IMPLEMENTATION OF FOREIGN ARBITRAL AWARDS IN INDIAN COURTS: ANALYTICAL STUDY ON THE NEW YORK CONVENTION, 1958

By

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ABSTRACT

The purpose of this thesis is to emphasize the implementation and enforcement of the foreign arbitral awards in the Indian Courts, irrespective of the state Jurisdiction and independent laws. It is a challenge to the Courts to enforce an arbitral award which is passed outside the country in a different jurisdiction or the seat outside India but following the New York Convention.

The purpose of consideration of The Convention is that India is one of the signatories in the said Convention. When the proceedings of arbitration are based on the laws comprised by The Convention and thus chosen as substantive law of the proceedings, then the award which is passed by the arbitration proceedings shall be binding on both the parties. So the consideration of the arbitral awards in the Indian Courts is quite a challenge as to enforce it on the parties.

The thesis mainly observes on the consideration of the award by discussing three cases from the date of passing of The Foreign Awards (Recognition and Enforcement) Act, 1961 or the ratification of The New York Convention till 2018. There is a detailed comparative study on the cases and the consideration of the foreign award in the Indian Courts and executing the same upon the parties who are liable. Therefore, it is the observation made on the changes which can be found in executing the awards on the parties in the local jurisdictions and discuss the reasoning given by the courts in each of the cases, to ensure and analyse that how well are the Indian Courts are flexible in considering the foreign awards and enforce it on the parties and it is also important to note that how are the awards considered which are conflicting with the local jurisdictional laws and if so, what kind of provisions to overcome it.

INTRODUCTION

The very thesis is to observe the main aspect of the implementation of the foreign arbitral awards in India which are passed in International Commercial Arbitration. This thesis mainly observes on the implementation of The Foreign Arbitral Awards in India through Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (hereinafter referred to as 'The New York Convention' or 'The Convention').

Before leading directly to The New York Convention, the important aspect is to discuss the introduction or practice of arbitration existence in India. The very concept of the arbitration in India is well-within the practice and hence the First Chapter of the thesis clearly envisages on the formation of the existing Act in India by studying or discussing brief follow up or the history about the said Act and how it is related to The Convention per se. The chapter discusses the liability of the parties as well as the Courts in different jurisdiction of India and also gives comparative information on domestic and foreign arbitral awards.

The main content of this thesis is about the Chapter Two which clearly and categorically explains about how The Convention affected the practice of arbitration in India and what all regulations which were brought in, for the sake of implementing the very Convention in India, and how are the disputes resolved based on the provisions which are provisions provided either in The Convention or in the existing Arbitration Act in India. it clearly explains the fact of how the development of arbitration took place after the ratification of The New York Convention in its entirety.

The Third Chapter in the thesis is a clear discussion of the randomly selected cases, wherein they are three different cases in which the first case is actually the very first decision made by the Indian Court on the foreign arbitral award and the analytical study on how the Court would consider The Convention or the awards from the member state legal system. This aspect is followed by the other two cases which the second selected which is decided after the

ratification of The Arbitration and Conciliation Act, 1996 and the third is the very recent decision which is made on the basis of the foreign award through the provisions of The Convention. Therefore, all the cases are discussed with the critical analysation which is made to each one of them as to how the Indian Courts consider such issues in different stages and how the implementation of The Foreign Arbitral Award is made in Indian jurisdiction.

CHAPTER – 1

This chapter provides information about how the present Arbitration Act is enacted and what was the history of arbitration practice in India. The chapter provides the information totally based on the independent practice of Arbitration in India before the introduction of The New York Convention, 1958.

THE ARBITRATION AND CONCILIATION ACT, 1996

This enactment was officially made and enforced on the 16th of August 1996 in order to consolidate the law relating to domestic arbitration, International Commercial Arbitration and the enforcement of foreign arbitral awards[1]. The very act is now presently used as the sole act for the process of arbitration and conciliation proceedings within the territory of India.

BASIC PARAMETERS

The arbitration process is in a wide range of practice all over the world acting as one of the alternative dispute resolutions. This act clearly extends the whole of India. The Arbitration and Conciliation Act is broadly based on the 1985 UNCITRAL Model Law and was enacted to consolidate, define and amend the law in relation to domestic arbitration, international commercial arbitration and the enforcement of foreign arbitral awards in India.[2] Therefore, the very act is in scope for further timely modification or amendment based on the requirements of the jurisdictional or judicial changes occurrence.

History and Origin

The arbitration process in India seems to be having a long history. Whether or not with the enactment but the practice of arbitration could be seen in Ancient India and it was one of the ways of dispute resolving method. As per the Hindu Law, one of the earliest known treaties

[1] WIPO Lex, 'The Arbitration and Conciliation Act, 1996' 1.
[2] 'Arbitration In India | Lexology' (*Lexology.com*, 2019) <https://www.lexology.com/library/detail.aspx?g=72bcbbe3-c139-46f2-b9ce-086394161f41>

that mentions arbitration is ***"Brhadaranayaka Upanishad"***[3] we can also follow the practice of arbitration in the ancient village system where the dispute was resolved through *Panchayat*. The word "Panchayat" literally means "assembly" of five wise and respected elders chosen and accepted by the local community. However, there are different forms of assemblies. Traditionally, these assemblies settled disputes between individuals and villages.[4]

The principle and the practice of Panchayat which is mostly practiced in villages in India are typically a good example of Arbitration, where the wise and respected elders are acting as arbitrators and the issue will be between the two different parties tend to be resolved by deciding based on the evidence and arguments. However, theoretically, as the legislation, the enactment was made by The Bengal Regulation in 1772 when India was under the British Rule[5] and it is said to be called as the first Modern Arbitration Law in India. The Bengal Regulations provided for reference by a court to arbitration, with the consent of the parties, in lawsuits for accounts, partnership deeds, and breach of contract, amongst others.

Legislatively stating, if The Arbitration Law was enacted, then it was done during the year 1937 as The Arbitration (Protocol and Convention) Act. Later on, the act was revised and made as The Indian Arbitration Act in 1940. After that The Foreign Awards (rule for recognition and enforcement) Act 1961. It is said that The Act made in the year 1940 and in the year 1961, particularly came into force with the implementation of consideration of foreign awards and especially the act of 1961 is made later after India signing The New York Convention treaty[6] of 1958.

[3] 'Evolution Of Arbitration In India - Litigation, Mediation & Arbitration - India' (*Mondaq.com*, 2016) <http://www.mondaq.com/india/x/537190/Arbitration+Dispute+Resolution/Evolution+Of+Arbitration+In+India>

[4] 'Arbitration In India | Lexology' (*Lexology.com*, 2019) <https://www.lexology.com/library/detail.aspx?g=72bcbbe3-c139-46f2-b9ce-086394161f41>

[5] Ibid 3

[6] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958

Therefore, The Arbitration and Conciliation Act of 1996 was a consolidated and amended law relating to Arbitration, International Commercial Arbitration and also for enforcement of The Foreign Arbitral Awards.[7]

Power of the Parties

The Indian courts will recognise and implement the parties' choice of governing law unless it is opposed to the public policy of India.[8] In case when the power of the parties where both the parties are citizens of India, is restricted (*when neither the presence of arbitral agreement nor mentioning of place of arbitration*) with their rights in choosing the place of arbitration, the arbitration tribunal shall decide the dispute in accordance with the substantive law (Indian Law)[9].

When there is a written agreement to consider which is said to be called as an arbitration agreement or if it contains the provision of arbitration proceedings, the parties or either of the parties to the agreement shall move the same before the Court and if in any case there is a dispute pending under the Indian Courts, the said case shall be directed to move the case into the arbitration proceedings.

In the practical scenario, usually in the domestic arbitration, in most of cases, parties tend to appoint the arbitrator through Court and not independently like in most of the countries. Even though the parties have their independent arbitration agreement or at least mentioning the clause of arbitration in their respective contracts, which would include all the details of seat of arbitration and also the appointment of the arbitrator, even this would be considered to move the trial based on the direction of the Court and not directly by the parties going before arbitral institution or choosing a sole arbitrator.

[7] Evolution of Arbitration In India, (n 3)
[8] 'Arbitration In India, (n 4)
[9] The Arbitration and Conciliation Act 1996, S 28(a)

When there is a question of choosing the sole arbitrator to the trial, then almost 98% of the cases will be going before the judiciary, seek for direction and then the appointment of the arbitrator will be made in the presence of the parties. The most important aspect is that the act provides an option saying that the appointment of the arbitrator shall be of any nationality unless it is accepted by the parties.[10] At this time, the question may be raised about the maintainability of the agreement by either of the parties, as to whether the agreement is a valid arbitral agreement or not and can seek for a detailed examination of the same to the Court of Justice.

So basically the parties will be having the power of appointment of the arbitrators to the arbitration proceedings which would be the main power of the parties and also in which Chapter III of The Act clearly explains how they are liable to appoint the arbitrator and on what causes and so on in case of Domestic Arbitration or International Commercial Arbitration per se. This Chapter also explains as to how the judiciary would intervene or what all remedies available to the aggrieved party in order to choose the arbitrator in time and make the decision with the help of the Court of Justice.

