

Dispute Resolution Hotline

August 02, 2019

MEDIATED SETTLEMENTS: THE NEXT REALM OF DISPUTE RESOLUTION IN INDIA

- Union Cabinet approves ratification by India of the Singapore Convention
- Global framework being put in place for the enforceability of mediated settlements
- Likely to provide a significant impetus to mediated settlements and their enforceability in India

INTRODUCTION

On July 31, 2019, the Union Cabinet, chaired by Prime Minister Narendra Modi, approved the signing of the United Nations Convention on International Settlement Agreements Resulting from Mediation (popularly referred to as the “Singapore Convention”) by the Republic of India. This is scheduled to be held at Singapore on August 07, 2019, or thereafter at the United Nations Headquarters. This is a landmark decision and puts the future of mediation and mediated settlements in India on a strong pedestal.

WHAT IS MEDIATION?

Mediation¹ is an interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. Mediation is focused upon the needs, rights, and interests of the parties. Mediation is voluntary and non-binding. Mediation is not an adversarial process. Rather, a mediator is facilitative.

THE SINGAPORE CONVENTION

The Singapore Convention aims to provide a global framework for the enforcement of mediated settlement in international commercial disputes arising from mediation. Putting it simply, it aims to do for international mediation what the New York Convention did for international arbitration. Upon its ratification and coming into effect, the Singapore Convention is expected to provide impetus to mediation as a method of resolving commercial disputes.

The treaty comes into effect six months after the ratification of 3 countries. Thus far, about 25 countries, including the United States of America and China, have indicated their willingness to sign and ratify the Singapore Convention. This demonstrates the widespread acceptance of the need of the treaty. It is truly the need of the hour.

INITIATIVES TO PROMOTE ADR MECHANISMS

The Government of India has been proactively taking steps to improve the ease of doing business in India. Improvement in the ability to resolve disputes is an important step in this. To this end, several steps have already been taken with many more in the pipeline. Amongst them (i) the Government is establishing the New Delhi International Arbitration Centre (NDIAC) as a statutory body; (ii) The Commercial Courts Act, 2015, has been further amended; and (iii) further amendments to the Arbitration and Conciliation Act, 1996, are currently underway (the efficacy of which are quite debateable).

Each of these initiatives are designed with a view to resolve disputes utilizing alternative dispute resolution mechanisms instead of the traditional court system, which is overloaded and where delays abound.

MEDIATION IN INDIA

While informal mediation in India is prevalent since time immemorial, Indian law does not, till date, recognize a settlement arrived at in mediation proceedings. It is for this reason that most parties prefer to have a mediated settlement recorded as a consent decree or award. This grants it enforceability.

For India, signing of the Singapore Convention is expected to boost the confidence of investors and also provide a positive signal to foreign investors about India's commitment to adhere to international practice on alternative dispute resolution.

Even though mediation is extremely useful and is an excellent dispute resolution mechanism, the fact that it is non-binding (and consequently dependent on the volition of the disputing parties) makes it vulnerable to misuse. In that sense, this decision by the Union Cabinet is likely to encourage the adoption of tiered dispute resolution clauses, first providing for mediation and then providing for arbitration. The upside of a dispute quickly resolved by mediation is too alluring to not consider. One can also expect the Government to roll out a detailed framework within which mediation in India and mediated settlements will operate.

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¹ See <https://en.wikipedia.org/wiki/Mediation>

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