

Dispute Resolution Hotline

April 04, 2018

ARBITRATION COUNCIL: THE BIRTH OF A NEW REGULATOR?

This article was originally published in the 04th April 2018 edition of

FINANCIAL EXPRESS
Read To Lead

The Supreme Court passed judgments overruling its previous positions, and the government made changes to the law, bringing in much-needed air of freshness in an otherwise stale and abused law.

Regulation is usually antithetical to growth. Over the past decade, we have witnessed the growth of arbitration in India. The Supreme Court passed judgments overruling its previous positions, and the government made changes to the law, bringing in much-needed air of freshness in an otherwise stale and abused law. Arbitration in India has finally taken off. However, this flight may be short lived.

The Cabinet recently approved the Arbitration and Conciliation (Amendment) Bill, 2018, which would make several changes to the arbitration laws. These amendments are based on the report of the High-Level Committee constituted under the chairmanship of Justice BN Srikrishna. The aim is strengthening institutional arbitration, which, consequently, would improve dispute resolution in the country.

A key recommendation made under the report is the constitution of a council that would grade arbitral institutions in India and set benchmarks. In addition, the council has other functions such as recognising professional institutes that provide accreditation to arbitrators, issuing recommendations and guidelines for arbitral institutions, and taking steps for creating India as a centre of domestic and international arbitrations. While recommending the constitution of such a council, the committee strongly cautioned against the council acting as a regulator. However, the government appears to have not seriously heeded to this warning.

The committee recommended that the council would provide benchmarks and guidelines. While adopting this recommendation, the Bill gives power to the council of making regulations, which would have force of law. Thereby completely changing the nature of the body from the one contemplated under the report.

Contrary to the recommendations of the committee, the governing body of the Arbitration Council of India would only consist of people nominated by the government and members of ministries. This raises serious issues of conflict of interest. Arbitral institutions perform crucial functions requiring a high degree of independence and impartiality such as the appointment of arbitrator, extension of timelines, scrutiny of awards, etc. The government is the largest litigator and, by virtue of council, has the ability to grade arbitral institutions and set benchmarks for them.

The committee recommended the appointment of an eminent overseas practitioner nominated by the Attorney General of India on the governing body of the council. The overseas practitioner would have helped introduce international best practices, and, importantly, allow the council to be viewed favourably by foreign counterparts, considering that the government wishes to promote international arbitration in the country. However, this suggestion has been dropped.

Further, the report only spoke of the council recognising professional institutes that provide accreditation to arbitrators such as the Chartered Institute of Arbitrators.

However, the Bill allows the council to review the grading of arbitrators. This creates a concern, i.e. whether the council could also directly look at arbitrator accreditation? If so, it again creates a huge issue of conflict of interest.

The list of issues doesn't end here. There are several concerns with the amendments proposed in the Bill, grammatical and typographical errors included. The government, while taking the broad recommendations under the report, has critically altered the suggested constitution of the body and given it much wider powers. Therefore, though it may be claimed that the Arbitration Council of India is not a regulator but a promoter of arbitration, the Bill surely allows it to act like one if it chose to do so.

Ashish Kabra

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In

Research Papers

Little International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

case this mail doesn't concern you, please unsubscribe from mailing list.

Scope of judicial interference and inquiry in an application for appointment of arbitrator under the (Indian) Arbitration and Conciliation Act, 1996

September 22, 2024