Court Directions

The parties at any moment of the on-going arbitration proceedings or before or before the award is passed in those particular proceedings but before the award is enforced, the parties have the right to have the interim order or interim injunction from the Court of Law[11]. This process is fully binding when the parties are Indians and the seat of arbitration would be within India, so that means to say that it is when the Domestic Arbitration is taken place.

[10] The Arbitration and Conciliation Act 1996, S 11 (1)
[11] The Arbitration and Conciliation Act 1996, S 9(e)

Before the 2015 Amendment to The Indian Arbitration and Conciliation Act, 1996, the Chief Justices, where the parties failed to do so, were also required to appoint arbitrators in pursuance of an arbitration agreement for arbitrations seated in India.[12] The Court would intervene only when the parties are failed to choose the arbitrator and this is characterized as a judicial power, that means to say that how judicial intervention is made in the arbitration rather than administrative one. The Chief Justice (*either the state or Central)* has the detailed course of evaluation of such cases on trial whether the arbitration agreement is valid or arbitrable or not (as opposed to making a prima facie determination, and leaving the final determination for the arbitrator).[13] [The same instance is proved and explained in *SBP v Patel Engineering*, (2005) 8 SCC 618; *National Insurance Co. Ltd. v Boghara Polyfab Pvt. Ltd.*, (2009) 1 SCC 267].

The Indian courts are increasingly adopting a pro-arbitration approach and enforcing valid arbitration agreements. The statement of objects and reasons of the Arbitration and Conciliation Act also recognises the principle of non-intervention by courts in the arbitration process[14]. Therefore, the Courts in India easily refuse to enforce the arbitral agreement when it finds that the agreement is not a valid one or the dispute is not arbitrable.

[12] Ayushi Singhal, 'Appointment Of Arbitrators In India – Finally Courts Divest Some Power' <http://arbitrationblog.kluwerarbitration.com/2017/09/05/appointment-arbitrators-india-finally-courts-divest-power/>
[13] Ibid 11
[14] Arbitration In India, (n 4)

CONCLUSION OF CHAPTER

Therefore, in conclusion of Chapter One, though India has a history on the practice of arbitration which is a logical and known process, by seeing the development which is made when compared to the other countries, it is a bit low in the process but it is being widely developed in the recent days. According to the research made, even though India is one of the signatories of The New York Convention and also of The Geneva Convention for Arbitration, the practice of arbitration was not much since then because of the fact that firstly the parties usually tend to execute their rights and fight for their justice through Court, even though they had arbitration clauses in the agreements and secondly the most of the agreements are made without the clause of the arbitration which is unlike other regions. Therefore, the parties did not rest their interest or belief in the process of arbitration and always tried to resolve the matters in the judicial way, which was and is more likely under The Indian Contract Act, 1872.

Based on the reasons mentioned above, that would be the reasons why the Courts in India vested their powers within them in order to have control over the arbitral proceedings and also The Arbitration and Conciliation Act, 1996 was also drafted in such a way that there would be room to question the arbitral proceedings in many ways, mainly when it comes to the choice of the Arbitrator, irrespective of the parties rights. Therefore, since the dependency and the belief is more the judicial aspect which is rested within the people in India, Courts at the time of trial in deciding the cases to refer the matter to the arbitration, mostly tend to refer it to the sole arbitrator, by considering the request of the parties and it was not to the Institution.

Therefore, because of this reason, the Supreme Court of India, first time ever in the matter of arbitration case, referred a matter to the Arbitration Institution for the purpose of appointment of an arbitrator in Arbitration Case No. 33 of 2014, the Supreme Court of India, has by order dated May 3, 2017, directed the Mumbai Centre for International Arbitration

(MCIA) to appoint an arbitrator, in an international commercial dispute between Sun Pharmaceutical Industries Ltd., Mumbai and M/s Falma Organics Limited Nigeria[15], wherein this would be the first instance where the Hon'ble Supreme Court of India made use the power of Section 11[16] of the Act by designating an institution in order to appoint an arbitrator.

WHEREFORE this chapter explains that how the practice of arbitration arose in India and how the legislation is framed and also explains the procedure of the Courts and its action and the parties' rights in order to the arbitration as a whole, which is mainly in domestic arbitration.

[15] Singhal (n 12)
[16] The Arbitration and Conciliation Act 1996, S 11

CHAPTER – 2

The chapter explains the major portion of the thesis, which discusses the entire process of the implementation of The Convention in India and its territorial jurisdictions. It also discusses the existing act in India; that is The Arbitration and Conciliation Act, 1996 and The Foreign Awards (Ratification and Enforcement) Act, 1961 and how the existing Act has included the New York Convention into its enactment based on its own required terms.

IMPLEMENTATION OF THE NEW YORK CONVENTION

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York or The New York Convention was made and executed in the year 1958. Since the very day, India became a member state to The Convention[17]. This Convention has helped India to improve the Indian Act for Arbitration and also led to the amendment of the existing Act and enactment of The Foreign Awards (Recognition and Enforcement) Act which clearly mentions in its introduction that the act was specifically made to bring out the causes and practices based on The New York Convention which envisages on enforcement of the foreign awards in the independent territories (Member States).[18]

THE CONVENTION

After The Convention was made, presently it is seen that there are about 159 Member States which are signatories for this Convention.[19] The Convention mainly aims at resolving international commercial disputes and The Convention also seeks to provide common

[17] NewYork Convention, 'List Of Contacting States » New York Convention' (*NewyorkConvention.org*, 1958) <http://www.newyorkConvention.org/list+of+contracting+states>
[18] THE FOREIGN AWARDS (RECOGNITION AND ENFORCEMENT) ACT 1961.
[19] Ibid 18

legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.[20]

The Convention wishes to have the arbitral awards to be enforced as like a domestic arbitral award in either of the respective jurisdiction of the Member States. The primary aim of The Convention is to resolve the issues in enforcing the international arbitral awards which are between two different states. By this Convention, the contracting states to The Convention shall have a rule in enforcing the award which shall be common among Member States and shall be enforced on each of them by considering the said award as a domestic or local arbitral award.

This Convention putforth the common legislative procedures to identify the arbitral agreements in a single manner and consider the same. The latter fact is that the arbitral awards which arose out of such issues raised between the parties belong to two different jurisdictions shall be considered in their respective Courts or shall be enforced undoubted in order to achieve one hundred percent result on enforcing the award on the aggrieved party.

The Convention emphasizes the obligation of every contracting state to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the *lex fori*.[21] This is actually the prime motive of this Convention wherein it is expected that all the contracting states to The Convention shall be holding the responsibilities and obligation of considering the arbitral awards of the other contracting states is one among them. The Convention indeed has shown its significant presence which helped to resolve quite a number of cases since it was ratified. Therefore, the objectives of this Convention are continuous and more likely to ease the process of the International Commercial Arbitration, especially within the contracting states.

[20] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958
[21] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958

Basic Rules for Signatories

The Convention is not only a widely able form of International Commercial Arbitration but also it seems to be more flexible in contrast with the contracting parties and also with the other states of the United Nations. The Convention eases the process by considering certain exceptions to invoke the recognition and enforcement of the arbitral awards within the contracting states.

The enforcement can be refused or reallocated based on the incapacity of the parties, the invalidity of the arbitration agreement, due process, scope of the arbitration agreement, jurisdiction of the arbitral tribunal, setting aside or suspension of an award in the country in which, or under the law of which, that award was made.[22] Therefore, The Convention always emboldens to resolve the issues through the commercial arbitration proceedings and see to that the enforcement is made within the contracting states as like the domestic awards.

There are about 159 States which are already acting as Member States and still, there are many other states that are not yet signed to The Convention. These countries who are not the signatories to The Convention are allowed to be a member at any point of time by closing a signature to The Convention. Only then it is said to be a member state. Therefore, any Member States of the United Nations are open to access this Convention, but this Convention is initiated subject to the ratification of The Convention in the home country.

In fact, it is observed that the Member States to The Convention are actually accepted or signed by having an understanding on certain terms which would make it convenient to the Member States to follow the said Convention per se. Therefore, the application of The Convention in the Member States is flexible to the effect based on the conditions on which it

[22] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958

is accepted accordingly. So these conditions place a vital role when it is the question of enforcing a foreign arbitral award within the Member States accordingly.

The Convention clearly provides the option to the Member States as to be clear on what basis the states/countries would accept the said Convention based on the conflict between the legislative clashes and also the arising legal differences at the time of applying foreign arbitral awards. There are certain situations or issues with regard to the foreign awards in some countries wherein this Convention plays a vital role even when there is no possible legislative remedy under the domestic laws to the foreign awards, therefore the Member States who are having such problems would easily depend on this Convention in order to enforce the foreign arbitral awards. The same conclusion can be drawn to the countries or states which also do not have the remedy on International Commercial Arbitration as well.

