate debtor or other available documents. However, when the claim of the Creditor had been had rejected due to various reasons, the creditors are constrained to approach the Adjudicating Authority under its residuary section, i.e. Section 60(5) of the Code with an application praying for setting aside of the rejection of the claims of the Creditor. In the event, the Adjudicating Authority erroneously fails to decide in favor of the Creditor, a further Appeal under Section 61(1) of the Code to the Appellate Authority, i.e., National Company Law Appellate Tribunal.

However, on account of operation of the moratorium under Section 14 of the Code and bar imposed there upon no legal proceedings, etc. can either be continued or initiated against the Corporate Debtor be it either suits, arbitration, etc. Moreover, by implication

[8] Section 40 of the Code • [9] (2019) 4 SCC 17 • [10] Section 42 of the Code • [11] (2019) 2 SCC 1

of the Section 31 of the Code, on approval of Resolution Plan by the Adjudicating Authority, the same shall be binding on all the Creditors, necessarily implying that no proceeding either fresh or old can be initiated and/ or continued for recovery of the amount outstanding from the Corporate Debtor on account of provisions for exhaustion of all claims stated in the Resolution Plan.

It is worthwhile to state that under the Section 60(6) of the Code specifically excludes the time period taken for Insolvency Resolution Period/Moratorium Period from the calculation of Limitation period as envisaged in the Limitation Act, 1963 for initiation and/or continuation of disputes, etc. before the Hon'ble Courts.Evidently, it was clearly within the anticipation of the framers of the Code that the disputes, etc. arisen before the start of Moratorium Period can be perused even after the Resolution Plan was approved by the Adjudicating Authority.

Judicial Interpretation and Disparity to the Claims of Operational Creditor

In a recent pronouncement of the Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Limited Vs. Satish Gupta & Ors[12] while re-emphasizing the primacy of the commercial wisdom of the Committee of Creditors set aside the Judgment of the Appellant Authority[13]. The Hon'ble Court on interpreting the scope and ambit of limited judicial review of the decision of the Committee of Creditors, held that the Operational Creditors and

dissenting Financial Creditors are entitled only to their notional Liquidation value and nothing more, relying on the fact that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is completely with the Committee of Creditors, who has complete flexibility in this regard.

Settling two further legal issues of significance, the Hon'ble Court also held that while the Resolution Professional is required to collect, collate and admit claims, any claims not capable of being quantified say on account of an ongoing dispute, it is valid for the RP to admit claims only at a notional value.

The Supreme Court further observed that Section 31 of the Code is sacrosanct and the new entity formed after approval of Resolution Plan could not be put to risk of unknown disputes, etc., and opinioned as follows: "A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove."

This reasoning though may be helpful in the Insolvency Resolution Process of the Corporate Debtor which is 'dead' and not capable of being sold as an on-going concern but is calamitous to the Operational Creditors of the Corporate Debtor that was at all times an on-going concern with profits.

In a first, the Appellant Authority in the matter of M/s. Kotak Mahindra Prime Ltd. Vs. Mr. Bijay Murmuria & Ors[14]. has also held that once the claim of a creditor is taken into consideration in Resolution Plan, the Creditor,

[12] 2019 SCC Online SC 1478 • [13] 2019 SCC Online NCLAT 388 • [14] Company Appeal (AT) (Insolvency) No. 47 of 2019

thereafter cannot take the benefit of Sec. 60(6) nor can they proceed with the suit or arbitration proceeding, if pending, on completion of the Moratorium.

However the Adjudicating Authority in Export Import Bank of India and Ors. Vs. Resolution Professional JEKPL Private Limited and Ors[15] and in Andhra Bank Vs. M/s. F.M Hammerle Textiles Ltd[16], inter-alia, held that any person, who has a right to claim payment under Section 3(6) of IBC, can file its claim irrespective of the fact whether the same is matured or not at the time of commencement of Insolvency proceedings and set aside the rejection of the claims by Resolution Professional.

That in clarity furnished by the Hon'ble Supreme Court in Swiss Ribbons (supra)[17] it is crystal clear that the Resolution professional could not reject the claims filed by the Creditors. Recently the Adjudicating Authority, Mumbai Bench in Amar Universal Private Limited vs. SK Wheels Private Limited censuring a Resolution Professional for not taking a decision with respect to the claim of the Creditor held the resolution Professional to be in the "abuse of Dominant Position" and imposed a heavy cost of Rs. 1,00,000/- on the Resolution Professional while criticizing the action of the Resolution Professional in not including the claim of Creditor as an abuse of the powers given to him under the Code and contrary to Justice and against Public Policy.

> Once Insolvency process is initiated, claims are invited by Resolution Professional from creditor(s) for ascertaining the actual liability pertaining to such corporate debtor so that such creditor(s) may recover their dues upon revival or liquidation of such corporate debtor to the extent allowed.

Conclusion

However, what seems to be seen is as to how the rights of the Operational Creditors could be evolved in the modern day scenario when only the primacy for the recovery of the dues of Financial Creditor is accorded to by both the Code and the Hon'ble Courts. The constant abrogation of the rights of the Operational Creditors, for no fault on its part, both in the form of rejection of its claims filed before the Resolution professional and further bar on persuasion of the pending and/or future litigations, itself is evolving in the vicious circle of the Operational Creditor itself going into liquidation despite the fact that enormous amount was recoverable by it from the Corporate Debtor. The intention of the Code though specifically on revival of the 'dying' Company was never meant to hammer undue hardship on the Operational Creditors, more so when their rights are determined ex-parte even without their consent and knowledge either by the Resolution Applicant through rejection of their Claims or by the approval of payment of nil and/or bare minimum amount approved by the Committee of Creditor, consisting mostly of Financial Creditors. The judgements discussed in this article, are mainly in reference to situations where financial creditors have approached the Courts. May be as and when and if an Operational Creditor approaches the court with its grievance, the same will be looked into by the Court. ■

[15]CA No. 304 of 2017, 16 of 2018 and 302 of 2017 •[16] Company Appeal (AT) (Insolvency) No.61 of 2018 •[17] MA No. 2319/2019 in C.P. (IB) 4301/2018

The Group of Companies Doctrine in Arbitral Proceedings: Treading Unchartered Waters

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An arbitral proceeding, in general, takes place between partiesor signatories to an Arbitration Agreement. Section 2 (1) (h) of the Arbitration and Conciliation Act, 1996 (as amended) (for short "the Arbitration Act") defines a 'party' as a party to an arbitration agreement. Further, Section 2(1) (b) read with Section 7 of the Arbitration Act provides that an arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. Therefore, only parties to the arbitration agreement, expressing clear consent to enter into arbitration in case of a dispute, is a sine qua non.

A paradigm shift in arbitral practice is noted in recent times, wherein non-signatories to the arbitration agreement are being made parties. A non-signatory is an entity which has not formally ratified the arbitration agreement but is presumed to have consented to resolving dispute by way of arbitration or who plays a pivotal part in the contract, albeit without formal mention or elaboration of its roles in the arbitration agreement.

Group of Company Doctrine –Tracing the Jurisprudential path

The genesis of the 'Group Companies' doctrine owes its roots in the case of Dow Chemical v. Isover Saint-Gobain. It provides that where several companies form part of a larger corporate group, they may be regarded as a single entity constituting a single economic unit despite legal independence from one another. Such interdependence may arise due to the circumstances in which the contract was concluded or terminated, manner of performance or degree of control existing between the individual entities in connection to performance of the contractual obligation.

This legal proposition of a non-signatory claiming under an arbitration agreement was first recognized in India by the Supreme Court of India in Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. &Ors. (hereinafter referred to as "the Chloro case") Till the pronouncement of the Chloro case, the ruling in Sukanya Holdings (P) Limited v. Jayesh H. Pandya and Anr. held the ground wherein non-signatories had no obligations whatsoever in an arbitration arising out of dispute between the parties.

The effect of the Chloro case resulted in the Arbitration and Conciliation Amendment Act, 2015 amending Section 8 of the

Arbitration Act to include, in addition to any "party to an arbitration agreement", "any party claiming through or under him." Thus, arbitration can now extend statutorily even to a non-signatory post the Amendment Act, 2015. Although the 246th Report on the Amendments to the Arbitration and Conciliation Act, 1996 contained contemplation on amendment of Section 2(1)(h) of the Act, that is, the definition of a party to include expressly any person claiming under him, however, such proposal never materialized.

The newly recognized 'Group of Companies Doctrine' was recently revisited by the Supreme Court of India in Mahanagar Telephone Nigam Ltd. v. Canara Bank &Ors. wherein, our law firm, i.e., MCO Legals successfully defended the interest of Mahanagar Telephone Nigam Ltd. (hereinafter referred to as "MTNL").

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Brief Facts

- MTNL had invited offers wherein Rs. 200 crores were subscribed by Can Bank Financial Services Ltd. (hereinafter referred to as "CANFINA"), a 100% subsidiary of Canara Bank and accordingly, MoU was entered into.
- Due to reports of CANFINA's involvement in the security scam, MTNL requested CANFINA and its 100% holding company to provide assurance that the MoU would be honoured.
- In view of lack of response, when the securities scam had shaken the nation's financial markets, MTNL decided to recall the deposits and also withheld the interest on deposits.
- Canara Bank, alleged to have acquired the Letter of Allotment (hereinafter referred to as "LOA") of Rs. 120 crore from its 100% subsidiary CANFINA, demanded MTNL for transfer of the same in it's name. However, the same was not transferred by MTNL.
- Since the original MOU had become futile, MTNL had decided to close the matter amicably and shared with CANFINA and Canara Bank the provisional settlement details in respect of the LOA.
- Canara Bank contested this arguing that it was the holder of the LOA in due course and was entitled to have the same registered in its name and receive proceeds thereof.
- The matter descended into litigation before courts and representations before the Committee of Disputes, whereby the three parties were directed to enter into an arbitration agreement under the Arbitration and Conciliation Act, 1996.
- MTNL had drafted an arbitration agreement between MTNL on one side and CANFINA and Canara Bank on the other side, however the same was not signed.
- When a sole arbitrator came to be appointed in 2012, through court proceedings, Canara Bank objected to the impleading of CANFINA as a party to the arbitration which was opposed by MTNL and litigated by the parties involved.

Issue

The primary issue which the Supreme Court had to deal with was whether a non-party to an arbitration agreement can be impleaded in arbitration proceedings.

Judgment

- The Supreme Court of India, vide Order and Judgment dated 08.08.2019, directed that CANFINA, the wholly owned subsidiary of Canara Bank, to be impleaded in the arbitral proceedings between the parties.
- An arbitration agreement need not be in writing but is required to only ascertain the intention of the parties to settle the dispute through arbitration. If it can, prima facie, be shown that parties are ad idem, even though the other party was not a formal signatory to the formal contract, it cannot be absolved of its liability.
- It reasoned that in the original transaction dispute was between MTNL and CANFINA, which made CANFINA a necessary and proper party to the

arbitral proceedings. It held that although normally non-signatories are not bound by an arbitration agreement like any other contract, a non-signatory can be bound by an arbitration agreement on the basis of "Group of Companies" doctrine, whereby the conduct of the parties displays a clear intention of the parties to bind the non-signatories as well.

- The circumstances which necessitate the invocation of "Group of Companies" doctrine is the existence of a direct relationship between the signatory and the non-signatory, direct commonality of the subject matter and the composite nature of the transaction between the parties.
- The application of the theory mandates the presence of an inter-linking nature wherein performance of the agreement is not possible without the aid, execution and performance of the same is not possible without a collective approach.
- Furthermore, under the "Group of Companies" doctrine, in case of tightly grouped companies linked so closely so as to constitute a single economic unit, signatory and non-signatory parties can be bound together under arbitration agreements.
- It would be futile to decide the dispute only between MTNL and Canara Bank since it is an undisputed fact that the origin of the dispute germinates from a transaction between MTNL and CANFINA, that is, the original purchaser of the Bond.
- Thus, the Supreme Court was satisfied that CANFINA, the wholly owned subsidiary of Canara Bank, was a necessary party by the common intention of the parties to the arbitral proceedings in question.
- Thereafter, the Supreme Court of India, vide Order dated 17.10.2019 in MTNL v Canara Bank & Ors. , directed MTNL, Canara Bank and CANFINA to approach the Administrative Mechanism for Resolution of CPSEs Disputes for settlement of their disputes.

Analysis & Conclusion

The 'Group of Companies Doctrine', divergent from the customary laws and in defiance of the doctrine of contractual privity and consensual character of arbitral procedure, is one of the many methods used to extend an arbitration agreement to a non-signatory.

Though a novel and unconventional doctrine, inevitable problems cannot be over looked. While applicability of the doctrine is mostly fact based, a general trend can be interpreted from the judicial decisions giving essence and emphasis to the genuine and veritable intension of the parties, which is one of the most prominent drawbacks of the doctrine. Reliance is placed on intention of a party, which may not be the most sound approach as the same has no set yardsticks. Lack of explicit mention of the non-signatory often leads to blurring of its roles and responsibilities.

