

Business Standard

The Union Finance Minister Shri Arun Jaitley delivers the Valedictory Address at the Conference on 'International Arbitration in BRICS; FM calls for larger Economic and Trade cooperation amongst BRICS Nations; Asks them to set-up a Task Force of experts and officers to explore possibilities for setting-up world class Arbitration Centers among others.

Delhi August 27, 2016 Last Updated at 12:27 IST

The Union Finance Minister Shri Arun Jaitley delivers the Valedictory Address at the Conference on 'International Arbitration in BRICS; FM calls for larger Economic and Trade cooperation amongst BRICS Nations; Asks them to set-up a Task Force of experts and officers to explore possibilities for setting-up world class Arbitration Centers among others.

The Union Finance Minister Shri Arun Jaitley calls for larger economic and trade cooperation including goods and services among the BRICS member nations i.e. Brazil, Russia, India, China and South Africa for achieving higher growth in the globally challenging environment. Shri Jaitley was delivering the Valedictory Address at a Conference on 'International Arbitration in BRICS: Challenges, Opportunities and Road ahead' in the national capital here today. The one day Conference was jointly organized by the Department of Economic Affairs, Ministry of Finance, Government of India along with the Federation of Indian Chambers of Commerce & Industry (FICCI) and Indian Council of Arbitration (ICA).

Speaking on the occasion, the Union Finance Minister Shri Jaitley also called for not only

free trade but also fair trade. He asked the BRICS nations to set-up a Task Force of experts and offices from BRICS nations to explore the possibilities for setting-up world class Arbitration Centers in these countries among others. In this task force, they can debate all the issues and areas of concern which were debated and deliberated in three technical sessions of the one day Conference, he added. The Finance Minister said that there is also need for having a credible international dispute resolution mechanism among BRICS countries to resolve all trade related issues among them and there shall be effective system in place to quickly implement the arbitration awards. He said that later on once this mechanism established, this can be extended to non BRICS nations as well. He also called the BRICS member countries for capacity building by having a pool of international level arbitrators and arbitration lawyers among others.

Earlier, speaking on the occasion, Shri Shaktikanta Das, Secretary, Department of Economic Affairs, Ministry of Finance, Government of India said that despite globally economy facing various challenges, it is emerging economies carrying the world growth on their shoulders by performing much better than others especially on economic front. He said that existing international arbitration regime while taking any decision should consider the social welfare and development policies of the developing and emerging economies and not only the private commercial requirements. He said that India in its Model Draft of Bilateral Investment treaty has a provision that international investors have to first exhaust the option of local judicial system at least for five years before going to international arbitration mechanism. He said that there is necessity for early dismissal of frivolous claims.

The First Technical Session of the Conference was held on the subject Arbitration and Dispute Resolution: Focus BRICS Countries in which Mr. Gaurab Banerji, Senior Advocate & Barrister, Supreme Court of India was the Moderator. In this panel discussion Speakers from BRICS countries broadly highlighted upon issues which are as follows:

First legal framework in BRICS countries on domestic and international arbitration;

Second -BRICS countries experience in handling arbitration including requirements for reference to arbitrations; and

Third- the role of domestic courts in enforcement of awards

Lastly, brief introduction on investment agreements and dispute resolution mechanism under them.

Some suggestions were made by the panelists are as follows:

? There is a need for interaction between the legal fraternity like judges and lawyers from BRICS countries to discuss the ground realities and the challenges as pointed out by

Brazils speaker

? Even if an institution at BRICS level is formed, it is relevant to enhance peoples trust in that institution;

? Additionally , as speaker from china pointed out that there are many arbitral institutions and one more by BRICS may not solve the emerging issues, especially considering the differences in historical legal systems of the BRICS countries which may impede a making of a common framework . The suggestion was that it would be more beneficial to have arbitration rules for BRICS countries rather than an institution.

In second Thematic Session on Dispute Settlement and Enforcement of Treaty Awards, Delegates from the BRICS countries participated in the panel discussion. Ms Pallavi Shroff, Managing Partner, Shardul Amarchand Mangaldas & Co. was the Moderator & Speaker. Panelists from BRICS Countries broadly highlighted upon their experience with investment treaty disputes and treaty awards:

? Most BRICS Nations, have not had a very positive experience with investment arbitration;

? Brazil and South African speakers pointed out an empirical evidence to establish co-relation between BITs and FDI;

? We noted the different pathways adopted by Brazil and South Africa in relation to investment protection and diversity in usage of BITs among BRICS nations- All BRICS countries , with exception of Brazil have signed and ratified BITs;

? BRICS countries experience with misuse of existing investment arbitration mechanism and adverse awards;

? There is some lack of clarity and understanding on enforcement of investment awards like China and India

? None of the BRICS countries, except China has ratified ICSID Convention;

Suggestions some very relevant issues have been culled out from this discussion, which are:

? Whether countries should continue with treaties as they exit; or

? Enter into new agreements favourable to Government; or

? Enact domestic legislations for protection of investments- how would that protect

outbound investment as bilateral /multilateral treaties; or

? Should a new/separate arbitration regime be established for BRICS or all developing nations- should it be restricted to commercial disputes or cover investments matters as well;

? Further, considering the challenges faced with enforcement of awards-should BRICS take an initiative to set up an investment court

? Regardless of arbitration mechanism- governments need to guarantee rule of law to investors and investors rights should be proportional to their contribution to economic development

? A balance must maintained between the sovereign right to regulate vs. investor interest , though China is now a member of the ICSID Convention, state immunity may come in the way of enforcement of ICSID awards

In Third Session on Towards developing an International Arbitration Mechanism in BRICS, Mr. Nishith Desai, Managing Partner, Nishith Desai Associates was the Moderator & Speaker. Speakers discussed if there is a need to develop an international arbitration mechanism within BRICS, when there are existing arbitral institutions of repute. They also discussed the structure of the BRICS institution would need to accommodate both commercial and investment arbitration and address issues like-location, hearing centre, staffing, sustainability and achieve acceptability in both BRICS and non- BRICS nations to be successful.

Some suggestions were made by the panelists are as follows:

? Increase awareness by increasing the interaction between the legal experts in the BRICS nations about the existing arbitral institutions in the individual BRICS nations.

? BRICS arbitration mechanism can be cost-effective, have a less onerous arbitration procedure, better BRICS represented arbitrators list, friendlier to SME, enforceability of awards.

? A transparent investment arbitration mechanism from the current confidential proceedings.

Shri Suresh Chandra, Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India has summed up the outcomes of One day Conference.

Outcomes of this Conference could go a long way in better understanding and optimally utilizing the legal framework governing international arbitration involving BRICS member

countries.

|