Liability of India as a Signatory

Right after the ratification of The Convention, The Foreign Awards Ratification and Enforcement Act, 1961 were enacted as a support to The New York Convention. The said Act was clearly made to consider The Convention in the Indian Courts to avoid the enforcement of foreign awards based on the Indian jurisprudence. In this Act, unless the context otherwise requires, "foreign award" means an award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960.[23]

It may be supremacy to the party who is from Indian origin in order to manipulate or to take a lead in applying Indian Laws to enforce his rights or liabilities for his own benefits. Therefore, in order to avoid this since The Convention has not specified certain particular

[23] The Foreign Awards (Ratification and Enforcement) Act 1961.

aspects such as getting interim injunctions against the International Arbitration, questioning the foreign awards in the Indian Courts and so on which are unanswered in certain terms, made it clear in ratifying The Foreign Awards Ratification and Enforcement Act, 1961, which makes it clear in enforcement of the foreign awards in the Indian Courts.

At the time of signing up to The Convention, India made a clear note on the way of accepting The Convention says that:

"*In accordance with Article I of The Convention, the Government of India declare that they will apply The Convention to the recognition and enforcement of awards made only in the territory of a State, party to this Convention. They further declare that they will apply The Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the law of India.*[24]"

The concept of accepting The Convention in such a way seems that The Convention is fully accepted by India and only restrictions are based on the jurisdictional issues and also ensuring that India would fully consider The Convention only when it is with other contracting state and not with the non-member state to The Convention. So therefore when the issue is between the non-contracting states, the trial of the cases will be based on the agreement clauses and the accepted substantive law to follow and also the region where the litigation is tried. It is totally an independent action of the based on the parties based on the contractual commitments or any other independent treaties or Conventions per se.

The article II of The Convention suggests that when the court of a Contracting State is seized of a matter in respect of which the parties have made an agreement to which the article applies, the court shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.[25]

[24] The Foreign Awards (Ratification and Enforcement) Act 1961.
[25] View VakilNo1, 'Foreign Awards (Recognition And Enforcement) Act, 1961' (*Vakilno1.com*, 2019) <https://www.vakilno1.com/bareacts/laws/foreign-awards-recognition-and-enforcement-act-1961.html>

So theory clearly explains the fact that the mere need of a valid arbitration agreement in order to consider the same and refer the matter to the arbitration and if there is any need of an interim relief such as stay. This action can be taken based on the conditions clearly explained in Section 3[26] of The Foreign Awards Ratification and Enforcement Act, 1961.

In the very first case which was held before the Supreme Court of India after India became a Member State to The Convention was between ***V/O Tractorsexport Moscow v. Tarapore & Co.***[27] In this case, it was a dispute between an Indian Company and the Russian Firm wherein the Indian Company filed a suit for breach of contract before the Court in Madras, the Russian Firm filed an arbitration proceedings in Moscow since the agreement had the Arbitration clause also sought for stay to the proceedings held in Madras Court. The Hon'ble Supreme Court of India, however, held, by a majority of 2:1, that section 3 of the Act does not give full effect to article II of The Convention. According to the court, the section is applicable only in a case where not only there is an arbitration agreement in force between the parties, but there has also been an actual reference to arbitration, it is, therefore, proposed to amend the section suitably to bring out the intention clearly.[28]

Accordingly, the present Arbitration Act of India[29] explains about the enforcement of the foreign awards based on The New York Convention in Part II Chapter I of the Act[30]. The Part II of the clearly states that Enforcement of 'CERTAIN' foreign awards, which means to emphasize only with The Convention[31] that is to direct the entire chapter on referring to the awards based on the contracting states to The Convention and on the conditions on which India has been accepted to execute.

[26] The Foreign Awards (Ratification and Enforcement) Act 1961.
[27] Yearbook Commercial Arbitration 1976 - Volume I (Sanders (ed.); Jan 1976)
[28] Ibid 26
[29] The Arbitration and Conciliation Act, 1996
[30] Ibid 29
[31] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958

Section 45 of the Act (Indian Arbitration Act)[32] establishes the power to the power to the judicial authority to refer the parties to the arbitration. It says:

"Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908) a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."[33]

The act makes a clear conclusion on making the fact that the agreement should be valid and enforceable, which could be the significant reason to enforce from judicial perspective. It also makes sure that even the issue between the parties should be arbitrable. Therefore, the enactment of these two issues plays a vital role in referring the matter to the arbitration and also since the same is made clear through an enactment, there is no discretionary power to the Court to decide on the reference of cases to the arbitration. This helps to avoid manipulations which can be seen in the Regional Court of Justice in the case of international arbitrations. In the international context, the fear was also based in the idea that judges might politicise the enforcement process. Regardless of the fears of how the application of the public policy exception would unfold, many authors have concluded that the public policy exception is not abused by domestic courts.[34]

In majority of cases of international arbitration, the losing party's strategy has been to claim the public policy exception. This exception derives from the common law maxim *ex turpi causa non oritur action* : an action does notarise from a disgraceful cause.[35]

[32] The Arbitration and Conciliation Act, 1996
[33] The Arbitration and Conciliation Act, 1996, S 45
[34] Aakanksha Kumar, 'Foreign Arbitral Awards Enforcement And The Public Policy Exception - India's Move Towards Becoming An Arbitration- Friendly Jurisdiction' [2014] International Arbitration Law Review https://www.academia.edu/8617775/Foreign_arbitral_awards_enforcement_and_the_public_policy_exception_-_Indias_move_towards_becoming_an_arbitration-_friendly_jurisdiction
[35] Kirindeep Singh, 'Arbitration And Public Policy - Is The Unruly Horse Being Tamed? | Lexology' (*Lexology.com*, 2012) <https://www.lexology.com/library/detail.aspx?g=bef4ddce-7276-4936-aaa7-972725aefa3b>

The use of "Public policy" as a fortune card is seen often in case of arbitration, mostly in International Commercial Arbitration. It is true to suggest that the public policy practice differs from region to region or country to country. The during the course of enforcing the International Arbitral Award, it is easy to the aggrieving party to prove his point against the award by using this card (public policy), which is specially in international arbitral awards, where the aggrieving party tend to oppose certain aspects of the award or the award as a whole stating that it is entirely opposite to the public policy of his region or country or the jurisdiction from the party is.

Therefore, it is understandable that these are the complex challenges which the international arbitral award faces and that is where The Convention or the treaties like The New York Convention come into action. These conventions ease the process by confirming the fact that numerous countries would be signing up to The Convention or the treaty and showing up their support and acceptance with their own different conditions. However, the main scenario is that all such Member States are accepting one cause and one purpose, which indeed makes common to all the Member States to that particular treaty or Convention.

When it comes to India, it is apparently known for its diversity in the law-making but issue is that certain aspects may clash against the legislature, local laws or the public policy per se, but by signing up to The Convention, it has shown its acceptance towards the consideration of the foreign awards of the International commercial arbitration and has given a possible clear function of the award in its jurisdiction.

Therefore, it is good to note that no wonder India is certainly moving towards the Arbitration-friendly jurisdiction by the enactment and the consideration of the foreign awards in the Indian jurisprudence.

WHEN FOREIGN AWARD IS BINDING

According to Section 44 of the Act[36], a foreign award means an arbitral award on disputes arising between parties to arbitration, whether in contractual or non-contractual relationship, considered as commercial under Indian laws enacted on or after the 11th of October, 1960.[37] The same Act explains about the very term about the application of the foreign award in the Indian Courts. Section 46 of the Act says as following:

"Any foreign award which would be, enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on; an award."[38]

Based on the explanation made in the above provision, it is mentioning about the consideration of The Convention in fully fledge manner, as the there are no further conditions are put on or called upon in order to consider the foreign award in the Indian Jurisdiction. It basically considers the fact that, since India is a contracting state to The Convention, it is clear that it is bound to the conditions made in The Convention and cannot make much more convenient provisions in order to save parties who are from own region (*Indians*). The very Act[39] is made and freshly enacted after The Convention by keeping the necessary objectives from the Old Act(s) [*The Arbitration (Protocol and Convention) Act, 1937 and The Arbitration Act of 1940*]. Later, recently in 2015, major amendments were brought into the Act which totally had changes from Section 2 to Section 37 of the Arbitration and Conciliation Act, 1996.

[36] The Arbitration and Conciliation Act, 1996
[37] 'ENFORCEMENT OF FOREIGN AWARDS IN INDIA' (*www.theindianlawyer.in*, 2016) <http://www.theindianlawyer.in/blog/2016/09/09/enforcement-foreign-awards-india/>
[38] The Arbitration and Conciliation Act, 1996, S 46
[39] The Arbitration and Conciliation Act, 1996

The amendment made within the aforementioned sections, clearly shows that the drawbacks which was seen in the Act was observed and hence was corrected based on the amendment and also the main reason is that to ease the process of domestic arbitration and overcome the flaws which are found within the practice.

When this act is compared to The Foreign Awards Ratification and Enforcement Act, 1961 which is the then act which enacted just after India became a Member State in The New York Convention, it is very clear in saying in its provision of Section 4(1) stating that:

"A foreign award shall, subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India."[40]

That means to say that accordingly, the Act itself try to say that the Foreign Arbitral Awards shall be considered or treated like a domestic Award and should be enforced accordingly. Therefore, it is true to suggest that the main reason for the enactment of The Foreign Awards Ratification and Enforcement Act, 1961 was to simplify the terms of The Convention and deliquesce in the practice of Indian Arbitration.