Although based on the broad presumption that a party choosing benefits under a contract, must also endure the liability, however, unless relevant provisions are amended, it would be rather unjust to refer non-signatories to arbitration without affording them analogous rights as endowed on a signatory.

Further, every subsidiary of a parent company is a separate legal entity with distinct legal rights and liabilities in the eyes of law. However, excessive applicability of the 'Group of Companies Doctrine' may create a negative impact as it gives jurisdiction over a company in a group structure merely based on its intension and relation with another company, thereby undermining the need and strategy of establishing a separate subsidiary company.

Although the doctrine departs from the conventional approach, the concept can be at the most be called an augmentation of the concept of consent or implied consent. The further expansion of the doctrine may lead to the applicability of the doctrine on any entity associated in executing/ performing the contract with the signatory thereby widening the theory of Group Company and making it rather a misnomer.

While the Courts are treading on a balance of not getting entangled in interpreting the arbitration agreement in a formalistic manner and are only importing consent by assessing conduct of the parties, it is leading to an era of uncertainty and lack of uniform guidelines to ascertain a proper framework to understand what criteria would lead to a non-signatory in being drawn to an arbitration proceeding. Therefore, to maintain effective corporate structure, the need of the hour is to review all transactional agreements to prevent circumstances from justifying its involvement. The solution therefore, is to be absolutely clear in the arbitration agreement as to whether the parties intent to extend the application to its group companies.

Challenge to an Arbitral Award – An 'Existing Dispute' under the Insolvency and Bankruptcy Code

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The Insolvency and Bankruptcy Code, 2016 (for short "IBC"), which is a complete code in itself contains a provision with respect to admission of an application by an Operational Creditor to initiate Insolvency Proceedings against a Corporate Debtor by the Adjudicating Authority i.e. the National Company Law Tribunal or NCLT. The said provision states that no notice of dispute should be received by the operational creditor or there should be no record of dispute in the information utility.

Demand Notice

The IBC envisages a two-step process for the initiation of insolvency proceedings by an Operational Creditor. An Operational Creditor would upon the occurrence of a default have to demand payment of the unpaid debt (for short "Demand") . The Corporate Debtor may within 10 days of receipt of the Demand either 'Dispute' the debt or pay the unpaid debt. In the event the corporate debtor does not reply or repay the debt, an application could be filed by the Operational Creditor before the NCLT to initiate Insolvency Resolution Process. However, the existence of a dispute can act as a barrier to such application.

Existence of 'Dispute'

The word "Dispute" is significant for the maintainability of every application filed under Section 9 of the IBC. The term "dispute" includes a suit or arbitration proceedings relating to: (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty.

The Supreme Court in Mobilox Innovations Private Ltd vs. Kirusa Software Private Ltd. (Mobilox Innovations Case) settled the issue regarding the interpretation of the term 'dispute in existence' under IBC. This provided much-needed relief and clarity to corporate debtors who may have a genuine dispute regarding the debt under consideration, but may not have yet initiated legal proceedings. Brief snapshot of the Mobilox Innovations Case is as under:

Brief Facts

- M/s Kirusa issued a demand notice to Mobilox as an Operational Creditor under IBC, demanding payment of certain dues. Mobilox issued a reply to the demand notice inter alia stating that there exists certain serious and bona fide disputes between the parties and alleged a breach of the terms of a non-disclosure agreement by Kirusa.
- Kirusa filed an application under Section 9 of IBC ("Application") before the National Company Law Tribunal, Mumbai for initiation of the corporate insolvency resolution process against Mobilox.
- This was dismissed by the NCLT, which expanded the scope of an 'existing dispute' under IBC to hold that a valid notice of dispute had been issued by Mobilox.
- Kirusa filed an appeal before the National Company Law Appellate Tribunal which allowed Kirusa's appeal and inter alia, held that the notice of dispute does not reveal a genuine dispute between the parties.
- Mobilox filed an appeal before the Supreme Court impugning the order of the NCLAT.

Judgment

The Court acknowledged the fact that situations may exist where a

debtor company may have a dispute qua an operational creditor, which it may have chosen not to escalate to a court/arbitral tribunal. The essential elements of a dispute have been crystallized as below:

- The term "dispute" must be interpreted in a wide and inclusive manner to mean any proceeding which had been initiated by the debtor before any competent court of law or authority.
- The dispute should be in respect of (a) existence of the amount of debt; or (b) quality of goods and services; or (c) breach of representation and warranty.
- The dispute should be raised prior to the issuance of a demand notice by the Operational Creditor.
- The debtor would have to particularize and prove the dispute in respect of the existence of the "debt" and the "default".
- The dispute cannot be a mala fide, moonshine defense raised to defeat the insolvency proceedings.

Therefore, the NCLT would have to prima facie verify the existence of the pending dispute and not judge the adequacy of the same. A recent amendment in law has incorporated this position of the Supreme Court. The Ordinance lays down that the corporate debtor shall bring to the notice of the operational creditor, existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings, i.e. the word "and" has been replaced by "or". The amendment liberalizes the interpretation of the word "dispute". Hence, the existence of dispute need not be in the form of pendency of suit or arbitration proceedings only.

> The IBC envisages a two-step process for the initiation of insolvency proceedings by an Operational Creditor. An Operational Credi-tor would upon the occurrence of a default have to demand payment of the unpaid debt (for short "Demand") . The Corporate Debtor may within 10 days of receipt of the Demand either 'Dispute' the debt or pay the unpaid debt.

Arbitral Award'and an 'Existing Dispute'

Whether IBC can be invoked in respect of an operational debt where an Arbitral Award has been passed against the operational debtor, which has not yet been finally adjudicated upon i.e. the award is pending challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act"). The Supreme Court in the case of K. Kishan v. Vijay Nirman Company Pvt. Ltd. , (K. Kishan Case) has clarified that operational creditors cannot use IBC either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. It held that filing a Section 34 Petition under Arbitration Act against an arbitral award shows a pre-existing dispute that concludes its first stage in the form of an award, and continues thereafter, till final adjudicatory process under Sections 34 and 37 of the Arbitration Act has taken place. Therefore, IBC proceedings cannot be initiated till all available statutory appeal mechanisms have been exhausted by the parties. Brief snapshot of the K Kishan Case is as under:

Brief Facts

- M/s Vijay Nirman Company Pvt. Ltd. and M/s Ksheerabad Constructions Pvt. Ltd. (KCPL) entered into an agreement on 1 February 2008 for construction and widening of the existing two-lane highway.
- Subsequently, disputes and differences arose between the parties and the same was referred to arbitration proceedings which finally culminated into an award dated 21 January 2017 ("Award"). In the Award, amongst other reliefs, a sum of Rs.1,71,98,302/- was granted in favour of the M/s Vijay Nirman Company Pvt. Ltd. in relation to certain interim payment certificates. There were certain cross claims which were rejected in the Award.
- Subsequently, on 6 February 2017, the M/s Vijay Nirman Company Pvt. Ltd. issued a demand notice on KCPL. KCPL disputed the demand notice within 10 days on the premise that the claimed amount was subject matter of an arbitration proceeding.
- Thereafter, on 20 April 2017, KCPL challenged the Award under Section 34 of the Act. On 14 July 2017, an application

under Section 9(3) of IBC was filed by M/s Vijay Nirman Company Pvt. Ltd. stating that amount granted in favor of the M/s Vijay Nirman Company Pvt. Ltd. was an 'operational debt' and non-payment of the said debt was a ground for initiation of the corporate insolvency resolution process under the Code ("Section 9 Application").

- On 29 August 2017, the National Company Law Tribunal admitted the Section 9 Application, and observed that pendency of a Section 34 challenge was irrelevant as there had been no stay of the Award, and moreover the claim amount stood admitted during the arbitral proceedings.
- On appeal, the National Company Law Appellate Tribunal affirmed the ruling of the NCLT basis the reasoning that order of the Arbitral Tribunal adjudicating on the default, would be treated as "a record of an operational debt". The decision of the NCLAT was subsequently appealed before the Supreme Court.

Observations and Reasoning by Hon'ble Supreme Court

- The Hon'ble Supreme Court held that the prime consideration for the Adjudicating Authority with regards the operational debt is whether the said debt can be said to be disputed. According to the Court, the challenge of the arbitral award under Section 34 of the Arbitration Act proves that there is a "pre-existing ongoing dispute" which exists between the parties and continues till the final conclusion of adjudicatory process under Sections 34 and 37 of the Arbitration Act.

- The Hon'ble Supreme Court rejected the contention of the M/s Vijay Nirman Company Pvt. Ltd. that the debt set out in the demand notice was admitted by the Appellants during the arbitral proceedings. According to the Court, since the cross claims were subject matter of challenge under Section 34 of the Arbitration Act and there exists a possibility that the Appellant may succeed with respect to the cross claims, the operational debt in the present case cannot be said to be an undisputed debt.
- The Hon'ble Supreme Court reiterated from its landmark judgment Mobilox Innovation Case that the insolvency process, particularly in relation to operational creditors, cannot be used to bypass the adjudicatory and enforcement process of a debt contained in other statutes. Meaning thereby, that the operational creditor cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedure.
- Section 238 of the IBC applies in cases where there is an inconsistency between the IBC and the Arbitration Act. Since, there is no such inconsistency between the adjudication and enforcement process under the Arbitration Act and Section 8 & 9 of the IBC, Section 238 of the IBC is inapplicable. On the contrary, the Arbitral Award passed together with the steps taken for its challenge shows that the operational debt, in the present case, was in dispute.

Judgment

The Hon'ble Supreme Court held that the pendency of a petition under Section 34 of the Arbitration Act constitutes a 'dispute' under the IBC. Thereby, the IBC cannot be invoked to initiate the corporate insolvency resolution process (CIRP) in respect of an operational debt where an Arbitral Award has been passed against the operational debtor, though has not yet been finally adjudicated upon due to a challenge under Section 34 of the Arbitration Act.

Conclusion

The true meaning of section 8(2)(a) read with section 5(6) of the code clearly brings out the intent of the code, that the corporate debtor must raise a dispute with sufficient particulars. Hence, for rejection of an insolvency application, the adjudicating authority does not have to go into the merits of the dispute as to whether such a dispute would withstand judicial scrutiny. However, it is important that the authority determines two things – firstly that the dispute raised is valid in its estimation and secondly that the dispute has been brought to the notice of the creditor before the notice is served. The Supreme Court in Mobilox Innovations Case has clarified the object of the code keeping in mind the legislative intent.

Insights into Arbitration in India

Pooja Kumari
Law Officer
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"Interminable, time consuming, complex and expensive Court procedures impelled jurists to search for an alternative Forum, less formal, more effective and speedy for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without exception challenged in Courts, has made Lawyers laugh and legal philosophers weep...Informal Forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Court been clothed with 'legalese' of unforeseeable complexity."

These aforementioned words of Justice D.A. Desai[1] succinctly articulates the jurisprudence of arbitration in India. With an aim to become most-preferred arbitration forum, commercial legislation and judicial landscape has seen a major overhaul including the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act of 1996"). The amendments of 2015 and 2019 to the Act of 1996 bears testimony to India's commitment towards a user friendly forum for both international and domestic arbitrations. These amendments ushered in the much awaited changes and since then the jurisprudence on arbitration has been evolving with each passing day.

Arbitration – Complex or not

Parties enter into a contract and agree for resolution of a conflict through arbitration. In case of dispute, notice of arbitration is issued by either of the parties. Subsequently, appointment of an arbitrator is done. Once the arbitration proceeding commences, there are submission of pleadings and formal hearings. The arbitrator, if the matter so requires, issues interim reliefs followed by a final award which is binding on both parties. The above steps reflect a picture of a simple and effective means for resolution of dispute. However, it has been seen over the past decades that adoption of complex court procedure has plagued the mechanism of arbitration. To curb these issues, legislative reforms by way of Amendment Act of 2015 and Amendment Act of 2019 brought in significant changes. These amendments have attempted to change the face and management of arbitration in India and it is to be seen whether India climbs up to become a major hub for arbitration.

Bottle-Necks in Effective Dispute Resolution

In the backdrop of evolution of arbitration with the introduction of amendments, following are the major challenges that deters India from becoming "user-friendly, cost-effective and speedy disposal" arbitral forum:

Procedural Impediment

Proceedings in arbitrations are becoming a replica of court proceedings, despite the specific provisions in the Act which provide adequate powers to the arbitral tribunal[2]. Broadly speaking, arbitration till date is being conducted fundamentally as per the court practices, where parties provide testimony and give evidence, as in a trial manner, frustrating the principles of arbitration. Often parties adopt intricacies of Civil Procedural Code and Evidence

1 Guru Nanak Foundation vs. Rattan Singh and Sons; 1981 AIR 2075

2 http://lawcommissionofindia.nic.in/reports/Report246.pdf

Act in entirety, rather than its principles, which violates the foundation on which arbitration as an alternative means for dispute resolution was developed. Arbitration has been caught up in cumbersome procedural claptraps, transposed from court litigation, and this is usually encouraged by arbitrators who are former judges and are familiar with such procedures.

