The Singapore Mediation Convention And Its Effects On Indian Businesses Per Se

written by Rajeev Rambhatla | September 26, 2020

The Singapore Mediation Convention: Ease of International Dispute Resolution and its Significance for Indian Businesses

The United Nations International Convention on Settlement Agreements for Mediation (Singapore Convention) was taken up for signature in Singapore on the 7th of August, 2019, and the same came into force on the 12th of September 2020. The Singapore Convention, if read in entirety corresponds to the growing demand from a body of users who rely on mediation as an enforcement mechanism that is applicable to settlement agreements in case of cross border disputes. Technically, it is an international convention that aims to help businesses resolve cross border disputes and further facilitate international trade.

This convention looks to give global businesses with some amount of certainty in resolving cross border disputes by way of mediation and making it possible for them to apply directly to the courts of countries that have ratified the convention in question. As per the latest data, there are 53 signatory countries to the convention and this convention is also called the United Nations Convention on International Settlement Agreements Resulting from Mediation, including India, China and the United States.

Applicability Of The Singapore Mediation Convention

As it stands, a settlement agreement executed in country A has no legal force in country B. A party looking to enforce a mediated settlement agreement in a different country or multiple countries for that matter will have to initiate legal proceedings in each of those countries. This can be very costly and time heavy, especially for settlement agreements that are of international nature.

Now, after this convention has come into effect, one of the parties to the dispute looking for enforcement of a cross border mediated settlement agreement can do so by applying to the courts of the signatory countries that have also ratified the treaty/convention. This can save time and money for all signatory countries and adds to their convenience index as well. Another big advantage of this convention is that it can always help the signatory countries during times of uncertainty like the current time of the pandemic.

Before this convention came into force, the settlements which are reached through mediation were enforceable through contracts. The only deviation from this settled procedure is where mediation is undertaken as a part of arbitration or litigation proceedings and an agreement is reached through mediation which can be enforced as an arbitral award or a decree. The convention and the accompanying Model Law intends to introduce a legal framework wherein mediated settlement agreements resulting from international commercial disputes can seek enforcement. Ergo, it can be concluded that it is similar to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[1].

Now, moving towards the basics of this convention, the primary applicability criteria of this convention is that that it is applicable to two parties who have their place of business in two different countries. Certain kinds of settlement agreements that are excluded from the scope of the Singapore Convention are settlement agreements that have been approved by a court or concluded in court proceedings and those which are enforceable as a judgment in the state of such a court, or those that have been recorded and are enforceable as part of an arbitral award.

Settlement agreements that pertain to a few particular subject matters are also excluded which are inheritance or employment law and those of disputes arising from transactions engaged in by a consumer purely for personal purposes.

Limitations Of The Convention

There are a limited number of grounds under the Singapore Convention based on which a state party may refuse to grant relief as requested by a party to a settlement agreement. As per Article 5(1) of the Convention, relief may be refused only if the party opposing relief can furnish proof of any of the following:

- A party to the settlement agreement was somehow incapacitated;
- The settlement agreement is frustrated, declared void *ab initio* or incapable of being performed under the applicable law;
- The settlement agreement is not binding or final according to its terms; it has been subsequently modified; the obligations under the settlement agreement have either already been performed or are not clear or comprehensible, or granting of relief would be in contravention of the terms of the agreement;
- There was a breach of serious nature by the mediator in absence of which breach that party would not have entered into the agreement;

- There was a failure on the part of the mediator to disclose circumstances to the parties' which raise significant doubts as to the mediator's impartiality or independence and such a failure to disclose had a material impact or undue influence on a party in absence of which failure that party would not have entered into the agreement.

  Further, as per Article 5(2) relief may be refused if the competent authority where relief is sought finds:

1. Granting relief would be in contravention of public policy;
2. The subject matter of the dispute at hand is not capable of settlement by mediation under the law where the relief is being sought;
3. It is noteworthy to mention the fact that these grounds are by and large similar to the grounds enumerated under New York Convention.

Singapore Convention & India

In 2019, India was among the first group of signatories to the United Nations Convention on International Settlement Agreements which we know as the "Singapore Mediation Convention" today. To deeply engrave the results of this convention, India needs to ratify this convention. The convention is designed in such a manner that each and every signatory is required to work with their own domestic processes and procedures in order to bring them in conformity with the required protocols for ratification.

A treaty can be ratified by obtaining the instrument of ratification under the signature and seal of the President of India. Now, after analyzing the scheme of this convention, one thing which is very clear is that it is not going to have a substantial effect on the contracts which will be signed by Indian businesses having their business in India with other companies which are located in a different state who is a signatory to this convention and are doing business somewhere else.

The key change which this convention will bring is regarding the dispute resolution because the conventional method of resolving the dispute which we all know is arbitration will be changed and one has to incorporate the settlement of dispute by way of mediation after this convention has come into force. In addition to this, the enforcement aspect of the settlement reached through mediation is the most attractive feature of this convention which will have its own advantages to the parties who are contesting their claim and effecting an amicable settlement through mediation and saving their time and money.

Mediation In India

Though unlike arbitration, mediation has never been dealt with by any separate legislation in India and it is mentioned under Section 89 of the Civil Procedure Code and it says that whenever there is an element of settlement in a dispute, judges are required to give the parties an option to resolve their disputes through either Arbitration, Mediation, Conciliation, Lok Adalat or Judicial settlement.

The landmark case on this point is the case of Afcons Infrastructure and Ors. v. Cherian Varkey Construction and Ors.[2], wherein the Hon'ble Apex Court clarified that Courts can *suo moto* order parties to go for mediation and listed out the categories of suitable cases. The court stated that mandating parties participating in mediation does not prejudice the "voluntariness" of mediation as the extent of participation and the outcome of mediation is left entirely to the free will of the parties.

As it stands, almost all High Courts in the country have a Court Annexed

Mediation program that is set in place. Some of the courts including the Supreme Court, refer cases to private mediation when they feel the need to do so. The Companies Act 2013, the Real Estate (Regulation and Development) Act 2016 and the Consumer Protection Act, 2019 include mediation. The Commercial Courts Act, 2015 has a mandatory requirement for pre-institution mediation.

Conclusion

It is indeed a good sign that India is one of the first signatories to this convention however it remains to be seen how India ratifies this convention and how it equips its judicial system to accommodate litigation arising from this convention. Nonetheless, in the current scenario, this move adds weightage to India's ease of business initiatives and goes a long way in ensuring that foreign businesses coming to India or working with Indian Businesses are protected by this convention when it comes to mediation.

- [1] New York Convention, 1958.
- [2] 2010 (8) SCC 24.

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