The observation that can be made is that the Act makes the clear provision, irrespective of the conditions that can be put on to such provision is seen only with this 1996 Act. It is said that the foreign awards shall be considered subject to the enactment of this act (*the 1996 Act*) and also makes the clear conclusion saying that the foreign awards which are to be enforceable within India or in the Indian Jurisdiction, the same shall be considered as like a *Domestic Award.* This is to make clear that there would be no discrimination shall be shown in order to consideration of the foreign awards in India and also it is seen that it is proved that the Court of law would consider it equally unless there is no default or flaws are found in such awards.

[40] The Foreign Awards (Ratification and Enforcement) Act 1961, S 4

On the other hand, the requirement of a reasoned award must make sense and cannot be satisfied by an artificial or clearly inadequate set of reasons.[41]

At the outset, it is understood that the foreign awards are broadly welcomed in India but the question arises when such award is really eligible to enforce in India. The question is that to validate the reasoning of the awards which are passed outside India but the same must be logical and supportive. The reasoning of the award does matter when the issue is resolved through such awards. When the award is passed with providing possible solutions, it is the basic conquest of an arbitrator to make sure that he is providing reasoning for every possible issues and solutions which is rendered in the award. The award should contain certain basic aspects such as:

- The award must be in writing and signed by all of the arbitrators assenting to the award (dissenting minority arbitrators need not sign unless the parties agree that they must);[42]
- The award must contain reasons;[43]
- The award must state the "seat" of the arbitration (the place where the arbitration took place); and[44]
- The award must state the date upon which it is made. This is important for the calculation of interest.[45]

These can be called as the basic requirements for an award which is accepted in various countries in order to enforce the same in their respective jurisdiction. Therefore, these answers the question of how can a foreign award be binding?

[41] PIERRE LALIVE, 'On The Reasoning Of International Arbitral Awards' (2010) 1 Journal of International Dispute Settlement.
[42] 'Arbitration Award' (*En.wikipedia.org*) <https://en.wikipedia.org/wiki/Arbitration_award>
[43] Ibid 42
[44] Ibid 42
[45] Ibid 42

Since there are expectations to the awards to contain in it, than it is common to suggest that it should have the factors to be accepted in the various countries, even though such countries are Member States for any of The Conventions or treaties to the Arbitration, which is like The New York Convention.

The last but not the least, Chapter VI, Section 28 (b) of the Arbitration and Conciliation Act, 1996, clearly suggest the fact of how there should be making an arbitral award and also termination of proceedings. The section points out on the rules applicable to substance of dispute, wherein in order to The New York Convention or with regard to the International Commercial Arbitration, the following are the terms which are need to be considered by this enactment:

a. *"The arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;*"[46]

This provision tries to explain the basic rule in the arbitration proceedings wherein the Tribunal or the institute or a sole arbitrator should follow the substantive law which is decided by the parties all-together (*when there are three parties*) in order to conduct the proceedings and the said law shall be applicable to both the parties and it is clear that the parties should not have and issues with regard to the same and thus, the arbitrator or the tribunal shall follow the same and pass the award accordingly.

b. "*Any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules"*[47]

The aforementioned provision suggests that the parties from different legal system shall be given importance to the law of their particular land and it would stand with the substantive law

[46]The Arbitration and Conciliation Act, 1996, 28(b)(i)
[47] The Arbitration and Conciliation Act, 1996, S 28(b)(ii)

which has been chosen in order to have the proceedings between the said two parties and also the law which is binding on that particular proceedings, which would be the substantive law, if the same being a conflicting law or any of the conflicting provisions which is against the substantive law of the country or which clashes with the chosen law to the arbitration proceedings then the aggrieved party should or may inform or bring it to the notice initially during the course of proceedings, that means to say that the parties if not, mentioning any of these irregularities, then it may not be considered at the later stage.

That means to say that the irregularities should always be seen during the course of the proceedings itself and not after the award is passed, which doesn't make any sense because of the fact that the proceedings should always be in a watch of the parties or their representatives as in whether the procedure or the path of the proceedings is well-good to them or not and this is highly necessary when it is an international arbitration.

c. Failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate, given all the circumstances surrounding the dispute.

The parties are particularly intended to choose the proper substantive law to the proceedings to the arbitration. This can be done mainly at two stages, firstly at mentioning about it when the agreement of arbitration is drafted or as a clause of arbitration in the general agreement between the two parties and secondly, even though there is no mentioning about the substantive law which to the arbitration proceedings in any of the two types of agreement which are mentioned above, then atleast it should be decided before commencement of the arbitration. The substantive law should be informed to the arbitrator before commencing the said proceedings so then it is well within.

The clause (a)[48] of the Section suggests that, in the case of non-international arbitration, if the substantive law is not assigned then usually the law of the land, which is said to be Indian Law, will be applied, so there would be the same principle to be used in the sense of the international arbitration too. In the case of International Commercial Arbitration, the principle is that the application of the appropriate substantive law based on the issues of the party. That shall be decided either by the arbitrator or chosen the institution of arbitration based on considering the facts of appropriation of which type of substantive law shall be used in case of the arbitration proceedings.

This situation mainly arises when the substantive law is not decided within the parties. Even after that, if the parties do not intend to choose one in the given time granted from the institution or the arbitrator or the tribunal, then the suitable appropriate substantive law will be chosen by the institution or the arbitrator or the tribunal in order to proceed with the case. It is true that the chosen law by the institution or the sole arbitrator or the tribunal is questionable and sometimes it is not, which is again depending on the issue which is dealt between the parties.

With Convention clauses in the agreement

The agreement to the arbitration plays a vital role. The very procedure of the arbitration usually starts with the commitments among the two parties who enter into a contract for their benefits and execute their terms through these agreements. The question of arbitration only comes in when the dispute arises between the parties to the agreement and when dispute arise the method of resolving the dispute will be the next move. Arbitration agreements require that

[48] The Arbitration and Conciliation Act, 1996
"*In an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India"*

any disputes between the parties be resolved through some form of arbitration. These agreements are typically formed at one of two points in time: during the negotiation of a contract, or after a legal dispute arises.[49] Therefore the question arbitration comes when the clause is made specifically for it. Otherwise the dispute may be questioned before the Court which is jurisdictionally possible.

It is true to suggest that the reference of the arbitration clause is so necessary in the commercial agreement. Since it is found that arbitration process is the fastest and favourable dispute resolution system, it is highly recommended to have such clauses in the agreement and specially when it is between the two international parties or can be said that parties from different legal system. The very necessity brings down the type arbitration process which the parties would choose.

Parties to the agreement usually when creating a clause to the arbitration, usually make sure that they mention about the seat of arbitration, substantive law to the arbitration and the choice of arbitrators. The absence of any of these three clauses will be leading to the delay of having this process at the time of dispute. This is mainly because of the fact that the same shall be decided at the time of the dispute and it would take its ample time in order to decide any of those missing sub-clauses.

The Article II (1) and (2) of the New York Convention clearly specifies on two main issues which is supposed to be there with regard to the agreement, which says that:

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

[49] 'International Arbitration Agreements - International Arbitration' (*International Arbitration*, 2019) <http://internationalarbitrationlaw.com/about-arbitration/international-arbitration-agreements/>

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

Firstly, the agreement should be in writing and secondly the agreement should have the arbitration clause. The latter issues to observe are that to have the legality of the agreement. The agreement becomes complete when the parties sign the document by showing their due acceptance. So the clause (1) of the article stresses on the written document of the agreement to consider the same as a valid agreement. Therefore, it also validates the fact that the jurisdiction of the law and answers the capability of the settlement through arbitration.

When it comes to the clause (2) of the Article II, which specifies that the very next concept which needs to be concentrated on is that the clause of arbitration is shown or mentioned when the said agreement is in writing. Therefore, it is said that the arbitration clause shall be included in the written document. By mentioning about the written format of the agreement, it is true to suggest that in some of the contracts the arbitration process is entirely depending upon the arbitration agreement which are drafted separately by the same parties to the main agreement. This agreement shall be considered as the continued format of the original-related agreement executed between the parties and the same may be enforced simultaneously.

The Convention when observed shall not impose on the fact that the agreements which are made for the arbitration wherein the parties from the member-states to The Convention may not particularly mention that The Convention should be applied and followed accordingly. The very issue is that The Convention is being flexible on the fact that proper arbitration clause is what needed and not the mentioning about the very Convention, in order to follow the same.

Therefore there is no mandatory suggestion from The Convention that the agreement of the parties should contain the mentioning about The Convention in order to follow The Convention principles. The Convention is made to observe and acceptance of the foreign

arbitral awards between the parties from different legal entities or different legal system. So it is clearly understood that when there is an arbitral clause in the agreement or when there is an agreement made specially for arbitration, it is good to mention about The Convention in order to be specific and save time at the time of the dispute and when arbitration clause need to be enforced.

Without Convention clause in the Agreement

In this state of argument it is clearly made assumed that the agreement shall be in writing and there would be an arbitral clause or the arbitration agreement will be in existence between the parties.

When a party from a contracting state have an agreement with the party from another contracting state and while having the valid arbitration clause or an agreement for arbitration, then most usually it is recognised that even though the clause is not specific about The Convention, then at least it should mention about the substantive law of the process to be clear, whether it may be based on the seat of the arbitration or by the decided clause which is already mentioned in the agreement.