Costly Affair

Though initiation of arbitration is fairly easy, unknowingly this has resulted into one of the nuisances of filing of inflated claims by parties. The costs for the proceedings are determined on the basis of the claims and counter claims filed by the parties and other facets. Over time, it has been seen that parties by way of practice have found it convenient to file significantly high claims and counter claims, thus resulting in increase in the cost of arbitration. This abuse by a few contractors has led to increase in the resistance towards arbitration as choice of alternative dispute resolution mechanism.

In order to keep claims more realistic and encourage pre-trial settlement, the concept of "Calderbank Offer" which was established in the year of 1975 by the English Court in Appeal of Calderbank v. Calderbank which is often identified by the disclaimer "Without Prejudice, Save as to Costs" can be adopted by Arbitral Tribunals in India. The concept of "Calderbank Offer" provides that in case where a winning party has refused an earlier settlement offer made by the losing party, the losing party may produce the settlement offer as evidence towards the appropriate level of costs payable before the Court.

Shortage of professional arbitrators and arbitration lawyers, arbitration matters are handled almost entirely by litigators who pursue arbitration matters as an adjunct to their regular practice. This has crippled the ability to effectively monitor and encourage the development of arbitral institutions in India.

In other words, where a party declined a reasonable pre-trial settlement offer, he should not be entitled to legal costs for unnecessarily prolonging the legal proceedings. The same principle holds true where winning party offers settlement offer and the losing party chose to contest the case, in such case winning party can rely upon said offer at the time of arguments on cost to show his bona fide and that he should be compensated for the cost incurred by him on account of refusal of losing party to accept said offer which prolonged the legal proceedings.

Adoption of such concepts, surely will deter parties from filing inflated claims and dragging the proceedings basis such baseless and vexatious claims.

In addition to the above, the subject of fees of arbitrators is another major concern. The Supreme Court in Union of India v. Singh Builders Syndicate[3], discussed the said subject at length, where it was observed:

The cost of arbitration can be high if the arbitral tribunal consists of retired Judges… There is no doubt a prevalent opinion that the cost of arbitration becomes very high in many cases where retired Judges are arbitrators. The large

The cost of arbitration can be high if the arbitral tribunal consists of retired Judges… There is no doubt a prevalent opinion that the cost of arbitration becomes very high in many cases where retired Judges are arbitrators. The large number of sittings and charging of very high fees per sitting, with several add-ons, without any ceiling, have many a time resulted in the cost of arbitration approaching or even exceeding the amount involved in the dispute or the amount of the award. When an arbitrator is appointed by a court without indicating fees, either both parties or at least one party is at a disadvantage. Firstly, the parties feel constrained to agree to whatever fees is suggested by the arbitrator, even if it is high or beyond their capacity. Secondly, if a high fee is claimed by the arbitrator and one party agrees to pay such fee, the other party, who is unable to afford such fee or reluctant to pay such high fee, is put to an embarrassing position. He will not be in a position to express his reservation or objection to the high fee, owing to an apprehension that refusal by him to agree for the fee suggested by the arbitrator, may prejudice his case or create a bias in favour of the other party who readily agreed to pay the high fee."

[3] (2009) 4 SCC 523

number of sittings and charging of very high fees per sitting, with several add-ons, without any ceiling, have many a time resulted in the cost of arbitration approaching or even exceeding the amount involved in the dispute or the amount of the award. When an arbitrator is appointed by a court without indicating fees, either both parties or at least one party is at a disadvantage. Firstly, the parties feel constrained to agree to whatever fees is suggested by the arbitrator, even if it is high or beyond their capacity. Secondly, if a high fee is claimed by the arbitrator and one party agrees to pay such fee, the other party, who is unable to afford such fee or reluctant to pay such high fee, is put to an embarrassing position. He will not be in a position to express his reservation or objection to the high fee, owing to an apprehension that refusal by him to agree for the fee suggested by the arbitrator, may prejudice his case or create a bias in favour of the other party who readily agreed to pay the high fee." The above observation reflects the true picture of cost involved in arbitration and even though a model schedule of fees was introduced by the Amendment Act of 2015, the real practice seems to be far from an ideal position. It may be wise to mandatorily cap the fees for arbitrators.

Delays & Excessive Judicial Involvement

Parties often delay arbitration proceedings by initiating court proceedings before or during arbitration proceedings, or at the enforcement stage of the arbitral award. In the past, various judicial decisions have been criticised particularly with regard to the expansive interpretation given to the "public policy" ground for setting aside of domestic arbitral awards created a climate of uncertainty as to its enforcement.

However, recent judicial decisions and amendments have attempted to restrict the grounds for challenge, which may change the scenario of arbitration in the long run. The 2015 and 2019 Amendments have underlined the legislative intent of limited judicial interference in the enforcement of arbitral awards. This is evident from one of major change in Section 34 of the Act wherein the words "furnishes proof that" has been replaced with "establishes on the basis of the record of the arbitral tribunal that", to clarify that the parties must rely on the record before the arbitral tribunal alone at the time of challenge of an award. Amendments such as fixing of a one-year time limit excluding time for filing pleading which in turn can be extended upto a period of six months with the consent of the parties, power to arbitrator for imposition of cost on parties for delay and provision for imposition of cost on arbitrator for delay would play an important role in dis-incentivising dilatory tactics.

Dearth of Dedicated Infrastructure

Shortage of professional arbitrators and arbitration lawyers, arbitration matters are handled almost entirely by litigators who pursue arbitration matters as an adjunct to their regular practice. This has crippled the ability to effectively monitor and encourage the development of arbitral institutions in India. Insufficient a pool of professional arbitrators who are able, conflict free and

above all, non-partisan, hinders the effectiveness of arbitration.

To counter such drawbacks, Amendment of 2019 has introduced the "Arbitration Council of India" which shall grade arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations under the Act. The qualifications, experience and norms for accreditation of arbitrators will be such as specified in the Eighth Schedule to the Act.

Conclusion

It is important that that legislative efforts undertaken vide these amendments reflects in actual arbitration proceedings both in letter and spirit to achieve the motto of "an effective and efficient alternative to traditional dispute resolution through Court". Meanwhile, as suggested in the High level Committee Report by Justice B. N. Srikrishna (Retd.) dedicated institutional arbitrations should be developed to streamline the arbitration proceedings and to evolve techniques to control the arbitration proceedings which would make the entire system more transparent.

Genesis of Arbitration in India

O. P. Khorwal
Convener, SCOPE RTI
Steering **Committee**

"In India, Alternate Dispute Redressal (ADR) methods have a very ancient legacy. Indian civilisation expressly encouraged the settlement of differences by Tribunals chosen by the parties themselves. An equivalent of it in the old Indian system is the "People's Court" known as the "Panchayat".

The position outside India with respect to submission of disputes to the decision of private person was recognised under the Roman Law known by the name of "Compromises". The Greeks attached particular importance to Arbitration.

The attitude of English Law towards arbitration has been fluctuating from stiff opposition to moderate welcome.

The word "Arbiter" was originally used as a non technical designation of a person to whom controversy was referred for decision irrespective of any law. Subsequently, the word "Arbiter" has been attached with a technical name of a person selected for friendly determination of controversies, which though not a judicial process is yet to be regulated by law by implication. Arbitration is the term derived from Roman Law nomenclature. It is applied to an arrangement for taking and abiding by the judgement of a selected person in some disputed matter instead of carrying it to the established courts of justice.

History in India

The first Arbitration law in India was Arbitration Act 1899 which was based on the English Arbitration Act 1899. Thereafter the Arbitration Act 1940 was enacted in India to consolidate and amend the law relating to the Arbitration effective from 1stJuly, 1940.

The Arbitration and Conciliation Act was again modified in 1996 with the aim and objectives to give effect the UNICTRAL model laws as adopted by the United Nations Commission on International Trade Laws on 21st June, 1985.

Subsequently to remove the short comings such as high costs & delays, the Government asked Law Commission of India (LCI) for recommendations in order to amend the 1996 Act. The LCI presented its 246th Report and the Government introduced the Arbitration & Conciliation (Amendment) Bill 2015 for short '2015 Bill' in the Parliament. The Bill was passed by both the houses and was given the assent of the President on 31.12.2015 and was than enacted as the "Arbitration & Conciliation (Amendment) Act 2015.

Alternate Dispute Resolution System (ADR)

Meaning

Alternative Dispute Resolution (ADR) includes dispute resolution process and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. It is a collective item for the ways that parties can settle dispute with the help of third party.The term ADR is used to describe a variety of disputes and resolution process that are short of or alternative to full scale court process. The term ADR refers to everything from facilitated settlement negotiation which parties are encouraged to negotiate directly with each other prior to some other legal process,

to arbitration system or mini trials that look and feel very much like a court room process.

Process designed to manage community tension or facilitate community development issues can be included within the rubric of ADR. ADR is not the recent phenomenon as the concept of parties settling their disputes themselves or with the help of third party is very well known to ancient India. Disputes are peacefully decided by the intervention of (Kulas) (family assembly),Srenis(guilds of men of similar occupation), parishads etc.

The primary objective of ADR movement is avoidance of vexation, expense and delay.Alsoit promotes of the idea of the "access of justice" for all. ADR facilitates parties to deal with the underlying issues in disputes in a more cost effect manner and with increased efficacy. In addition, ADR provides the parties with:

- The opportunity to reduce hostility.
- Regain sense of control.
- Achieve greater sense of justice in each individual case.
- The resolution of disputes takes place usually in private and is more viable.

Objective

There are numbers of identified objectives that should inform the tribunal's use of ADR process. ADR process should be:

- Resolve or limit the issues of disputes
- Be accessible
- Resolve the dispute as early as possible
- Produce outcomes that are lawful, effective and acceptable to the parties and the tribunal
- Enhance the satisfaction of the parties

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As a general principle, all disputes are potentially suitable for referral to ADR.

Advantages

Flexibility

ADR process is flexible and not affiliated with the rigorous of rules of procedures. The procedures may be designed to suit the dispute rather than follow the "one size fits all" rule of Court.

Applicability

It can be used at any time even when a case is pending before a court of law through recourse to ADR as soon as the dispute arises may confer maximum advantages on the parties and it can be terminated at any stage by any one of the disputing parties.

Cheaper

It can provide a better solution to dispute more expeditiously and at less cost than litigation. It helps in keeping the dispute a private matter and promote creative and realistic business solution, since the parties are in control of the ADR proceedings. ADR proceedings take relatively lesser time to arrive a settlement.

Protection of Freedom

The freedom of parties to litigation is not affected by ADR proceedings. Even a failed ADR proceeding is never a waste either in terms of money or time spent on it since it appreciates the parties to understand each other's case better.

Non Necessity of Lawyers

ADR process can be used with or without a lawyer. A lawyer, however plays a very useful role in identification of the contentions, issues, exposition of strong and weak points in a case, rendering advice during negotiations and overall presentations of his client's case.

Reduction of work load

ADR process help in reduction of the workload of the courts and thereby helps them to focus attention on the cases which ought to be decided by the courts.

Conclusion

To deal with the situation of pendency of cases in courts of India, ADR plays a significant role in India by its diverse techniques. Alternative Dispute Resolution mechanism provides scientifically developed techniques to Indian judiciary which helps in reducing the burden on the courts. ADR provides various modes of settlement including, arbitration, conciliation, mediation, negotiation and Lok Adalat.

Supreme Court:

When the agreement specifically stipulates for the appointment of a named arbitrator, the appointment should be in terms of the agreement

Deepak Dhawan
Legal Consultant,
POWERGRID (Former ED (Law&CA), IOCL

Background

- In context of an arbitration proceeding initiated prior to the Arbitration and Conciliation (Amendment) Act, 2015 (2015 Amendment Act), the issue before the Supreme Court (SC) was whether the court ought to appoint the named arbitrator as per the contract or an independent arbitrator.
- The SC collectively heard the appeals arising from the judgement of the Delhi High Court (High Court) in Union of India v. Pradeep Vinod Construction Company (Arbitration Petition 1) and Union of India v. BM Construction Company (Arbitration Petition 2). The arbitration clause which arose for determination in Arbitration Petition 1 and Arbitration Petition 2 were similar and contained in the general conditions of contract (GCC) of the Northern Railways (UOI). The clause inter alia provided :

"the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM." (Arbitration Clause)

Facts

Arbitration petition 1

- UOI and Pradeep Vinod Construction Company (Pradeep) entered into a contract dated 14 July 2010 (Contract 1) for engineering works. Disputes arose between the parties, and Pradeep invoked the Arbitration Clause in the GCC. UOI resisted the appointment of an arbitrator on the basis that it was agreed in writing between the parties that UOI had made full and final

payment of all claims. Pradeep filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 (Act), before the High Court seeking court assistance to appoint an arbitrator. The Ld. Single Judge of the High Court inter alia held that since UOI failed to appoint an arbitrator despite the invocation of the Arbitration Clause by Pradeep, UOI forfeited its right under the Arbitration Clause. In the circumstances, the Ld. Single Judge appointed an independent sole arbitrator despite the Arbitration Clause providing for a named arbitrator.

