FULL TEXT OF THE INAUGURAL ADDRESS DELIVERED BY HON'BLE THE CHIEF JUSTICE OF INDIA SHRI JUSTICE N V RAMANA AT THE CONFERENCE ON 'ARBITRATING INDO-UK COMMERCIAL DISPUTES'

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I am glad that FICCI and ICA have brought together eminent experts to deliberate upon pressing issues in the field of arbitration law. The theme chosen for this event, "ARBITRATING INDO-UK COMMERCIAL DISPUTES" is an important topic that merits in-depth discussion.

FICCI and the Indian Council of Arbitration are doing a commendable job in making India a favourable destination for all investors and businessmen. It has been in the forefront of garnering opportunities for Indian businesses and start-ups. Similarly, the Indian Council of Arbitration is one of the leading arbitral institutions in South Asia and is dedicated to the cause of quick and inexpensive justice.

London has been the financial hub of the world. Whether finance, insurance, stocks or trade, this port city is the gateway, where the east and west converge. Its ideal location situated between two time zones and the global appeal of the English language has boosted London's dominance in the commercial world.

Undeniably, other important aspects behind London's consistent position are its progressive policies, the presence of the best of the legal minds and leading dispute resolution centres.

With increasing trade and commerce, there was a rise in the number of established Arbitration Centres in London. This city also features the highest concentration of arbitrators, industry experts, counsels and solicitors. Apart from the aforesaid factors, a robust arbitration legislation and impartial and supportive court system have reinforced London's position as one of the most popular seats for international arbitration.

The historical trade and commercial ties between the United Kingdom and India need no reiteration. Presently, India stands as the UK's 12th largest trading partner. In 2020, the foreign direct investment (FDI) from the UK to India was 14.9 billion pounds. During the same period, FDI in the UK from India was 10.6 billion pounds. The recent India-UK Free Trade Agreement will pave a new path for future investments. It is projected that the FTA could strengthen the business relations between the two nations further.

India is rated to be one of the fastest growing economies. In trade and business, as in any human relationship, difference of opinions and conflicts are bound to occur. To achieve the title of an investor friendly destination, India needed to establish and strengthen an efficacious mechanism to address these issues and ensure that business continues to operate without much hassle. This is where

Alternate Dispute Resolution, and particularly Arbitration plays a significant role.

Arbitration is the best suited dispute resolution mechanism for the commercial world. It is an effective alternative to traditional litigation and is regulated primarily by the terms previously agreed upon by the parties themselves. The process is consensual, confidential and the result is binding.

The parties have the freedom to choose not only the procedure and the laws that govern their transaction, but also have the freedom to choose their own arbitrators and domain experts. This choice provides parties with a sense of neutrality and fairness in the process.

Although, arbitration is not new to India, I must admit that it is still a domain which is evolving with the changing needs of the time. As you all are aware, the legal regime was introduced first in 1940, by way of a pan-India Arbitration Act. Keeping in view increasing cross border transactions and disputes arising thereof, India adopted the UNCITRAL Model Law while enacting the Arbitration and Conciliation Act in 1996. One of the important pursuits of the drafters was to achieve a cost effective and quick mechanism for the settlement of disputes with minimum intervention of Courts in the process of arbitration. However, our experience with the Act indicated the existence of certain practical issues in achieving the aforesaid objectives.

The Parliament amended the Arbitration and Conciliation Act of 1996 in 2015, 2019 and 2021. The main objective was to streamline the dispute resolution process by fixing strict timelines and reducing judicial interference. The much appreciated changes were introduced in the form of no automatic stay of arbitral award upon challenge to award, recognition of emergency awards and shift to institutional arbitration.

It can be safely concluded, that the growth of the Indian Arbitration scenario has been very responsive to global trends and demands. One important issue that we often encounter is that of enforcement. An award resulting from an international commercial arbitration is enforced according to international treaties and conventions. Enforcement of foreign awards in India is governed by Part II of the Indian Arbitration Act. In India, the courts are pro-arbitration. From the reference stage to enforcement, the Courts are fostering an environment where arbitral institutions and the autonomy of the arbitrator is respected. The United Kingdom is one of the reciprocating countries under Section 44A of the Code of Civil Procedure in India, wherein the decree passed by courts in England are enforceable as a decree passed by Indian Courts.

Apart from ease of enforcement, another advantage for choosing India as a favored investment destination is its judicial system. Both the legal systems in India and the United Kingdom are known for giving paramount importance to the rule of law. Both the nations share a similar legal culture, where Courts are known and respected as independent institutions. Apart from this, the investors would be entering into a common familiar legal field as both nations

follow the common law system. Laws on important issues are often convergent between both nations.

An issue that has been affecting court systems across the world relates to the fact that decisions within the regular courts take a long time. There is no denying that pendency of cases is a major issue in India. Reasons for this include growth of the Indian economy, population, rising awareness about rights etc. In the absence of infra structure and sufficient number of judges commensurate with the increasing work load, the problem is intensifying. This is why I have been strongly advocating for transforming and upgrading the judicial infrastructure in India, as well as filling up of judicial vacancies and augmenting the strength.

After I assumed the office of Chief Justice of India, in addition to filling up of 11 vacancies in the Supreme Court, the Collegia could secure appointment of 163 Judges to various High Courts. 23 more recommendations are pending with the Government. The Central Government is yet to transmit another 120 names received from various High Courts to the Supreme Court Collegium. I have been reminding the Government to expedite the process so that remaining 381 vacancies can be reduced considerably. I am hoping for some forward movement in this regard.

Another way of reducing the burden of pendency is to promote and popularise other means of dispute resolution, such as Arbitration or Mediation. In fact, throughout my professional legal career, I have been a strong advocate of dispute settlement mechanisms that do not require litigants to face traditional litigation.