At the time of execution of the arbitral clause, when the dispute arises, when it is between the parties from contracting states then it is better to see that either of the parties regions have ratified The Convention. A proper ratification of The Convention would ease the process of enforcing the award in either of the states. So it is important to note that the ratification of The Convention is much needed.

In another instance, when the parties from the ratified contracting states come up with a dispute and when they further move to enforce the arbitration clause, then it may not be necessary to be mentioning about the application of The Convention. Parties even at the time of the ongoing dispute can make an announcement in order to follow the principles of The

Convention and also look up to the award which can be passed. The parties to the agreement have certain obligation in order to go through all these kind of smallest issues, to avoid the future unnecessary issues arising out of those defaults.

Another issue which would may arise when the parties to the agreement have a legitimate business and come up with some issue or dispute, even though the agreement of the arbitration contain the due mentioning about The Convention but instead, when either of the parties wishes to question the validity of the agreement and raise the question about the arbitrability, then it is thereof understood that the issue would be resolved in order to continue with the arbitration.

When an agreement is containing the arbitration clause it is fore more important to consider many other aspects such as the agreement to arbitrate, a definition of the scope of disputes subject to arbitration, the means for selecting the arbitrator(s), a choice of the arbitral seat, and the adoption of institutional or ad hoc arbitration rules. A number of other provisions can also be included in international arbitration clauses, including the language for the conduct of the arbitration, choice of applicable law, arbitrator qualifications, interim relief, costs, and procedural matters.[50] When there no mention about The Convention when either of the parties are from the contracting states, then it is well and good even it is suggested while in the process of the dispute or it can be mutually agreed based on the oral suggestion made by either of the party or if the institution or the arbitrator or a tribunal recognises it and may suggest to the parties about The Convention.

Therefore, it is good to suggest that, it is not mandatory to mention in the agreement about The Convention when it is between the two contracting states, but it is good to have it as

[50] 'International Arbitration' (*En.wikipedia.org*) <https://en.wikipedia.org/wiki/International_arbitration#Agreement_details>

a particular clause or atleast a whisper about it in order to avoid further defects in the dispute when initiated.

ENFORCEMENT

Prior to the enactment of the Arbitration and Conciliation Act, 1996 ("Act") the enforcement of foreign awards were governed by the Arbitration (Protocol and Convention) Act, 1937 and The Foreign Awards (Recognition and Enforcement) Act, 1961 ("1961 Act"). The law on annulment of domestic awards was governed by the Indian Arbitration Act, 1940 ("1940 Act"). The 1961 Act was enacted by the Indian Legislature to implement The New York Convention. [51]

It is very clear to note that The Convention's major aim was to the enforcement of the foreign awards in the different legal system. The very motive of The Convention was to bring a common ground in order to enforce the foreign arbitral award of the international commercial arbitration and bring down the obstacles which are worrying the parties to enforce the foreign awards in the different legal system. The referendum of The Convention clearly envisages that the arbitral award made and shall be executed easily based on certain terms of the member-states and clearly reduces the difficulty in executing the award.

The 1996 Act, suggests that if any party interested in foreign awards to be enforced through Indian Courts then they must apply in writing to a court having jurisdiction over the subject matter of the award. The decree holder/the Awardee must file the award, the agreement on which it is based and evidence to establish that the award comes under the category of foreign award under the 1996 Act.[52] Therefore, now it is to enforce such an award which is

[51] 'Enforcement Of Foreign Awards In India' <https://www.hg.org/legal-articles/enforcement-of-foreign-awards-in-india-32348>

[52] Vinati Bhola, 'Arbitration Law In India: Development And Critical Analysis' Vivekananda Institute of Professional Studies.

passed elsewhere is easy to consider the same in the Indian Courts based on the enactment which is passed including The Convention, which eases the procedure to execute such a foreign award.

The difficulty comes in when the enforcement of the foreign award should be made in India when the state which passed the award is not a member of The New York Convention or any other Convention wherein India is a signatory to it. Therefore, it is true to suggest that the issue with regard to this shall be having many obstacles and questionnaires that under what ground such foreign award shall be executed or how would that be considered or on what intensive conditions that the award shall be liable to be executed in India.

The clear provision of The Convention which explains about the enforcement in Article III which says that:

"Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.[53]"

So point is that the article of The Convention clearly envisages the fact that, firstly, it is to the contracting states which are signatories to The Convention and that of when the awards passed in the jurisdiction of any of the Member States then it is binding and enforceable in the other member state. Secondly, it is also made clear in the provision that the member-state who actually enforces the foreign award shall be following their particular procedural aspects which are explained or enforced or ratified at the time of signing of The Convention and shall be considering the foreign award by following those territorial procedural norms but having said

[53] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958, Art. III

that the article also makes sure that the concerned territorial jurisdiction shall also be considering and following all the terms of the New York Convention while enforcing the award.

The Convention also in the next explanation observes the possible manipulation or exploitation that can be seen while considering the foreign arbitral award in the member-state jurisdiction. When there is an award which is to be enforced in the foreign land, it is common to foresee that the exploitation likewise explained in the aforementioned provision that there would be over-charged fee structure for the consideration of the foreign award in that particular territory. Therefore, The Convention has made a clear provision in which it says that the foreign arbitral award if charged to enforce shall be enforced by charging the same amount of which if it would have been charged for the domestic awards in the same territory. So therefore The Convention makes sure that the parties should not be exploited in the foreign land in order to enforce the foreign award in the different territory or a different member state.

When the Foreign Awards (Ratification and Enforcement) Act, 1961 was passed in India which is soon after signing Convention, which was enacted in order to ratify the very Convention in India, tries to explain the enforcement in major two terms, such as:

a. *"Where the Court is satisfied that the foreign award is enforceable under this Act, the court shall order the award to be filed and shall proceed to pronounce judgment according to the award."*[54]

After the ratification of this act, in order to enforce The Convention in the Indian territory, the main intention of the very provision to make sure that the final decision will be taken by the Court of law whether to enforce such foreign award or not. Then latter fact again the Court is expected to pass an Order as a Judgment to ensure that it is justifiable in the Indian Territory.

[54] The Foreign Awards (Ratification and Enforcement) Act 1961, S 6(1)

By looking into this we can observe that though the award is passed and standing to be enforced in the foreign land (*India),* it is expected to make it in a judiciary point of view and not directly enforce such awards. It is noted that the Court of justice had to intervene or take control of the enforcement, by verifying the order/award whether it is acceptable or not and the same award is passed unintentional and bonafide. So therefore though The Convention was duly signed by India, while ratifying the same, it reserved it control over the Award by giving an authority to the judiciary in order to verify such an award in the Indian Courts and then pass a common judgment based on such award in order to bringing it to the enforcement.

The second aspect of the Act or the ground for the enforcement is that:

b. *"Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award."*[55]

This provision clearly envisages the fact that the Court of law would pass a decree as against such foreign award in order to enforce the same in the Indian territory and also it is observed that such an award to be enforced, it was not treated as like domestic arbitral award rather than it is considered like a civil litigation process. This action or enactment may have been made in order to make sure or double-check the award and its very liability in the Indian territory and also to be cautious that no wrong would be made in enforcing such a foreign award.

The provision also explains about the decree which is so passed based on the foreign award would be appealable or not and hence said it is not. It is making clear factum that the decree shall only be questioned again unless the said decree is not containing all the conditions and terms which are mentioned in the foreign award or when it is not coinciding with the

[55] The Foreign Awards (Ratification and Enforcement) Act 1961, S 6(2)

original foreign award per se. Therefore, it is clear that the foreign awards were usually or directly was not appealable but it would have been questioned when it is not fully enforceable but however at this stage parties would have to be mindful of the various challenges that may arise such as frivolous objections taken by the opposite party, and requirements such as filing original/authenticated copy of the award and the underlying agreement before the court.[56]

Even in the present Act (The arbitration and Conciliation Act, 1996), it is said that the review of the foreign Awards by the Court is unchanged and the same is explained in Section 49 of the Act:

"Where the court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court."[57]

The 1996 Act, even after the amendment act passed in 2015, there was no change with regard to this section, as in the foreign awards shall go through a review from the Courts and then it is validated whether it is enforceable or not and later it is made clear that the decree would be passed by the Court in order to enforce the same in the territory, this acts as a non-appealable decree but the fact is that if any issue is again raised even after proper consideration of the foreign awards, then the parties are not stopped to go before the Supreme Court of India and question the same.[58] The parties can challenge before the Supreme Court of India under Article 136 of the Constitution of India when it is a question of fundamental importance or public interest. However, in the case of an award held to be non-enforceable by the court, an appeal may be allowed under section 50 (1) (b) of the Act.[59]

Therefore, it is clear that the review of the Court is a must in order to enforce the foreign award in the Indian Territory.