Arbitration petition 2

- UOI and BM Construction Company (BM Construction) entered into a contract dated 17 January 2012 (Contract 2) for construction works. Disputes arose between the parties and BM Construction invoked the Arbitration Clause in the GCC, seeking determination of two claims. Resisting the appointment of an arbitrator, UOI submitted that the claims are not referable to arbitration as the same are covered under "excepted matter" and BM Construction had issued a "no claim" letter stating that it had no claims towards UOI. Clause 64 of the GCC inter alia provides as follows :-

64. (1) (i) in the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration….."

UOI submitted that the claims of BM Construction were not arbitrable as Clause 43 (2) of the GCC provides that the contractor shall be debarred from disputing the correctness of the items covered under the "No Claim"certificate or demanding a clearance to arbitration in respect thereof. On the other hand, BM Construction disputed the "No Claim" certificate and submitted that it was issued under compulsion and due to undue influence by the railway authorities.

- BM Construction filed an application under Section 11 of the Act before the High Court seeking court assistance to appoint an arbitrator. The High Court observed that though the claims fall under `excepted matter', the question of whether the disputes can be referred to arbitration ought to be determined by the arbitrator. The High Court appointed an independent sole arbitrator under the aegis of the Delhi International Arbitration Centre.

Observations and findings

- In the appeal before the SC, UOI submitted that since the request for appointment of an arbitrator was made prior to the 2015 Amendment Act, the proceedings shall be in accordance with the pre-amended Act, and therefore the High Court erred in appointing an independent arbitrator. Pradeep and BM Construction contended that UOI forfeited its right to appoint an arbitrator in terms of the Arbitration Clause, in view of its failure to respond to the notice of arbitration.

The arbitrator shall be appointed in terms of the contract

- Relying upon Parmar Construction, (2019) the SC observed that the request for appointment of an arbitrator shall be examined in accordance with the principal Act without taking recourse to the 2015 Amendment

> Pursuant to section 12 (5) of the Act, as amended by the 2015 Amendment Act, an employee of a company is precluded from being an arbitrator in disputes between the company and another party. Interestingly, in Rajasthan Small Industries, amongst other issues, the SC determined whether the named `Managing Director' was ineligible to act as an arbitrator in view of section 12 of the amended Act.

Act. The SC also observed that in the said case it had set aside the appointment of an independent arbitrator and directed the `General Manager' of the railways to appoint an arbitrator in terms of clause 64 of the contract therein.

- Relying upon V.S. Engineering, (2006) the SC observed that when public institutions are slow in responding to request of the contractor for appointment of an arbitrator, the power of the high court to appoint an arbitrator is not taken away. Further, when the authorities fail to appoint an arbitrator and the contractor seeks court assistance in constitution of the tribunal, the Chief Justice/ Designated Judge shall have the discretion to appoint a railway officer as per the contract or a High Court Judge.
- The SC examined clause 64 of the GCC and observed that in the event of any dispute between the parties, except in any of the "excepted matters", the `General Manager' shall nominate a railway officer as per clause 64 as the sole arbitrator.
- Testing the judicial precedents in the present facts, the SC held that V.S. Engineering squarely applies to the present case and when the agreement specifically stipulates for the appointment of a named arbitrator, the appointment should be in terms of the agreement.
- The SC concluded that the High Court erred in deviating from the Arbitration Clause and appointing an independent arbitrator.

The issue of arbitrabilityof disputes shall be left open for determination by the arbitrator

- UOI submitted that the High Court erred in referring a matter to arbitration which falls within the ambit of "excepted matters" under the contract. However, the Respondents contended that the matter cannot be regarded as an "excepted matter" since the "No Claim" letter was issued under undue influence and therefore, the arbitrator ought to examine the evidence to determine the same. With reference to the said plea of the respondent, the SC held that the issue ought to be left open to be decided by the arbitrator. The Respondents argued that there was no merit in the Petitioners' contention that the introduction of section 87 in the Act and the repeal of section 26 of the 2015 Amendment Act was unconstitutional.

Conclusion

Based on the above findings, the SC set aside the judgements passed by the High Court in Arbitration Petition No. 1 and Arbitration Petition No. 2. The SC directed UOI to appoint an arbitrator in terms of clause 64 of the GCC within a period of one month. In the interest of time, the SC set the timelines for the pleadings to be filed by both parties. The SC further directed the arbitrator to hear both parties and preferably decide the claims within a period of four months.

Pursuant to section 12 (5) of the Act, as amended by the 2015 Amendment Act, an employee of a company is precluded from being an arbitrator in disputes between the company and another party. Interestingly, in Rajasthan Small Industries, amongst other issues, the SC determined whether the named `Managing Director' was ineligible to act as an arbitrator in view of section 12 of the amended Act. The SC held that the Managing Director was eligible to act as an arbitrator as section 12 of the amended Act was not applicable to the arbitration proceedings.

In the present case, the SC respecting principles of party autonomy in an arbitral process, reiterated that the courts shall make efforts to adhere to the agreed procedure for appointment of an arbitrator.

Challenges and Management of Arbitration

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Arbitration is justice blended with Charity

- Nachman of Breslov

- The Arbitration is the act of dispute settlement through an Arbitrator i.e. the third party who is not involved in the dispute. The dispute resolution process has a huge impact on the Indian economy and global perspective on doing business in India. An earlier study shows that, India takes as much as 1420 days and 39.6% in an average of the claim value for dispute resolution.
- The Arbitration in India is gaining importance in the backdrop of huge pendency of the cases with lot of commercial disputes before the civil courts, it is necessary to take a proper Arbitration mechanism in place for faster resolution of issues. Though, theoretically there are good number of advantages of Arbitration, Viz; it minimizes the court intervention; brings down the cost of dispute settlement; fixes time lines for expeditious disposal; ensures neutrality of Arbitral enforcement of awards; etc., practically what is happening in administration of Arbitration system in India is almost a known fact to everyone.
- Though the concept of Arbitration is for minimizing the Court intervention, ultimately if the parties to the Arbitration chose to challenge the awards under Section 34 starting from the District Court level up to Supreme Court, the entire journey demonstrates the intervention of the court, except the period spent in Arbitration proceedings. There are number of instances that, even before forming the arbitral tribunal, to protect their contractual rights, parties tend to proceed to court under Section 9 and Section 11 of the Act.
- With special reference to CPSEs and PSUs, taking a decision whether to go for appeal/ Sec. 34 or not, or to accept the award is another important and phenomenal task.
- In the scenario of being accountable to the agencies like CVC, and audit, in reality, many times practically the CPSEs tend to chose to go for filing applications U/s. 34 for challenging the awards, unless there is a strong reason/ground available for them not to go.
- Further, though the idea of Arbitration is to bring down the cost of dispute settlement comparing with the regular judicial process, of late it is observed that, sitting fees being charged by the Arbitrators is escalating on "day basis" to "session basis" (few hours) and also fee under heads like reading fee etc.,
- All the times arbitrators themselves take lead in fixing the sitting fee, probably looking into the quantum of claim amount appealed by the claimants.
- Though the parties can express their opinion on the quantum of fee, usually would hesitate and restrain themselves with the so called "fear of antagonizing the tribunal".
- In case the opposite party to a CPSE in the arbitration proceeding is happened to be MNC or a Big Corporate, the things would become further inferior, since those parties would not

normally hesitate to spend for providing logistic and stay arrangements for the arbitrators as per their demand, whereas the CPSEs/PSUs sometimes may have to restrict themselves for such spending, within the Box.

- Coming to the engagement of counsels, obviously every CPSE/PSU tend to appoint Senior / expert counsels in the field of Arbitration to effectively pursue the case on par with the private entities, who also tend to charge under various heads like per hearing / conference/ preparing reply etc. Further, (of late) arranging the accommodation to the Arbitrators in star hotels, arranging the logistics, arranging flight tickets of their convenience (in case arbitrators resides outside tribunal jurisdiction), reading fee apart from sitting fee etc, would further escalate the bill to the parties.
- The ultimate aim of bringing down the cost of dispute settlement and expeditious disposal of cases probably a practical myth in majority of the cases, till passing of the 2015 & 2019 amendments wherein the maximum period prescribed for disposal of an Arbitral dispute is 18 months.
- As per the report submitted by officials working in Niti Aayog, in the year 2015, (which has been accessed in web) it took almost 2508 days to resolve challenges U/s. 34 of the Arbitration Act. The study has estimated that, it takes 24 months to resolve U/s. 34 in lower (District) courts, 12 months in higher courts and 48 months in Supreme Court.
- It is appropriate to note in the subject context that, in Dolphin Drilling Limited Vs. M/s. ONGC, (Order dated 17.02.2010 in Arbitration Petition No. 21/2009) the Honourable Supreme Court of India has amongst other things acknowledged that, Arbitration in India is an expensive and time consuming dispute resolution mechanism. It further says that, the very objective of providing for Arbitration which is to ensure fast and efficient disposal of disputes between the parties to the Arbitration agreement has been lost.

Though the concept of Arbitration is for minimizing the Court intervention, ultimately if the parties to the Arbitration chose to challenge the awards under Section 34 starting from the District Court level up to Supreme Court, the entire journey demonstrates the intervention of the court, except the period spent in Arbitration proceedings.

- On the other side of the coin, lack of awareness, zeal or commitment on the part of the officials who deal the Arbitration in PSUs/CPSEs may also a factor adding fuel to the fire, in managing and handling the Arbitration cases. When a party can invoke the Arbitration as per the laid down procedure, the CPSEs/PSUs are expected to equip with trained persons for proper contract management system, preparing the documentation in a chronological order right from the award of the contract, and also handling the communication with the Contractors/agencies anticipating the Arbitral dispute, and also in providing information/ facts to the counsel for preparation of defense/claim/Counter claim statements properly.
- The officials of PSE/CPSEs are to equally be equipped in dealing with the arbitrations through sufficient training sessions either through internal mechanism of getting trained by the legal departments or by the external agencies like SCOPE and reputed training agencies, to understand the nuances of the procedure and the issues thereon.
- NLC INDIA LIMITED recently started implementing

such awareness program of explaining its executives across the board about the Contract and Litigation/ Arbitration Management system, though its senior executives working in Contracts, Purchase and Legal Departments.

- Though the government is committed to make our country as an International Commercial Arbitration hub to create confidence among the foreign partners' for ease of doing business by making amendments to the Arbitration Act, still lot to be worked out for realizing this dream. Unless PSUs also take part in this initiative by doing their bit with robust Contract Management system and proper decision making process, while handling the Contracts, the government alone cannot achieve the task.
- It is the equal responsibility of the PSUs/CPSEs to take reasonable and justifiable call before choosing arbitration proceedings and try to settle the disputes through the conciliation mode, which yielded good result as evident from the success stories from CPSE's like GAIL, ONGC etc., In fact, the conciliation process shall be a mandatory clause for settlement of dispute, before invoking arbitration by the parties in the tender /contract documents so that, we can minimize the cost and time on the arbitration process. In the recent past, NLC INDIA Limited also witnessing the success of this system and settling the disputes through conciliatory process.

- While considering for the invoking the Arbitration, CPSEs to take a genuine estimate of the probable expenditure towards arbitrators, advocates, expenditure towards TA/DA/ logistics of the executives, stay and travel arrangements of the arbitrators etc., Vis-à-vis probable financial outflow in settlement of matter with the Opposite party by taking various parameters Viz., future interest burden, Cost of funds, deployment of manpower etc., in to consideration. Further, as long as the records are being properly maintained and the proof to show that the CPSEs sustained loss due to the breach of the contractor, there would be less chance to lose the cases by CPSEs , and for that robust Contract Management system is to put in place.
- Regarding filing of the Section 34 application, unless a strong /justifiable ground is found, that there would be a probability of succeeding in the matter, it would not be proper to go ahead by taking a call in general, so that the decision will have further impact in the form of accrued interest and also cost of funds of the CPSE/PSU.
- Given that the thrust to expeditious dispute resolution is viewed as a key parameter enhancing the ease of doing business, unless the challenges presently faced by Arbitration as discussed in this Article are redressed with concern, it is only a matter of time that the other remedial/ dispute redressal options such as Commercial Courts may evolve as the game changer for dispute resolution. Efficient Contract management/enforcement is essential to economic development and sustained business growth. That said, escalating cost of Arbitration and emerging judicial trends towards expeditious disposal of commercial cases may with time prompt the Corporates to eye for dispute resolution options beyond the framework of Arbitration."

ARTICLE

CLIMATE CHANGE

Role of Carbon Markets in Addressing Climate Change

Jai Kumar Gaurav
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Climate change has emerged as a key global threat to well being of humanity and there is an urgent need to reduce greenhouse gas (GHG) emissions. Most countries are implementing programmes and policies for reducing GHG emissions as per the Nationally Determined Contributions (NDC) submitted as part of the Paris Agreement. For example, India in its NDC has targeted achieving 30-35% reduction in GHG emission intensity by 2030 compared to 2005, installation of 40% of electricity generation capacity based on renewables by 2030. India also aims to create additional Carbon Sink of 2.5 to 3 Billion Tonnes of CO2 Equivalent through Additional Forest and Tree Cover by 2030. There are several barriers to achieving these ambitious targets and one of the key barriers is lack of financing. As the return on investment due to renewable electricity generation and savings due to implementation of energy efficiency measures is not as good as other investment options there is limited financing for these projects.