Several international dispute resolution institutions are being established across India, to provide the commercial world speedy and effective resolution of their disputes.

I am also glad to state that different State Governments in India are taking active steps in establishing International Arbitration Centers, keeping in view global trends. The aim is to set up professionally run Arbitration and Mediation institutions in India along the lines of the LCIA or the Singapore International Arbitration Centre. This is in line with the recommendations made by the Srikrishna Committee to the Government of India in 2017. Ultimately, the presence of modern infrastructure, with a global outlook, will attract both domestic and foreign parties to seek resolution of their disputes.

The increasing emphasis on establishing modern Institutional Arbitration Centers is understandable considering the benefits of institutional arbitration. The pre-established rules and framework give parties much needed certainty and transparency. An obvious advantage of institutional arbitration is the assured efficient administration. They provide complete pre-trial support, whether infrastructural, secretarial or otherwise. This helps the parties to go through the entire resolution process without any hassle.

An eminent arbitrational institution also provides a guarantee for bringing in esteemed panelists and arbitrators from across the globe, with rich and diverse experiences and knowledge. The choice of an arbitrator is very crucial. An Arbitrator with the requisite expertise, experience and practical understanding can bring a big difference in the process. The arbitrators must understand the consequences of their decisions. Without such an understanding, the arbitral process and the outcome will be unsatisfactory for the parties involved.

The presence of International Arbitration Centers will not only boost India's global position as an investor friendly nation but also will facilitate the growth of a robust legal practice. It will provide a fresh avenue for young lawyers to indulge in the practice of International Commercial Law.

Personally, I think it is the era of Institutional Arbitration and Mediation in India. To catch up to the developed world, world class Arbitration and Mediation Centres need to be set up and promoted. Individual arbitrators and mediators would have an opportunity to support, and develop these institutions, while also becoming empanelled.

Experienced arbitrators and mediators can use their knowledge and experience to make these Institutions world class. Keeping the big picture in mind, I have taken the initiative to set up an International Arbitration and Mediation Center in Hyderabad. I am happy to note that the Government of India has proposed to set up another one in the State of Gujarat. As these Centres are new and upcoming, there is a lot to be learned and shared from the success stories of arbitration in London.

Conferences, such as the present one, provide us with unique opportunities to discuss pertinent issues and roadblocks with the stakeholders to come up with appropriate solutions. We can learn from each others' experience. Today we have eminent panellists discussing two important aspects of Arbitration: Med-Arb, and Recent Trends in Shareholders and Merger and Acquisition Disputes. These days most arbitration clauses in commercial contracts have a multi-tiered approach, where the first attempt is to resolve the dispute between parties through mediation or negotiation.

The Med-Arb system proposes certain advantages. Primarily, the hope is that parties would be able to successfully enter into a negotiated agreement as there exists the threat of a third party (the arbitrator) entering and imposing a binding decision which may not be to their benefit. However, an issue that needs to be discussed and deliberated upon is the enforceability of such negotiated settlements, and how to ensure that parties follow the same. I am sure the panelists here today will pay some attention to this pressing issue.

Coming to the next session, involving Recent Trends in Shareholders and Merger and Acquisition Disputes. In today's world, where Mergers and Acquisitions worth trillions of dollars are being undertaken every year, commercial arbitration is an efficient process to resolve disputes arising from the same. As there are huge economic repercussions involved in such

transactions, their timely resolution is essential. Commercial arbitration is best suited for this purpose. At the same time, this also throws up certain interesting questions due to the interaction between *in-personem* and *in-rem* rights in these transactions.

Arbitration under a Shareholders' agreement might involve issues relating to winding up or oppression and mismanagement, which may affect the rights of a large number of people. Such an issue could raise difficult questions before the Courts at the reference stage.

Before I conclude, it is time for us to introspect and find ways and means to explore all possibilities to make arbitration an efficient result-oriented institution. In this context, I would suggest the following:

I. Establishment of more Commercial Courts for dealing with arbitration cases and nominating experts in the field to be Judges of those Courts.

II. The role of the Court in arbitration process must be supervisory. We should not cross the fine line between assistance and interference.

III. There are some specialized institutions like Indian Council of Arbitration (ICA) and the International Centre for Alternative Dispute Resolution (ICADR). We need more such institutions. Institutional arbitration has to be encouraged and streamlined to provide for continuous hearings and expeditious awards.

IV. The most important aspect for the success of arbitral proceedings is the efficiency and efficacy of its Award Enforcement Regime. This is especially true for a country like India, which is a hub for investment. One mechanism to improve enforcement that I have earlier suggested is to constitute a special authority by the State which could assess an investment contract prior to its execution. A contract which went through such prior assessment would be presumed by Courts to be in line with the public policy of the State, thereby ensuring a more expeditious execution. This is just a suggestion, of course. I request the panelists to discuss and come up with new ideas and possible solutions. This is a vital area which requires greater debate and expert opinion.

V. Another suggestion is that the various institutional arbitration centres functioning across the world may consider forming a council or confederation. This would enable them to share experiences and adopt best practices.

Today is a brilliant opportunity for the solicitors, arbitrators and the investors present here. We are fortunate to have the dynamic Indian Union Minister for Law, Mr. Kiren Rijiju with us. After a very candid discussion on pertinent issues affecting the arbitration scenario in India, I am certain the Minister can make an informed policy decision keeping in view the concerns expressed by the stakeholders here.

Before I conclude, I must thank FICCI and ICA for hosting this event and inviting me to inaugurate this conference. I would like to place on record special compliments to Mr. Arun Chawla. But for his relentless efforts, this conference would not have materialised. I congratulate him and his team for taking this brilliant idea to its logical conclusion.

Thank you.