[56] Nishith Desai Associates, 'Enforcement Of Arbitral Awards And Decrees In India'.
[57] The Arbitration and Conciliation Act, 1996, S 49
[58] The Arbitration and Conciliation Act, 1996, S 50(2)
[59] Newyork Convention (n 17)

Conditions to the enforcement

In speaking about the conditions to enforce the foreign awards, there are certain few aspects which one need to observe in order to enforce the same in the Indian Law system. It is observed that to enforce any arbitral award in India, either it is domestic or foreign, there are certain major aspects which parties needs to follow and succeed in enforcing the same. These following conditions are the extract from Article V of The New York Convention where on the basis of the ratification of The Convention, is made on country's (India) specific terms.

Firstly to consider, under Section 48(1) of the act, clearly envisages about the parties' right in invoking a foreign award, wherein when a party against whom the award is passed should prove the following conditions as to why the award has to be invoked:

a. *"The parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made"*[60]

The parties to the agreement referred in Section 44 of the Act, (the 1996 Act) were under some incapacity to perform under the law to which they were subjected to and in the absence of any mention of such law, the law of the country where the award was made, i.e. the place of arbitration. When the agreement was invalid under the law to which the parties have subjected to it and in the absence of any mention of such law, the law of the country where the award was made.[61]

Hence, the flexibility of the rule under the enactment can be observed, wherein the provision clearly makes it a point that even though the substantive law is not decided and the award is passed based on the law where the award is passed, the award will likely be considered

[60] The Arbitration and Conciliation Act, 1996, S 48(1)(a)
[61] Newyork Convention (n 17)

and will not be rejected for the same reason stating that it is not valid. Above that the parties based on this provision without any hesitation, can lodge an application before the court in order to be exempted by the award.

The other important aspect is that the condition in the provision is so specific that if the agreement is found that it was invalid and if the substantive law is not at all decided, then the subject matter of consideration of the award clearly will be dropped and the same may be used as a contention by the aggrieved party to reject the enforcement of such an award which is discrete in nature.

Therefore at the time of the trial in the Court, the court may discuss the issues the problem which may arise out of the applicability of such an award wherein the substantive law which is chosen is actually not conflicting or being against the rights of the party(ies) when the award is passed by following such substantive law. Hence if any discrepancies found in such law wherein it is conflicting in nature, then court may reject the application of the award itself.

b. "The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case"[62]

When the party against whom the award is made was not informed or given proper notice of the appointment of the arbitrator or about the arbitral proceedings and thus, for the said reason who was unable to present the case or participate in the arbitral proceedings properly, then in that case, the aggrieved party can seek for exception of the award from the jurisdictional Court.

This requires several documentary evidences too which needs to be submitted to the Court of law at the time of the trial before the exception. Thus, it is clear that the opportunity is given under law wherein the party needs to prove his grievance for non-consideration of his

[62] The Arbitration and Conciliation Act, 1996, S 48(1)(b)

part of action in a proper manner and of course the burden of proof in order to prove grievance lies on the aggrieved party who is questioning the award.

c. "The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration"[63]

The reason behind the scope of the verification process of the award by the judiciary (Indian Courts) in India is mainly because of the reason that before enforcing the award in the Indian territory, it is good to examine that whether the award is made or passed by following all the contentions of the party or following the rules of the arbitration agreement or considered the submission of the parties equally in due process of the arbitration proceedings and so on. Thus, based on the said fact, the Court can decide whether the award can be enforced in the Indian Jurisdiction or not.

The problem with the enforcement of the foreign awards which the courts found during the course of many cases is that the issues found is considering such award when the very award is not passed by considering all the necessary factum which needs to be considered or observed before passing of the award.

Hence, in the aforementioned provision clearly directs into the way how the arbitral award is passed. The aggrieved party to the arbitration proceedings shall enforce his right based on this provision before the Court on proving the fact that the award is totally not passed by considering the basic necessities to the contract and not considering the submission of the aggrieved party.

Under the condition, when the certain matters which are not at all submitted in the course of arbitration proceedings and thus is submitted before the Courts in order to invoke the award, then only it is considered to the matters which are submitted before the arbitration

[63] The Arbitration and Conciliation Act, 1996, S 48(1)(c)

proceedings and not the subject matters which were not submitted by then before the arbitrator(s) accordingly;

When such being the state of affairs, the provision also provides by considering certain aspects like:

d. *"The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place*"[64]

In accordance with the submission of the parties, when there is a default is with party when the certain aspects which are not discussed during the course of the arbitration proceedings then, it is believed to consider the aforementioned provision where it says that the arbitration proceedings should be proved wrong when the entire proceedings having defaults when the question of composition of the authority is not made based on the agreement between the parties or the entire arbitral procedure is not based on the agreement between the parties or when the agreement of the parties would not be in accordance of the law of the country when the very arbitration was taken place based on the said agreement.

Hence, based on the default which can be seen in the agreement or in the procedural aspects which may have not followed in the due course of the arbitration proceedings, in such stages, the aggrieved party can take up that ground under this provision, and prove that he can be exempted by the award which is passed by such process. The important aspect is that the aggrieved party has to prove that the awards are made against these aspects and it should not be enforced accordingly.

e. "The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made"

[64] The Arbitration and Conciliation Act, 1996, S 48(1)(d)

The above provision suggests that the award can be invoked when the very award is not executed within the time prescribed by the award itself or by the authority. When the said award is tried to execute or tried to enforce in the Indian territory, then it shall not be accepted and the it can easily be avoided by bringing up a rejection order as against such award through the Indian jurisdictional Courts or from the Supreme Court itself.

Secondly, under Section 48(2) of the act, which concentrates on the consideration of the very award itself which is to be proved that whether it is valid or invalid or it is in conflicting nature to the public policy of the country (India).

a. "*The subject-matter of the difference is not capable of settlement by arbitration under the law of India"*

The enforcement of the award is considered on the basis of the settlement which is made in the award between the parties. If the said award when it is seen that the issue would not be resolved by enforcing such an award, then the question of liability of enforcing the award will not be entertained by the Indian Courts, wherein it may be invoked and will not be considered. The very concept of enforcement of the foreign award is to resolve the dispute within the parties when such act is not made then it is believed that there is no use in acting upon it and it would not be fair to the part of that party who is going to be facing the charges.

b. The enforcement of the award would be contrary to the public policy of India.

In the case of *Venture Global Engineering vs. Satyam Computer Services Ltd*.[65] the issue of whether a foreign award can be set aside if it violates Indian statutory provisions and is thereby deemed to contravene Indian public policy was decided and the Supreme Court relied principally on an earlier decision, Bhatia International v Bulk Trading[66], which held that provisions of Part-I of the 1996 Act apply equally to foreign arbitrations. The *Bhatia* decision

[65] (2008) 4 SCC 190
[66] (2002) 4 SCC 105

was in the context of the power of Indian courts to grant interim measures (e.g. injunctions) in foreign arbitrations under section 9 of the 1996 Act.[67]

In the procedural aspect, it is further provided that if an application for setting aside or suspension of the award has been made to a competent authority, the court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.[68]

It is furthermore clarified that based upon the aforementioned clause, the issue relating to the public policy of the country like India is very much to be concentrated. One of the reason is that the India is a sovereign democratic republic by having multi-cultural, multi lingual population. Thus, the issue of the public policy is quite important also it is even more important to consider it. When the foreign awards are so against the public policy of India or even clashing towards its principles, then it is a serious issue to consider and decide over it.

Therefore, the provision which is mentioned above, in order to consider the public policy of India is so necessary and this provision would play a vital role in invoking certain awards, if it is proved before the Court. According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in such areas. The enforcement of the foreign award must not be contrary to the public policy or the law of India. Since the expression "public policy" covers the field not covered by the words "and the law of India"[69].

No wonder there are certain manipulations which can be drawn by the aggrieved party by using this issue as a ground in order to escape from the enforcement of the award against them and save their profits, but Courts do not relay on just the statements which would be made

[67] Kumar (n 34)
[68] NewYork Convention (n 17)
[69] 'Enforcement Of Foreign Awards In India (n 51)

on this ground by such party, but they are liable to prove the same before the Court of justice. In order to save the genuine problems, it is mandatory to have this provision in action and use it before the Court for the purpose of saving the cultural sovereignty.

Thirdly, Section 48(3) of the Act, explains about the security which is given to the party who is enforcing the award in Indian Territory when the award is withheld or suspended by the action of law based on Section 48(1)(e) of the Act and it explains as hereunder:

"If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security."[70]

The provision mentioned above, is an extension of section 48(1)(e), wherein this shows that the act is concentrating on both the parties in order to maintain the balance between the two parties. When the action is taken based on the provision of Section 48(1)(e) of act, it is true to suggest that there would be a chance of misrepresentation of action by the party who was aggrieved by the award, but this provision tends to save the rights of the defending party by providing security to such party where in case, if such an award is invoked under the Section 48(1)(e).

Therefore, the provision suggests that the party who is claiming an enforcement of such foreign award, should lodge an application before the jurisdictional Court, by pleading to order the other party to give suitable security.

[70] The Arbitration and Conciliation Act, 1996, S 48(3)

EVIDENCES

On the basis of The Convention, it is noted that the explanation made in Article IV is the factors that needs to be followed in order to enforce the foreign arbitral award in the Member States and for now, the same conditions of Article IV is extracted based on the Indian terminology, which would ease the enforcement process and prove the same by the submission of the authenticated documents or also to be called as Evidences.