Carbon markets provide additional revenue for projects reducing GHG emissions based on the quantification of the tonnes of GHG emissions reduced measured in tCO2eq. There are two types of carbon markets compliance based and voluntary carbon markets. In compliance markets, a government agency makes the rules about what types of offsets are permitted and with what rigor they must prove to be included in the market. Offsets sold on the voluntary carbon markets typically follow rules prescribed by one of a handful of voluntary standard bodies. Both types of markets serve as a source of innovation and inspiration, incubating projects and ideas and explore new avenues of emissions reductions that may be implemented to mobilize revenue from sale of carbon credits.

Example of compliance driven carbon market is Clean Development Mechanism (CDM) which started in 2005 with companies in developed countries buying offsets from projects in developing countries. CDM lead to development of registered projects 7814 and 327 Programme of Activities (PoA). As part of PoAit is possible to register the coordinated implementation of a policy, measure or goal that leads to emission reduction. Once a PoA is registered, an unlimited number of component project activities (CPAs) can be added without undergoing the complete CDM project cycle. Around 2 billion CERs were issued for project activities and 22 million CERs were issued for PoAs highlighting the significant impact a market mechanism can have in developing countries. A study conducted by GIZ India in 2012 pointed out that CDM triggered an investment of INR 1.6 trillion (EUR 20 billion). Nearly 1,700 projects are registered from India with a total amount of CER (certified emissions reduction) issuance of around 250 million. Due to lack of demand for Certified Emission Reductions (CERs) under the CDM after the end of the first commitment period of the Kyoto Protocol, the cost of CERs crashed to less than US$1, which could hardly cover the transaction costs. In order to sustain operations, some countries like China developed domestic mechanisms to continue supporting CDM projects, while multilateral development banks (MDB) such as the Asian Development Bank (ADB)

initiated programmes like the Future Carbon Fund (FCF) supporting selected CDM projects. In contrast, the VCMs have perhaps been the only steadfast buttress for the implementation of compliance-based mitigation activities at a global scale. In India, for instance, while CER prices have crashed, Voluntary Emission Reduction (VER) certificate have sustained high prices and demands. Ecosystem Marketplace, which tracks average prices of VERs, stated in its latest report that VER average price range is $3-$6/tCO2e, while actual prices range from under $0.1/tCO2e to just over $70/tCO2e.

Voluntary Carbon Markets have served as an alternate to the CDM for sale of certain CERsas well as supporting emission reduction activities. In India, VCM started as an alternate carbon trading mechanism to CDM for projects were CDM compliance proved impractical due to high costs and rigid rules.As a measure of success, the voluntary carbon markets globally have achieved the removal of 430 million tonnes of carbon from the atmosphere since 2005– equivalent to Australia's 2016 energy sector emissions. Ironically, many CDM projects also sold credits under voluntary markets to sustain operations. It can be argued that the VCM proved to be a stabilizer in the overall collapse of global carbon markets, particularly for projects in developing countries dependent on CDM revenue. However, despite the continued existence of VCM, lower price of credits has been a persistent limiter to the scaling up of activities. Limited awareness and lack of consumer pressure on companies to reduce emissions or buy offsets are other factors that have kept the demand for voluntary credits subdued.

The Paris Agreement will be in implementation from 2020 onwards and Article 6 of the Paris Agreement is dedicated to the issue of markets. Internationally Transferable Mitigation Outcomes (ITMOs) and Sustainable Development Mechanism (SDM) have been introduced within Article 6.2 and 6.4, respectively which will enable countries to transact emission reductions. Along with clarity regarding future mechanism for emission trading under Paris Agreement there is a need for clarity regarding the future of Voluntary Carbon Markets. It is not clear that countries with economy wide NDC will allow projects to transfer voluntary carbon credits to other countries as they might need the emission reductions domestically to meet the NDC target. Further, countries would like to report the emission reductions due to citizens buying voluntary carbon credits from other countries. These accounting related challenges might limit continuation of voluntary carbon markets post 2020 while the design of new market mechanism as part of the Paris Agreement may not be agreed in time. It is critical that countries and other stakeholders work on clarifying the next steps for the market-based mechanisms as part of the Paris Agreement as well as on the future of Voluntary Carbon Markets so that they can continue contributing to the mitigation goals of countries.

Climate change has emerged as a key global threat to well being of humanity and there is an urgent need to reduce greenhouse gas (GHG) emissions. Most countries are implementing programmes and policies for reducing GHG emissions as per the Nationally Determined Contributions (NDC) submitted as part of the Paris Agreement.

ARTICLE

CLIMATE CHANGE

Promoting Sustainable Agricultural Practices and the Role of Corporate

Vijeta Rattani
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Over the past week weeks media reports have flashed the problem of acute air pollution crises in Delhi and adjoining areas. Stubble burning in Punjab and Haryana was attributed as one of the main causes for it. Burning of crop residue to prepare land for sowing for another crop has been a long-standing practice in India. It is particularly prevalent after paddy harvesting. Studies also substantiate that within different crop residue, 43 percentis of rice . While matters such as crop burning present a grim picture of our state of agriculture, the bigger challenge is how to make overall agriculture practices sustainable in the wake of depleting resources and growing climate crises.

The state of Punjab is referred to as the nation's granary where the average farmer's income is more than the national average. Yet the state is beginning to experience the heat of challenges it faces which is expected to grow in coming times. Like other states of India, Punjab experiences the wrath of climate change in the form of temperature and rainfall variability, decrease of ground water, decrease in yield, etc. This coupled with the unsustainable practices of over consumption of water and electricity for irrigation, requiring standing water for paddy, burning of crop residue has further led to over depletion of ground water, soil quality, health hazards, productivity, efficiency and livelihood of farmers.

The main adverse effects of crop residue burning include the emission of greenhouse gases (GHGs) that contributes to the global warming, increased levels of particulate matter (PM) and smog that cause health hazards, loss of biodiversity of agricultural lands, and the resultant degradation of soil fertility. This basically accounts for the loss of organic carbon, nitrogen, and other nutrients. There is recognition of the unsustainable practices as contributing to vulnerability of climate change which is set to increase more in coming times as the climate crises escalates and assumes irreversible and greater proportions. The State Action Plan on Climate Change (SAPCC) which is a policy document highlights need to adapt to climate change by adopting sustainable agricultural practices.

GIZ's work in this area has focussed on systemic changes in the way agricultural practices are done in the state of Punjab, for instance. Through farmer networks, trainings, roving seminars, and awareness building programmes, efforts are made to promote mechanised sowing. Farmers are encouraged and demonstrated the adoption of Direct Seeded Rice (DSR) practice where rice seeds are directly grown into the soil, thus decreasing the water and electricity consumptionas opposed to traditional practice of sowing transplanted rice sprouts into the soil.

GIZ promotes the use of mechanised sowing involving seed drill and specialized Lucky Seed Drill which spray weedicides

while sowing simultaneously. Thereafter, post harvesting, use of Happy Seeder for successive sowing of wheat crop can alleviate the problem of stubble burning as Happy Seeder can sow the wheat seeds with the stubble in the soil. Presence of stubble in fact has shown to improve the nutrition content of the soil, thus decreasing consumption of fertilizers and pesticides.Farmers have reported multiple benefits of adopting DSR such as 50 percent reduction in consumption of water and electricity, greater efficiency, reduction in labour costs and overall increase in productivity by usage of sowing devises which ensures uniform sowing. Farmers adopting Happy Seeder did not require to burn stubble in advance. More attempts have been made to sensitize, educate and induct farmers and the agricultural community about the importance of sustainability in agriculture and benefits of practices of agricultural waste.

While government buy-in is relevant for upscaling and credibility, corporate involvement has been increasing and gaining relevance in the area. They already have an important role in training programmes and building awareness to farmers. Back in 2008/2009, under its CSR initiative, Pepsico organized training for farmers in the district of Bhatinda to acquaint them with advantages of using DSR and providing sowing machines to few farmers to practice DSR on the fields. The trained farmers played an important role in disseminating the messages to their fellow farmers.

While agricultural waste is a big challenge, recent technological developments have opened the possibility of using stubble and straw for multiple uses. One such use relates to biogasgeneration in an integrated approach. Urjaset up a biogas plant which it combined with commercial farms and processing units in Fazilka district of Punjab which can be hailed as a crucial innovation towards green energy. The plant has the capacity to generate biogas using rice straw through bio-methanation technology. The biogas plant generates around 4000 m3 of biogas from 10 tons of agricultural residue and is certified by institutes such as the Indian Institute of Technology, Delhi and Punjab Agricultural University (PAU) located in Ludhiana.

GIZ promotes the use of mechanised sowing involving seed drill and specialized Lucky Seed Drill which spray weedicides while sowing simultaneously.Thereafter, post harvesting, use of Happy Seeder for successive sowing of wheat crop can alleviate the problem of stubble burning as Happy Seeder can sow the wheat seeds with the stubble in the soil.

In another such initiative, a 12 MW rice-straw power plant consumes 120,000 tons of stubble collected collectedfrom around 15,000 farmersfor which they were paid within a range ofRs 600-Rs1600) for per ton of straw . Apart from managing waste and paying farmers for the residue, such private enterprises additionally created around 700,000 jobs for the farming population. Involvement of corporate in in-situ management of waste and production of biochar is being explored and implemented too.

With greater incentives, recognition to the corporate and focus towards public-private partnerships, corporate can complement government's efforts in an instrumental manner towards promoting sustainable agricultural practices.

Internal Carbon Price:
An approach to address growing risks of climate disruptions

Kundan Burnwal
Technical Advisor
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Leaders of governments, companies and business across the world are instituting a price on carbon as a measure to tackle climate change. Carbon pricing is a mechanism whereby a monetary cost or value is ascribed to emissions to hedge carbon-related risk and encourage innovation in the transition to a low-carbon economy.It is usually set as a dollar figure per one tonne of CO2e emitted and has emerged as a key driver in reducing emissions and mitigating the dangerous impacts of climate change.There are two types of carbon pricing: external/explicit carbon pricing, as mandated by a national or sub-national government, and internal carbon pricing, applied voluntarily by an organization to itself.Here I will discuss internal carbon price.

An internal carbon price (ICP) is a monetary cost/value voluntarily adopted by a company to a unit of carbon dioxide equivalent emissions. ICP is used by companies for managing climate related business risks and prepare for low carbon transition of the economy. It also helps companies to check whether their current and future business strategy is taking into account the growing risk of climate disruptions and how they can potentially take advantage by being far sighted of new business opportunities arising by addressing climate change through innovation, investment decisions andtechnological modernisation. The ICP value considers several factors including market trends and regulations where the company is located as well as the company's sustainability values, emissions reduction targets, or other company goals. There are examples of some sectors like oil and gas, electric power and minerals and mining that have been putting a price on carbon emissions since the 1990s as a part of their risk mitigation strategy. This has prepared them for future regulatory restrictions on GHG emissions, address stakeholder concerns, build resilient supply chains, provide competitive advantage and showcase business leadership.

Types of internal carbon price

There are the three following applications of ICP:

- Shadow Price: It is a theoretical/ hypothetical price that is put on each tonne of carbon dioxide equivalent emissions which reveals hidden risks and potential opportunities throughout a business's operations and supply chain. It aims to support long term business planning and low carbon investment decisions which can prepare these businesses for future regulatory changes on GHG emissions. The observed range of shadow price is $2 to ~$800 per tonne of CO2e.
- Internal Carbon Fee: This takes shadow pricing a step further by charging responsible business units for their carbon emissions and oftentimes reinvesting the collected revenue into clean technologies and activities that help transition the company to low-carbon. This fee creates a dedicated pool of finance to fund the company's emission reduction efforts. The observed range of an internal carbon fee is $5-$20 per tonne of CO2e.
- Implicit price: This is the amount that company/business spends on reducing GHG emissions and /or cost of complying with regulations. For example, it could be expenditure of the company on renewable energy purchases, adherence with fuel standards, etc. An implicit carbon price can help a company set a target/benchmark for launching an internal carbon pricing programme for the company.

It is important to highlight that several companies use a hybrid model of these approaches and combine different attributes for addressing growing risk of climate disruptions and improving their business strategies.

Status of carbon pricing globally and in India

CDP (formerly the Carbon Disclosure Project) has been tracking, since 2013, a steady increase in number of companies putting a price on carbon and embedding ICP into their business strategies. According to 2016 disclosures to CDP, more than 1,200 companies worldwide are either pursuing ICP or planning to do so. While most of those companies are based in North America and Europe, the sharpest increase is in emerging economies, including India, Brazil, Mexico, and China (Centre for Climate and Energy Solutions). This increasing trend is largely because of the parallel development of regulations that directly or indirectly price carbon and the increasing pressure from shareholders and customers for companies to adequately manage their climate-related risks.