The 1996 Act, under Section 47 clearly ratified the same conditions of The Convention, with more briefed subject to the territorial subjective necessity. Section 47(1) of the Act points out the responsibility of the party who is intended to apply for the enforcement of the foreign award before the jurisdictional Court of law in India would be in the following basic conditions:

a. *"The original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made"*[71]

The requirement of the document of the foreign award should be produced duly authenticated or identified or certified as per the terms of the Court of law in order to be accepted by the said Jurisdictional Court. This is to ensure that the award which is produced is not tampered and it is represented same as the original.

b. *"The original agreement for arbitration or a duly certified copy thereof"*[72]

The agreement of the Arbitration which are duly signed by the parties or the agreement in which the arbitration clause is mentioned and based on the said clause the arbitration trial is taken place, the copy of such document, shall be duly produced which is certified based on the requirement of the Court of Law in order to produce the same as evidence before the Court.

c. "*Such evidence as may be necessary to prove that the award is a foreign award.*"[73]

[71] The Arbitration and Conciliation Act, 1996, S 47(1)(a)
[72] The Arbitration and Conciliation Act, 1996, S 47(1)(b)
[73] Ibid, S 47(1)(c)

The additional evidences are required apart from the award itself in order to prove that such an award is a foreign award and is passed under the conditions of The Convention and also to prove that the parties are from the member-states per se. Apart from such information, the basic necessary terms such as the proof of the institution where the award is passed or the details of the arbitrator(s) or the details of the seat of arbitration in which the award is passed.

It is also important to note that the details of the substantive law which was followed should be produced in order to prove that the award is passed basically on considering the terms of such substantive law.

Section 47(2) of the 1996 Act or the Article IV(2) of the New York Convention is actually speak about the language of the foreign award which is passed and says as hereunder:

> "If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India."[74]

It is noteworthy that the language of the award which is passed shall be understandable to the either of the parties to the arbitration, if it is not so, then the award which is passed is in foreign language to the other party, shall be translated to his comprehensible language in writing and it is duly authenticated by the experts for their exact translations. Hence, such foreign awards which is not in the judicial language of India (English), shall be produced a translated document of the same, which is duly authenticated or certified by the diplomatic agent of the country.

[74] The Arbitration and Conciliation Act, 1996, S 47(2)

CONCLUSION OF THE CHAPTER

Therefore, in the conclusion of Chapter 2, the implementation of the New York Convention is widely in practice within the territory of India in accepting the foreign arbitral awards. The reason behind saying this is to note that this very Convention has the large number of the Member States who have accepted to imply in their respective regions. The other aspect is that it is purely to encourage the enforcement of the foreign arbitral awards universally and break down the wall which used to obstruct in enforcing such foreign awards in different territorial legal systems.

Although The Convention is applicable only to the Member States, the very Convention is holding three-fourth of the worldly states as signatories to The Convention and thus it covers almost all the countries in the world when compared to the other Conventions or treaties which is purely on the arbitration.

Hence, after India became a signatory to the said Convention, in order to ratify The Convention to the Indian jurisprudence, enacted The foreign Awards (Ratification and Enforcement) Act, 1961 which is soon after The Convention and was enacted duly on purpose of ratification of The Convention in India. Later, The Arbitration and Conciliation Act, 1996 was passed in August, 1996 in order to bring a proper rule to the domestic arbitration and the international commercial arbitration. In this point of view, the act was enacted with the possible domestic rules for the domestic arbitration and assimilation of The New York Convention, 1958 and The Geneva Convention, 1966 majorly, in order to consider the foreign awards which could be enforced in Indian jurisprudence.

WHEREFORE this chapter explains the main purpose of this thesis, wherein it discusses about the impact of The New York Convention on India and the application of the said Convention by India and the enforcement which is made in the Indian Courts in order to bring the foreign awards into action in the Indian jurisdiction.

CHAPTER – 3

CASE ANALYSIS

The cases which are to be discussed are solely from the Official website of The New York Convention which includes the facts, issues and the decisions, the analysis which is made by personal reasoning how the Indian Courts are implying The Conventions in such Foreign Award issues or in International Commercial Arbitration. The cases would be with the brief facts and the analysis of the judgment which is passed in such cases, and discussion is made on the application of the foreign award or the consideration of The Convention actively in the said cases.

V/O Tractoroexport v. M/s Tarapore and Co.,

Supreme Court of India

(Yearbook Commercial Arbitration 1976 - Volume I (Sanders (ed.); Jan 1976)

FACTS

The plaintiff, an Indian company, started a law suit in the court of Madras, India, for alleged breach of contract against the defendant, a Russian firm, in August 1967. Thereafter, in November 1967, the Russian firm initiated an arbitral proceeding in Moscow pursuant to the arbitration clause contained in the contract, and also sought to stay the lawsuit in Madras.

In the Indian court proceedings the Russian firm argued that – according to Article II, para. 3, of The New York Convention 1958 as implemented by Section 3 of the Indian Foreign Awards (Recognition and Enforcement) Act 1961 – the dispute should first of all be decided by the arbitrators in Moscow. The Indian company, on the other hand, asked the Indian court for an interim injunction against the Russian firm's continuing the arbitration proceedings in Moscow.

ISSUE

Essentially the question was whether Section 3 of the Indian Foreign Awards Act meant that, whenever there is a valid arbitration agreement, the parties should be referred to arbitration, or that for this purpose an actual submission of the dispute to the arbitral tribunal was required. In the present case this actual submission was only made after the Indian company had initiated court proceedings in India.

DECISION

For the reasons expressed the Hon'ble Court held that the appellant is entitled under Section 3 of- the Act for an order of stay of the proceedings in C.S. 118 of 1967 pending in the Madras High Court on the ground that in terms of the Contract dated February 2, 1965 the parties expressly agreed that all disputes arising out of the contract should be settled by arbitration by the Foreign Trade Arbitration Commission of the U.S.S.R. Chamber of Commerce at Moscow.

The Supreme Court held that Section 3 only gave a limited effect to the New York Convention 1958. The action could not be stayed under Section 3 in the absence of an actual submission to the arbitral tribunal in Moscow prior to the institution of court proceedings.

ANALYSIS

This is the very first case after signing The Convention by India in the 1960. After being a Member State to The Convention, The Foreign Awards (Ratification and Enforcement) Act, 1961 was introduced or enacted in order to ratify the said Convention in the Indian Jurisdiction. The other issue is that the Supreme Court found that the Act itself is not complete in order to refer the case to the arbitration, as such it states that the matter was first heard in the High Court of Madras, where the Court granted interim injunction of stay of the proceedings to the arbitration proceedings in Moscow.

The Russian firm appealed the said judgment before the Supreme Court if India wherein it analyses the basic fact that the case was of the true state of parties. The parties have agreed and signed the agreement which state that if any of the dispute arising out of that agreement shall be deemed to be initiate arbitration proceedings in Moscow. However, the Indian firm, did not do so, rather filed a petition before the Court of Madras in order to get the suitable order on the breach of contract with the Russian firm. Therefore, this was observed by the Supreme Court of India, wherein it states that though the High Court have allowed the application made under Section 3 of the Act (The Foreign Awards Ratification and Enforcement Act, 1961) the High Court did not consider the Article II of The Convention, which clearly emphasizes the arbitration clause in the agreement which is in writing shall be enforced in case of dispute arising out of such agreement. Hence, since the Indian Company did not have any contention to prove that the very agreement is invalid or void, then it is good to refer the matter to the arbitration in order to resolve the dispute.

This became a remarkable judgment and lead to the amendment of Section 3 of the Act on August 16, 1973. It now reads, in essence, that a party may apply to the Court to stay proceedings where 'any party to an agreement to which Article II of the New York Convention applies' commences court proceedings. Full effect to the New York Convention has therefore now been given.

Hence, the very Convention was given effect in a full manner and direction was made based on that effectively by the Supreme Court of India in the very first of its case.

Sumitomo Heavy Industries Ltd. v. ONGC Ltd. (India) and another

Supreme Court of India

Yearbook Commercial Arbitration 1999 - Volume XXIVa (van den Berg (ed.); Jan 1999)

FACTS

On 7 September 1983, ONGC Ltd. (ONGC), the Oil & Natural Gas Commission of India, entered into a contract with Sumitomo Heavy Industries Ltd. (Sumitomo) for the turnkey installation of an oil platform at Bombay High, approximately 100 miles north-west of Bombay. Clause 17.1 of the contract provided that "All questions, disputes or difference arising under, out of or in connection with this Contract shall be subject to the laws of India"; Clause 17.2 provided for ICC arbitration in London by two arbitrators and an umpire.

A dispute arose between the parties, whereupon Sumitomo initiated ICC arbitration as provided for in the contract. Each party appointed an arbitrator and the two arbitrators appointed an umpire.

When ONGC failed to file its statement in defence in the arbitration, Sumitomo petitioned the High Court (Commercial Court) in London for an order under Sect. 5 of the English Arbitration Act, 1979. Potter, J granted Sumitomo's request. The order was later set aside by the High Court.

The two party-appointed arbitrators did not reach an agreement and, on 27 June 1995, the umpire rendered an award in favour of Sumitomo.