Carbon Pricing in Indian companies

In India there has been an impressive growth in the adoption of ICP by companies – from one company in 2015 to 11 companies in 2017 and counting. Increasing uptake of ICP in India is spurred by voluntary adoption as well as implicit pricing policies at the government level.Of Indian companies disclosing, the Materials sector indicates the highest adoption of carbon pricing as well as average price at US$20, only slightly below the global average for Materials at around US$26. Notably, almost all reporting cement companies from the Materials sector have a relatively ambitious ICP in India. Some of the examples of Indian companies adopting ICP are given in the table below:

Conclusion

The Paris Agreement and the adoption of the SDGs marked the start of a new strategy for the world, with a clear message of low carbon revolution and that it cannot be achieved without the concerted efforts of businesses. Despite the global progress in carbon pricing initiatives, 85% of emissions are still not covered by carbon pricing. More progress is needed to help achieve the goals of the Paris Agreement.Indian companies are slowly but steadily getting on board and are taking various voluntary actions to mitigate the risks of climate change. However, this trend is much slower than in other parts of the world.A policy signal from the government can increase uptake of ICP as companies would like to prepare for regulatory changes in carbon constrained scenario. This was evident in 2017 in countries like China, Mexico and South Africa.

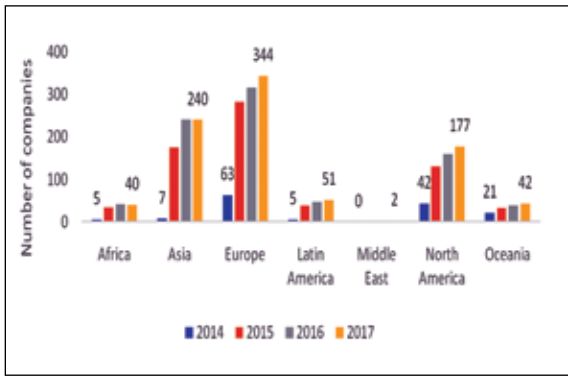

Fig1: Region-wise growth of companies pricing or planning to price in two years by region (Source: CDP)

For example, ICP adoption in Chinese companies doubled in response to China's plan of rolling out the World's largest Emission Trading Scheme.Clear voluntary and regulatory climate change mitigation frameworks in India could give an impetus to adoption of ICP. Similarly, companies participating in market-based schemes (PAT and RPO) can leverage their actions using an ICP metric and creating a new credit line (virtual or real) that can be tapped for implementation of low-carbon energy efficient projects.It is thus clear that policy clarity is a great enabler towards private sector inclusion. Open and detailed stakeholder discussions on carbon pricing and plans to implement it through climate policies would demonstrate a commitment towards regulating carbon emissions. This can be a part of an implementation strategy of the NDCs.

S.N.	Company	Sector	ICP	Approach adopted
1	Mahindra & Mahindra	Consumer Discretionary	US$10	Hybrid approach - combination of internal fee and shadow price
2	Infosys Limited	Information technology	US$10.5	Shadow price
3	Ambuja Cement	Cement	US$29.4	Implicit ICP
4	Essar Oil	Oil and gas	US$15	Implicit ICP
5	Tata Chemicals	Chemicals	US$20	Shadow price

Strategic Alliance for Water Stewardship:
A Collaborative Approach to Advance Water Security

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India is facing a serious and persistent water resource crisis owing to the growing imbalance of demand and supply, poor water quality, and climate-induced water scarcity. A 2030 Water Resources Group (WRG) report predicted that by 2030, the gap between demand and availability of water in India will be 50% with the demand touching approx. 1500 billion cubic metre (BCM) and availability approx. 750 BCM. This growing demand supply imbalance will have significant implications from the perspective of water sharing across industrial, domestic and agriculture sector. This article will discuss the impact of water shortage on businesses/industries and how the AWS Standard is being leveraged by businesses to implement water security measures in the catchment level.

Climate change poses a direct threat to urban water supply

The stress on scarce water supplies is created by climate variability and change, including irregular and altered rainfall patterns. According to the Composite Water Management Index (CWMI) report released by the Niti Aayog in 2018, 21 major cities are racing to reach zero groundwater levels by 2020, affecting around 100 million people. Indian climate scenarios for 2050 project's an increase in the average temperature by 2 to 4°C with a decrease in the number of rainy days by more than 15 days in western and central India. By 2050, the impact of climate change is expected to result in less water flow in most of the river basins (India's National Communication to the UNFCCC) putting the already strained water resources of the country under severe stress.

Water as a business risk

India's growing water challenges have made businesses vulnerable to physical, regulatory, social and reputational risks. Water is the materiality issues for every businessdue to its impact on their value chain; but the lack of in-depth understanding and quantification of water risksenhances the vulnerabilities. Therefore, there exists a need for better understanding of the shared risks across the river basin, sub-basin, lake or the groundwater system in which business facilities are located. However, in most scenarios, the scale of risks involved exceeds any single company's capability for action; thus, necessitating a joint approach.

Industrial consumption currently accounts for only about 8% of freshwater consumption in the country. Water being a shared resource, can pose substantial risk to companies' operations and profitability. It is a shared risk between multiple and often competing water users such as households, agriculture, industry, and the environment. The projected increase in consumption of water by industry from 42 km3 per year in 2000 to 161 km3 per year by 2050 will substantially increase risks to both industry as well as river basins (WWF). Even though these risks and challenges are known, their scales are way beyond the scope of action by a single stakeholder. The non-existence of a pre-competitive environment acts as an impediment to catchment-level collaborative action. Companies are facing challenges in collection of catchment-level data, collaborating with other water users in the catchment for multi-stakeholder engagements as well as in initiating dialogue with policy makers.

Water Stewardship

Stewardship is about taking care of something that we do not own. Stewardship approaches focus on

the management of common pool resources like forests, fisheries or, in this case, freshwater. Water stewardship is based on the principle of there being a collective need for sustainable water-resources. For private sector, water stewardship is about understanding their water use and impacts, and to work collaboratively and transparently for sustainable water management within a catchment context through stakeholder inclusive process.

Alliance for Water Stewardship (AWS) is a global membership collaboration comprising businesses, NGOs and the public sector. AWS members contribute to the sustainability of local water-resources through their adoption and promotion of a universal framework for the sustainable use of water – the International Water Stewardship Standard, or AWS Standard – that drives, recognizes and rewards good water stewardship performance.

AWS defined water stewardship as the use of water that is socially and culturally equitable, environmentally sustainable and economically beneficial, achieved through a stakeholder-inclusive process that includes both site- and catchment-based actions. AWS works on three fundamental building blocksof water stewardship:

- The AWS Standard is globally recognised and respected as defining best practice in collaborative and catchment-focused water use. The Standard is being widely used by major companies to help them address water risks and seize opportunities to build a sustainable future. Independent third-party verification and multi-stakeholder processes ensure that the Standard provides the 'safe place' to strengthen relationships and build trust between competing water users.Figure 1 below illustrate the five steps of AWS Standard V2.0 and the five outputs of the implementation of AWS Standard.

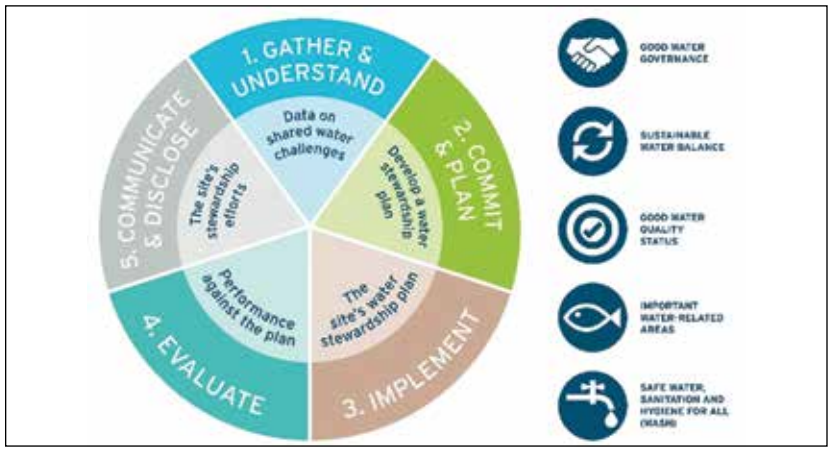

Figure 1 AWS Standard V2.0

Leaders of governments, companies and business across the world are instituting a price on carbon as a measure to tackle climate change. Carbon pricing is a mechanism whereby a monetary cost or value is ascribed to emissions to hedge carbon-related risk and encourage innovation in the transition to a low-carbon economy.It is usually set as a dollar figure per one tonne...

- Water Stewardship Networkas a multi-stakeholder platform to engage different interests and advance water stewardship. The India Water Stewardship Network (IWSN)is in place and enable a direct link between India and the global water stewardship best practices.
- AWS Membership connects progressive organisations from all sectors in advancing water stewardship and enables pre-competitive collaborations to flourish at different levels (technical, conceptual, practical). The members are seeking a more structured way to engage water stewardship in the country.

GIZ Strategic Alliance for Water Stewardship

The GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH), AWS, WWF-India and Private sector companies (Diageo, ITC and Mars) are collaborating for a Strategic Alliance project to advance water stewardship in India through actions and innovations at community, catchment, state and national levels.

The project is being implemented at diverse locations in India i.e.

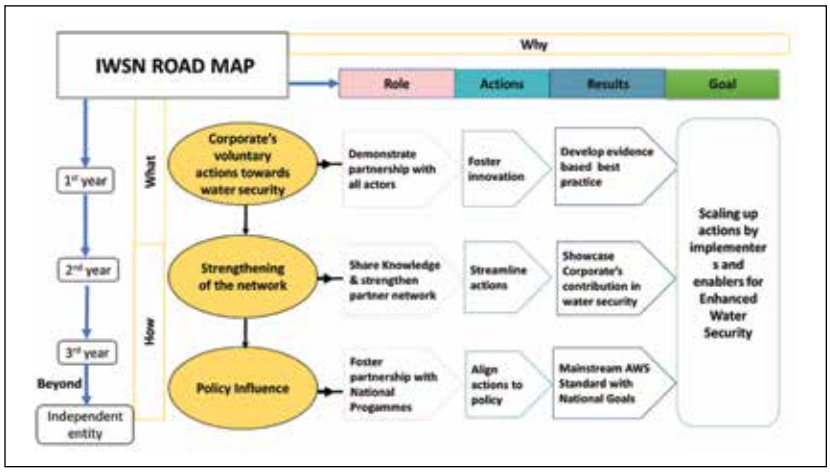

Figure 2 IWSN Road Map

Rajasthan, Maharashtra, Uttar Pradesh, Karnataka and Tamil Nadu. In each case there is a dual focus on optimization of water use at a site level and collaborative engagement on shared water challenges at a catchment level.

The AWS Standard provides the common framework around which the companies are implementing measures in catchment context to advance water security. Each of the private sector partners is implementing the AWS Standard at priority sites, providing an unparalleled opportunity to gain experience in water stewardship implementation in diverse hydrological, economic, and socio-political contexts across India towards achieving best practices.

The project will leverage the learnings from the practical implementation of the AWS Standard to strengthen the capacity of the India Water Stewardship Network to effectively lead the water stewardship agenda in India. The project will enable the IWSN to evolve from its current informal structure to a powerful agent for change in India, able to convene, support and inspire stakeholders to address the severity of India's water challenges.

Looking Forward

The project seeks to institutionalise India Water Stewardship Network (IWSN) comprising of businesses, civil society and public-sector organisations. It will act asa national platform to build partnerships, initiate policy dialogues, and support the regime of water stewardship in India. The IWSN would foster the sharing of knowledge and learnings from implementation of AWS Standard amongst the corporates and create a network of all major water users and bring policy advocacyto upscale and replicate water stewardship in India. (Figure 2)

The institutionalisation of water stewardship is a significant contribution to water security and Sustainable Development Goals (specially SDG 6 - Ensure availability and sustainable management of water and sanitation for all, SDG 13 – Take urgent actions to combat climate change and its impacts and SDG 17 - Strengthen the means of implementation and revitalize the global partnership for sustainable development) by multi-stakeholder collaborations to improve water use by private sector sites, improve the collection and sharing of multi-sectoral data, catalyse adoption of good water stewardship.

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Scaling up Circular Economy in India

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GIZ India

Urban population in India has quadrupled post-independence. Growth in economy and population over last 72 years of India's independence drastically changed consumption patterns, increased consumption and in turn waste generation. The linear behaviour of manufacture, use and dispose have made waste management paramount, albeit a complex issue in India. The average growth in waste generation from 2000 to 2011 in 18 states of India was reported to be 256%[1]. The decades before that did not see a systematic inventory of waste generated in India. The gap between collection and treatment of waste also remains significant as less than 30% of collected waste in in India is treated[2]. Treatment of valuable recyclable items also remains below international benchmarks. For packaging paper, it is 27%; plastics, 60%; and metals 20-25%. While Scandinavian countries have touched an average recycling rate of about 90%[3].