On 26 July 1995, ONGC summoned Sumitomo and the umpire in the High Court in Bombay, seeking an order directing the umpire to file the London award in Bombay under

Sect. 14(2) of the Indian Arbitration Act, 1940, as a prerequisite for a request to set aside the award. The Court granted ONGC's petition on 25 October 1996.

DECISION

The Supreme Court affirmed the lower court's decision. It found that the procedural law governing the arbitration, in case, English law, ceases to have effect with the making of the award. Hence, the filing of the award in court is not part of the arbitration proceedings; rather, it pertains to the subsequent (enforcement or annulment) proceedings, which are governed by the law governing the arbitration agreement. In case, the law governing the arbitration agreement was undisputedly Indian law and, more in particular, the Indian Arbitration Act, 1940, which allows a court to direct an arbitrator to file his award in court. The Supreme Court found that the Foreign Awards (Recognition and Enforcement) Act, 1961 did not apply as the award was made on the basis of an arbitration agreement governed by the law of India.

ANALYSIS

The Indian Court has rendered the proper difference which is made between the curial law and the Substantive law in the above case. It is said that in the agreement between the parties, Indian Law was the substantive law and the curial law was the English Arbitration Law. Therefore, the Court also observes and make a mention stating that the award filing to the Court is not merely the part of the arbitration proceedings and also it is said that the Court carefully has considered the fact that United Kingdom is a Member State and the English law would not affect the procedural aspect of the arbitration proceedings.

It is also observed that the case was about the filing of the award outside the place of arbitration or the law applicable to the arbitration. The court have its analytical view when the request is made by the Indian Court in order to file or enforce the award in the Court of Bombay, but the Supreme Court observed that the substantive law was the Indian Law (The Indian

Arbitration Act, 1940), hence the said Act clearly allows the Court to direct the arbitrator to file the award before the Court and it also observes that the Foreign Awards Ratification and Enforcement Act, 1961 is not applied in this case, therefore the application of the Turkish company was affirmed.

The Court has made a clear distinction between the laws which are applied and did not consider the two Indian Acts into same page. It is duly noted that the distinction is properly made and knew the provision in making such directions and also observed on what ground does the lower Court has directed the parties in order to enforce the Award in the different jurisdictional Court. However, not forgotten that the different legal system is united by The Convention (The New York Convention) and also it is noted that the application made before the English Court was duly considered as the Curial Law jurisdiction and it is nothing related to the substantive law. Therefore, the confusion between the two different Laws was explained based on the jurisdictional rights of the Courts and also made clear that when there is a room to activate such a right of properly using a curial law in the process of arbitration with different substantive law.

LDK Solar Hi-Tech (Suzuhou) Co. v. Hindustan Cleanenergy Limited (formerly Moser Bear Clean Energy Limited),

High Court of Delhi, New Delhi,

EX. APPL. (OS) 192/2017, 4 July 2018

FACTS

On 21 November 2011, LDK Solar Hi-Tech (Suzuhou) Co. (LDK) and Enertec Trading FZE (Enertec) entered into a Framework Contract setting forth General Conditions for Supplying Modules (GTAC), under which LDK undertook to supply solar panels to Enertec to be used in solar energy generating projects in India. Purchase Orders were to be issued for each

supply. Previous to the conclusion of the GTAC, on 14 November 2011, Hindustan Cleanenergy Limited (Cleanenergy) had issued a Parent Company Bond in favor of LDK, in which it guaranteed the due discharge of obligations by Enertec under the GTAC and the Purchase Orders. The parties agreed that all disputes "shall be submitted for arbitration before China International Economic and Trade Arbitration Commission (CIETAC) in Shanghai".

A dispute arose between the parties when Enertec failed to pay under the GTAC and the Purchase Orders. LDK commenced arbitration against Enertec and Cleanenergy at CIETAC in Bejing. (Enertec was later removed as a party at LDK's request, and the arbitration continued only against Cleanenergy.) Upon receipt of the notice of arbitration from CIETAC, Cleanenergy challenged CIETAC's jurisdiction. By an order of 8 April 2014, CIETAC rejected the challenge.

On 25 February 2015, the CIETAC arbitral tribunal issued a Final Award in favour of LDK, directing Cleanenergy to pay to LDK the balance of the purchase price in the amount of US$ 14,687,867.00; liquidated damages in the amount of US$ 734,393.35; LDK's legal fees; and 90 percent of the costs of the arbitration.

Cleanenergy sought annulment of the Final Award in China. LDK sought its recognition and enforcement in India. Cleanenergy opposed LDK's Execution Petition and applied to the Court to dismiss it.

DECISION

The High Court of Delhi, per Navin Chawla, J, granted the Execution Petition, dismissing Cleanenergy's objections based on Sect. 48(1)(d) and Sect. 48(2)(b) of the Indian Arbitration and Conciliation Act, 1996, which mirror Art. V(1)(*d*) and Art. V(1)(*b*) of the 1958 New York Convention, respectively.

The Court found no merit in the objections raised by the applicant to the enforcement of the Impugned Award and the present application is accordingly dismissed with no order as to cost. As the objections raised against the enforcement of the Impugned Award have been rejected, the Judgment Debtor shall make payment of the awarded amount to the Decree Holder within a period of four weeks from today failing which, the Judgment Debtor shall file an affidavit disclosing its assets in Form 16A Appendix E of the Code of Civil Procedure, 1908 within the same period.

ANALYSIS

This is observed as the latest case which decision is made on the basis of The New York Convention. It is a simple case wherein the issue between the two companies which one is form India and the other is from China. the issue is that the based on the agreement made between the party, the arbitration clause was enforced when the dispute arose between the two. It is simply said that the case was on deciding the jurisdiction of the arbitral institution in order to assign the matter. This case was entirely based on deciding the jurisdiction of the arbitration, wherein the institution which is mentioned in the agreement, supposed to have various entities in the different places in China. Therefore, the institution was correctly mentioned but the jurisdiction was not.

The very contention of the Indian Company is that the trial of the Arbitration was made at the other party's choice and did not mention the proper jurisdictional institution. This contention of the Indian Company was made even after the award is passed against them and when the award is tried to enforce in India by the said Chinese Company. It is true to suggest that the agreement should have certain specific aspects with regard to the seat, language, arbitrators, fee structures and so on which should be mentioned in India. The agreement as

mentioned contained only the institution's name and not place of the institution as it has subsidiaries in various places.

The analysis is made by the Indian Court is that the agreement was signed between the parties and the issue was not known and not checked properly at the time of signing of the document. Therefore, High Court of Delhi did the right job of accepting the award against the Indian Court, wherein it found that there was no default in passing of the award, and more than that, in order to reject the award under Section 48 of the Arbitration and Conciliation Act, 1996, the Indian Company tried to prove that the contract itself becomes null and void when the there is no proper jurisdiction is mentioned to the arbitration clause, but the Court held that the same issue was mere, and that it should have been resolved at the initial stage itself and also the Court found that, the information given in the Agreement is sufficient enough, and if so the company would be specific with regard to the particular about which subsidiary of the arbitral institution it would be, than they would have been mentioned.

At this stage, the entire procedure has been correctly followed by the Chinese company and they are liable for the enforcement of the award, because of the fact that the arbitration process is merely done based on the contract and with considering the substantive law and also the seat of arbitration and so on and also the default of the Indian Company clearly proved and the award was passed based on the evidences and the arguments which is submitted. Therefore, the Court found that just for the mere reason of not deciding the particular seat of the institution, cannot invoke the entire arbitral award and hence it was therefore the request of the Indian Company was rejected and allowed the execution petition of the Chinese company and also made mandatory condition that if the Indian company does not pay the due amount to the Chinese company within prescribed time, then it would seize the property of the Indian Company under the Code of Civil Procedure, 1908.

CONCLUSION

At the outset, the practice of arbitration in India and implementation of the foreign arbitral awards in the territorial jurisdiction in India is accurate, analytical and impartial in nature. It is clearly can be understood that India is moving towards the arbitration – friendly nation.

India is a country which had the practice of arbitration even before the Enactment or Ratification of The New York Convention, 1958. Therefore, the very first chapter of the thesis explains briefly how the practice of the arbitration was in existence and also how it was legislated in the later stage. It is true to suggest that at the time of the British Rule in India, the process of arbitration was identified and also gradually in the later stages. Therefore, after the ratification of the New York Convention, 1958, the very first enactment to the arbitration was to the ratification of The Convention in India and then the following amendments were made bases on the flexibility requirement in the country.

When it is observed keenly, on the practice of the arbitration in India, it has given a distinct importance to it and also it is observed that it is one of the most practiced Alternative Dispute Resolution System in India. The practice of the arbitration in India is not new and also it is good to know that, after the ratification of the New York Convention,1958, it has become much easier in order to enforce and apply the foreign Arbitral Awards in the Indian Territory and also it is making progress in bringing necessary amendments.

WHEREFORE, it is clear that the entire thesis is on the concept of observing the implementation of the foreign arbitral awards solely based on The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 and also discusses the various ways of consideration said Convention and also discusses about the implementation or enforcement of the foreign awards based on The Convention and the cases from which it is resolved accordingly.

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