India however does not lack the technical ability to treat and recycle waste. There are about 7,500 plastic recyclers in India(registered and unregistered)[4], 312 registered E-waste recyclers/dismantlers[5], 5 registered C&D waste recycling units. Some of these units were operational even before the notification of any national waste management rules. The low rates of recycling in India is more to do with missing catalysts which can upscale recycling industry and thereby scaling up circular economy.

Catalysts for scaling up circular economy

There is more than one catalyst that can upscale the circular economy in India. These catalysts are not stand alone but work together to speed up the upscale. They are explained below,

Assured Segregated Waste: Any manufacturing industry needs assured input materials that too in bulk quantities for a making a viable business case. Segregation

is a major challenge in India, especially with Municipal Solid Waste (MSW). In any of the contractual models for a waste management enterprise running in in a public private partnership mode-assured waste of desired quality is a common clause. It is seldom honoured by the ULBs. Swaccha Survekshan 2019 data suggest that less than 50% of total wards were segregating waste at source[6]. The segregated waste in most cases getting mixed again in the value chain before reaching the recycling or processing units. Ultimately this affects day to day running of an operational recycling unit by adding extra cost of onsite manual/mechanical segregation increasing costs and ruining infrastructure. With assured segregated waste recycling enterprises cost

Financing for self-sustainability: Financing is required at various stages of a recycling plant and it may come in various forms and from various sources. There are many public and private financing mechanism exists in India that can support recycling sector. Table 1 Shows list of few financial products provided by private sector,

There are other sources of funds that come either Corporate Social Responsibility Funds or from ULBs themselves either an upfront capital or annuity-based model or in other words payment based on performance.

The objective of all of the above financing is to support commissioning of plant and daily operations of a recycling plant. Though financing for both is necessary, but for the later, finding a right source of finance is critical whilemost of the financial products in the market focuses on supporting the former. Continuous operational support from external sources such as grant or CSR is an unsustainable model as both are available for limited durations and waste generation never seizes. There is an added risk of unsegregated and insufficient quantity of waste which might disrupt plants financials. CSR and grant support for commissioning a plant might work well. The objective of any financial mechanism for recycling industry should be to supportonly to a stage where they can generate enoughrevenue from sales to become financially self-sustainable for their operations and also should cover their operational risks.

> India has a huge gap between waste generation and processing. The positive side to this is that there is large volume of valuable resource that is available for recycling. However, the investments, particularly coming from private lenders, even though for circular economy, treats business as business.

Legal compliance: About 99% of E-waste generated in India is handled by informal sector, un-authorised recyclers of plastics also uses environmentally un-sustainablepractices to process plastic waste. Legal compliances related to environment and health are seldom applied which earns a bad name of the over-all industry and hence prevents public and private sector financing. Hence industry should strive towards following legal compliances to ensure best practices of operations and hence increasing confidence of investors and government in promoting recycling and sustainable treatment of waste.

R&D investments for technology: One of the major challenges that remains with technologies to recycle plastic is sustainable processing of Multi-layered Packaging (MLP) and single-use plastics.

Recycling of this MLPs remains expensive as separating various layers of this packaging is difficult. While single use plastics are a low value input for plastic recyclers to produce quality outputs. Both of these materials are toxic if dumped in the environment and have found there use as replacement of fuel in cement plants and waste to energy plants. Policy also supports this co-processing as 2018 version of the amended plastic waste rules categorises MLPs under either recyclable, energy recoverable, or with some other alternate use. Extended Producer Responsibility to take back the used packaging material from market is also a welcome policy move to divert MLPs from ending up in a land-fill. None of these policies have made a dent in preventing these toxic materials from dumped in to the land-fills, Therefore, additional to these uses, R&D investments are required to find alternatives to MLPs and single use plastics for packaging and reduce cost of recycling them. This will provide additional line of business for existing recyclers and also catalyse circular economy.

Way Ahead

India has a huge gap between waste generation and processing. The positive side to this is that there is large volume of valuable resource that is available for recycling. However, the investments, particularly coming from private lenders, even though for circular economy, treats business as business. It should be bankable and should provide steady returns. That is the line of thought that should drive any source of investment in to circular economy from private sector lenders.

Table 1: Financial products for investments in circular economy[7]

Source of Finance	Financial Instruments
Banks & Non-Banking Financial Institutions	Debt Finance
	Supply Chain Finance
	Blended Finance
	Credit enhancements
Development Finance Institutions and Multilateral Development Banks	Green Mortgages
Capital Markets	Green Bonds, SDG Bonds
Foundations and Impact Investors	Seed funding, impact bonds
Venture Capital and Private Equity Funds	Private Equity
Crowd Funding Platforms	Seed funding
Institutional Investors	Pension Funds
Specialized funds like Green Climate Fund	Debt, grants

Investments coming from public sector as grant or private sector as CSR should focus on strengthening the catalysts that would hand-hold recycling industry and turn it in to a self-sustainable business. This will have many trade-offs in terms of better segregation of waste, technology improvement, innovative business products for private investors to take up. The recycling industry has set precedence to be bankable. However, circular economy has not catalysed as there are not as many good examples as there are bad precedence due to lack of catalysts discussed above.

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ARTICLE

CLIMATE CHANGE

Sustainability
A way to Life

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Sustainability – A Way to Life

In August, 1963, Dr. Martin Luthar King, Jr., wrote from Barbhingam Jail – "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

The 'Stakeholder Theory' of Corporate Governance also advocates this view by emphasizing on maximizing the interest of all identified stakeholders of the company. By analyzing the effect of corporate activities on all stakeholders, it focuses on environmental, social and governance factors to achieve economic success and competitive advantage.In the wake of rapid and widespread social, economic and environment changes, concern towards society and environmenthas led to increased focus on the concept of "sustainability".

Sustainability is often defined as the ability to exist constantly i.e., meeting the needs of the present without compromising the ability of future generations to meet theirs. Sustainability mainly focuses on three main aspects; environmental, social and governance (economic), popularly known as ESG and informally referred to as people, planet and profits.

Why sustainability?

The term "Day Zero" became prominent in late 2017 with respect to Cape Town water crisis, referring to the day when the city would run out of water,the municipal water supplies would largely be switched off and residents would have to queue for their daily ration of water. Massive efforts from local authorities and citizens to reduce their water consumption coupled with strong rains in June 2018 helped Cape Town in averting this crisis. In India, due to excessive groundwater pumping, inefficient water management system and deficient rains, 12 per cent of the population is already living the 'Day Zero' scenario. According to the Composite Water Management Index (CWMI) report released by the NitiAayog in 2018, 21 major cities (including Delhi, Bengaluru, Chennai, Hyderabad) are racing to reach zero groundwater levels by 2020, affecting access for 100 million people. The report also states that by 2030, the country's water demand is projected to be twice the available supply, implying severe water scarcity and an eventual six per cent loss in the country's GDP.

WHO listed 10 threats to global health in 2019 and air pollution & climate change is one of them. According to a study, at least 140 million people in India breathe air which is 10 times or more above the WHO safe limit and air pollution contributes to the premature deaths of 2 million Indians every year.Governance failures can also adversely affect the lives of millions of common citizens as is evident from various scams in India & abroad viz., Enron, Maxwell communication, Harshad Mehta scam, Satyam computers, IL&FS default etc.

Sustainability: Global Efforts

Globally, there is growing awareness and consistent efforts are being made towards achieving sustainable development with Nordic countries viz., Sweden, Denmark and Finland leading the way. In May, 2019, UK has become the first country to declare an Environment and Climate Emergency, putting climate and the environment at the very center of all government policy.

Robeco SAM Country Sustainability Ranking

Update – November 2018 provides a succinct analysis of the environmental, social and governance (ESG) profiles of 65 countries around the globe. With Sweden, Denmark, Switzerland, Finland and Norway are top 5 countries on ESG dimensions, India stands 56th in the list. It is pertinent to mention that top 10 countries on this report are more or less those who also occupy top 10 positions in the World Happiness Index published by UN Sustainable Development Solutions Network. This appears to indicatethat inhabitants of the countries which care about environment and social issues are the happiest. The Report mentions that environmental risks have grown in prominence as climate-related incidents were responsible for more than a million lives lost and over USD 2.2 trillion in direct economic lossesover the past two decades.

During 2017 UN Sustainable Development Summit, 193 member countries of the United Nations collaboratively committed to adoption of Sustainable Development Goals (SDGs). The Sustainable Development Goals (17 SDGs and 169 interlinked targets) are the blueprint to achieve a better and more sustainable future for all as they address the global challenges being faced including those related to poverty, inequality, climate, environmental degradation, prosperity, peace and justice. The countries committed themselves to meet the 2030 agenda for sustainable development.

SDG Index 2019 which measures performance of 166 countries (India ranked 115th) towards achieving sustainable goals, highlights that high-level political commitment to the SDGs by countries is falling short of historic promises and this gap between rhetoric and action must be closed.Recently, climate activist Greta Thunberg, aged 16, while addressing the U.N. Climate Action Summit in New York City, severely criticized world leaders for their "betrayal" of young people through their inertia over the climate crisis.

Sustainability: Indian Perspective

Sustainability is an age old concept in India reflected in dictum "Bahujanasukhayabahujanahitaya cha" (for the happiness of the many, for the welfare of the many), concept of Ram Rajya and other social practices including worshiping of trees etc. Recently, Ministry of Corporate Affairs has revised the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 (NVGs) and formulated the National

Guidelines on Responsible Business Conduct (NGRBC). These guidelines urge businesses to actualise the nine principles (thematic pillars of business responsibility) in letter and spirit. These principles include conducting business in a ethical, sustainable and safemanner, protecting the environment and respecting the interest of all stakeholders.

The Indian Government has been using sustainable development goals as a roadmap for formulating national policies and regulations. Since,the SDGs have to be implemented by 2030, it requires immense efforts not only from the government but also from businesses. It is incumbent upon corporations to complement these actions. Companies are gradually incorporating SDGs into their responsible business actions. According to a Study, 'Responsible Business Rankings 2018' by IIM Udaipur and 'Futurescape', out of the 218 companies studied in India, 60 companies have mapped their responsible business actions to SDGs and nine of the top 10 companies mapped their goals to SDG. Scoringis based on governance, disclosure, stakeholders & sustainability with Five year pattern. Tata group companies occupy the prime position, with 3 companies in top five in the list. Tata Chemicals, Ambuja Cement & Infosys occupies first three positions. Two public sector companies viz., Bharat Petroleum Corporation Ltd and Indian Oil Corporation Ltd. also appear in the top 10 list.

Sustainability: An investor concern

Over the years, corporate investors have become more concerned about sustainability issues viz., reduction of carbon footprint and greenhouse gas emissions from company, ethical sourcing, employee support, improved labour conditions, proper

governance, compliances and risk management. There is a relevant concept of Triple Bottom Line (TBL) which recommends that companies should commit to focus on social (people) and environmental (planet) concerns just as they do on profits and if a company focus on profits only, ignoring people and the planet, it cannot account for the full cost of doing business.Realizing the importance of having an effective sustainability strategy towards improving business reputation and market premium, many companies incorporating sustainability aspects in their basic business practices.

Sustainability dialogue between organization and stakeholders

There is an increasing realization by the Corporates that disclosures on ESGaspects of sustainability will improve stakeholders' engagement, fulfil social/ moral responsibility and promote business interest. This coupled with pressure from investors, consumers and governments on companies to be more transparent about environmental and social impact of their business activities has led many companies to opt Sustainable Reporting. It is the practice of measuring and disclosing by a company/organization of economic, environmental and social impact of their everyday activities to various stakeholders anddepicts the relationship between its strategy and commitment to a sustainable global economy. It is also an essential element of integrated reporting; a more recent development that combines the analysis of financial and non-financial performance which aims at providing a concise communication about how an organization strategy, governance, performance and prospects create value over time.

The Global Reporting Initiative (known as GRI) is an international independent standards organization that helps companies, governments and other organizations to understand and communicate their impacts on sustainability issues such as climate change, human rights and corruption. GRI has created one of the most credible sustainability report network.

With the objective of improving ESG dimensions for companies, India has made significant changes in its regulatory framework through Companies Act and SEBI Listing Regulations in recent years viz., emphasis on independence of Board, mandatory woman director, provision of 2% of profits towards Corporate Social Responsibility, Business Responsibility reporting and enhanced disclosure & transparency requirements etc. Companies Act, 2013 through Sec 166 casts fiduciary duties on the Directors of a Company to promote the objects of the company for the benefit of its members, employees, shareholders, community and for the protection of environment. The Securities and Exchange Board of India (SEBI) through its 'Listing Regulations' in 2012 mandated the top 100 listed entities (extended to 500 companies in 2015-16) by market capitalisation to file Business Responsibility Reports (BRRs) from an environmental, social and governance perspective. In Feb., 2017, SEBI has also provided for the adoption of Integrated Reporting on a voluntary basis from the financial year 2017-18 by top 500 companies which are required to prepare BRR.

Sustainability: Way ahead

As we have already missed the Bus, so we have to run hard: - A Chinese proverb says,"The best day to plant a tree was 20 years ago. The next best day is today".Though, much has been talked about sustainable development overthe years, only recently, some concrete steps have been taken in this direction viz.,swatch Bharat campaign, steps to reduce air pollution including banning of crackers on Diwali, formation of Jal Shakti Ministry for efficient use of water resources,reducing single-use plastic usage,etc. Still issues like poor waste management, quality of drinking water, increasing air pollution, soil degradation, lack of flood control and monsoon water drainage system etc., question our seriousness towards sustainable development. We should also not forget that growing India's population puts increased pressure on the assimilative capacity of the environment and adds to air, water, and soil pollution. Since, we had not confronted and resolved these issues in the past, we have no option

but to vigorously take up these issues and find solutions on an emergent basis. Though, such an urgent shift require balancing between various conflicting priorities like reducing carbon footprint through moving to renewable energy and future of thermal power plant industry (main player satisfying our power/energy requirements), but these issues need to be resolved Today to the best possible satisfaction of all stakeholders, as this is not a question of necessity butof survival.

Coordinated efforts from Government, Corporates, Society and Individuals:-All stakeholders need to fully understand the need for sustainable development and their role & positioning in this regard and make coordinated efforts to achieve sustainability objectives. Though Indian Government is taking necessary steps, as stated above, our performance in meeting Sustainable Development Goals (115thRank) indicates that much needs to be done in this regard. The Government should communicate its commitment to environment and its sustainability initiatives more vigorously and may rope in State Governments, Corporates and Civil Society to ensure effective actions. The companies need to be fully committed to sustainability and treat environment & society as important shareholders. The Board of Directors should periodically review ESG performance and encourage effective sustainable reporting and regular assessment of suppliers on ESG parameters. Society and individuals have a crucial role in promoting sustainable development by supplementing government and corporate efforts, supporting measures for environment protection, offering sustainable solutions to poverty, addressing corruption, choosing pro-sustainability inclusive governments, and empowering woman for climate action.Inspiration can be taken from likes of MsParam Saini, a social activist from Ludhiana who was in news recently, as she has been producing, for free distribution, 20,000 eco-friendly biodegradable sanitary pads every month made from wood pulp, cotton, and organic fiber.Society and individuals can also contribute by making our festivals environmental friendly.

Using Technology (Artificial Intelligence/IOT) to resolve environmental challenges:-According to a recent survey by Intel and the research firm Concentrix, substantial majority of business-decision makers working in environmental sustainability agree that artificial intelligence (AI) and the Internet of Things (IoT) will help solve long-standing environmental challenges. AI can be used in climate science & natural disaster prediction and can help in renewable energy technology to make solar panels and wind turbines more efficient and cost effective. Through machine learning, robotics, drones, and IoT, there can be better monitoring and prevention of damage and stressors on Earth's land, air, and water(www.recode.net). Many startups in India like Vassar Lab, Uravu labs etc., are leveraging technology (like IoT) to provide much-needed water solutions to India.

> In August, 1963, Dr. Martin Luthar King, Jr., wrote from Barbhingam Jail – "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Sustainability is often defined as the ability to exist constantly i.e., meeting the needs of the present without compromising the ability of future....

To conclude, it can be said that sustainability means understanding by the Governments, Corporates, Societies and individuals, the seriousness of impact of their actions and business practices on themselves and for coming generations, and taking actions to ensure continual co-existence of human and environment. Substantial emergent efforts need to be undertaken in the direction of sustainable development as we are lagging behind in addressing the ill-effects of our actions which we have created/are creating over time in the race of material advancement. For this, we should be committed to sustainability objectives and imbibe social, environment and governance aspects of sustainability in our day to day activities with the understanding that sustainability is not only a way of life but sustainability is the way To quality life.

Disclaimer: The Views expressed in the article are those of the author and do not necessarily reflect the opinion of the company or any other Govt. agency. Your valuable comments on the article are welcomed at inderyours@gmail.com.

New and Improved Convention Centre at SCOPE Complex and SCOPE Minar

Conference Facilities at SCOPE Convention Centre Lodhi Road, New Delhi

The centrally air-conditioned SCOPE Convention Centre at SCOPE Complex, Lodhi Road, New Delhi provides excellent conference facilities to PSEs, Govt. Departments, Autonomous Bodies, Institutions/NGOs etc. The Auditorium and other Conference Halls are equipped with projector and screen facilities, sound & light control room with recording & P.A. facility, etc. Details of the capacity of the Auditorium and other Halls, which are available on nominal tariff are given below:

Tagore Chamber

The chamber having capacity of 92 persons (86 Nos. Chairs + 6 Nos. Chairs on Dais) equipped with 2Nos. projector & screen and mikes on dais, tables & podium.

Auditorium

The Auditorium having capacity of 310 persons (300 Chairs + 10 Nos. Chairs at stage) capacity equipped with projector, screen and mikes on dais and podium on stage.

Bhabha Chamber (Board Room)

The chamber having capacity of 44 persons (24 Nos. Chairs on round table and 20 Nos. Chairs on sides) equipped with projector, screen and mikes on dais, tables & podium.

Mirza Ghalib Chamber

The chamber having capacity of 108 persons (102 Nos. Chairs + 6 Nos. Chairs on Dais) equipped with 2 Nos. projector & screen and mikes on table, dais and podium.

Fazal Chamber

The chamber having capacity of 25 persons (15 Nos. Chairs on round table and 10 Nos. Chairs on sides) capacity with board room type sitting arrangement equipped with projector, screen and mikes.

Business Centre

The Business Centre having capacity of 7 persons equipped with multi point Video Conferencing System (1+3), at three locations at a time for National & International both.

Annexe II

The Annexe-II has capacity of 15 Persons and is equipped with projector and screen.

Banquet Hall

The banquet hall having capacity of 500 Persons for the purpose of lunch & dinner. Sitting arrangement could be done for 40 persons.

Tansen Chamber at UB

The Tansen Chamber has capacity of 30 persons and also has stage & podium equipped with projector and screen.

Annexe I

The Annexe-I has capacity of 20 Persons and is equipped with projector and screen.

Amir Khusro Chabmer at UB

The Amir Khusro Chamber has capacity of 35 persons with facility of stage & podium equipped with projector and screen.

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Conference Facilities at SCOPE Minar Convention Centre, Laxmi Nagar, New Delhi

SCOPE Minar, an architecturally conceived in the form of two high rise curvilinear tower blocks sitting on a four storey circular Podium Block, is strategically located in Laxmi Nagar District Centre, Delhi -110092 and housing around 40 PSEs of repute. It is one of the iconic buildings of East Delhi. It has a huge foyer which gives an ambience look inside the building. There is a green environment all around the SCOPE Minar building with large size planters. The building also has state-of-the-art Convention Centre comprising of five conference halls i.e.

Auditorium

The auditorium has capacity of 350 delegates. Various seminars, training programmes, presentations, get together etc. can be conducted in auditorium which is equipped with projector and screen. It provides ambient and peaceful environment for the programmes.

VIP Lounge

VIP Lounge has sitting capacity of 30 delegates. The executives and higher level officers, Directors, CMDs can use it as waiting lounge also.

Board Room

Board room having "U" shaped table, has a sitting capacity of 50 delegates with modern facilities - projector, screen, sound system, table mic etc.

SCOPE Academy of Public Sector Enterprises

SCOPE Academy of Public Sector Enterprises (APSE) conducts induction level programmes for PSEs' executives. It has three training halls equipped with projector, screen, sound system etc. one with capacity of 40 persons and two halls with capacity of 30 persons each for training purpose.

Meeting Hall

Meeting hall having "U" shaped table, has a sitting capacity of 62 delegates. Most widely used for small size meetings and training programmes, group discussion, power point presentations etc. and is equipped with projector and screen.

There is a wide space for vehicle parking that cater for a capacity of 550 cars, including the newly built good quality Banquet Hall wherein 300 delegates can comfortably dine at a time, makes it special to deliver an all-round conducive meeting environment .

SCOPE Forum of Conciliation and Arbitration (SFCA)

SCOPE had set up an Arbitration Cell known as SCOPE Fourm of Conciliation and Arbitration a(SFCA) mainly to settle disputes between PSUs and its associates. SFCA has framed its own rules prescribing consolidated fee structure and expenses with the assurance that arbitration proceedings shall be completed in the shortest possible time and shall be more economical in comparison to other institutions. A panel of expert Conciliators and Arbitrators has also been drawn which consists of retired Judges of Supreme Court, High Court, retired Secretaries, Joint Secretaries of Govt. of India , Chief Executives, Directors and senior officials of Govt. of India and PSEs, besides Advocates and C.As and other professionals.

The Forum has its own infrastructure with a spacious Arbitration Hall having sitting capacity of 15 persons with all the modern facilities such as projector for live projection of record of proceedings on a large screen with free service of mineral water, tea/coffee and biscuits. High tea and lunch can also be arranged by the Forum on request in advance at the cost of the parties by authorised caterer of SCOPE.

For Booking & Tariff details for Convention Center, SCOPE Minar, Laxmi Nagar please contact

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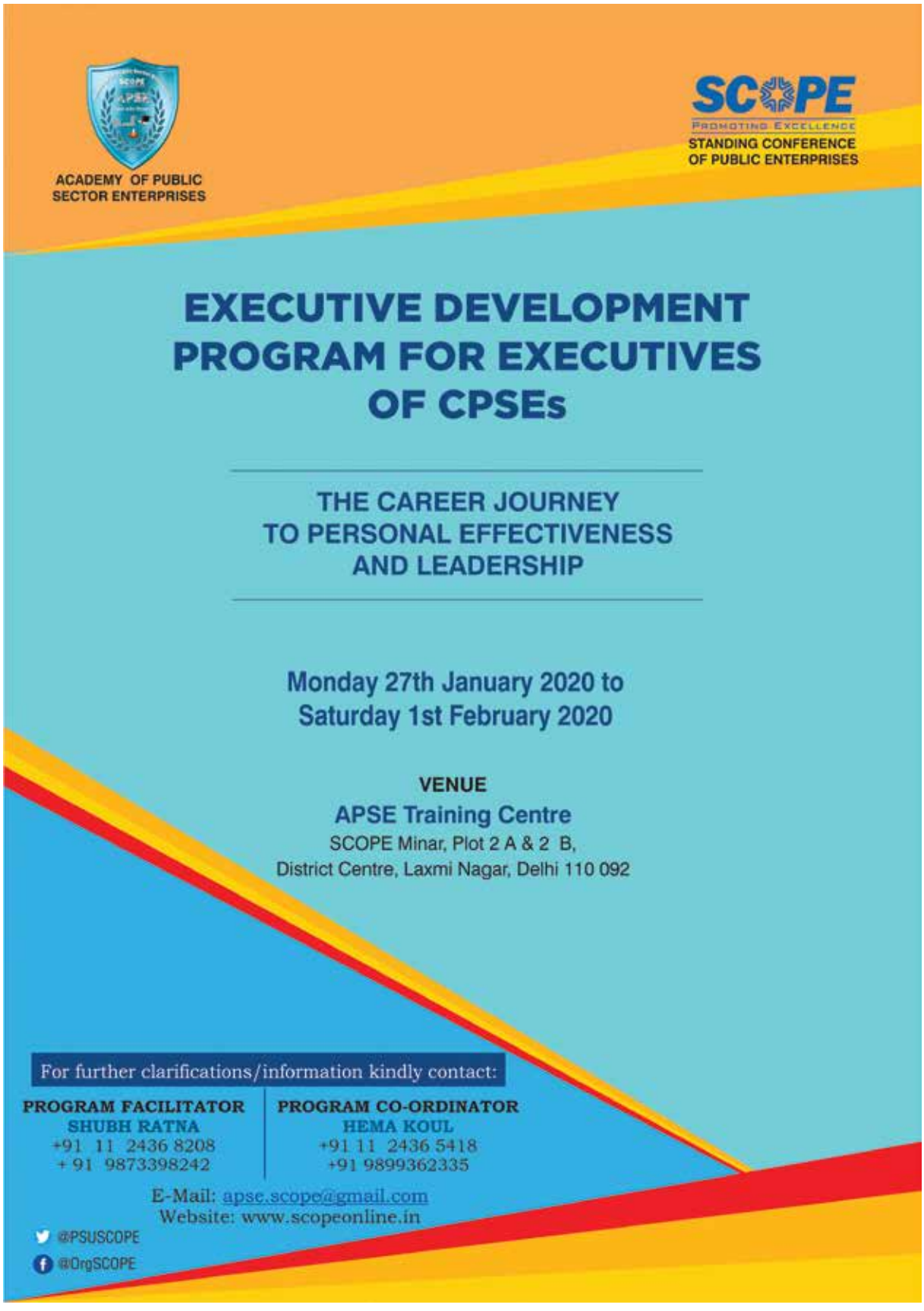
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