

ADR HOC WEEKLY BULLETIN

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**Singapore Convention
on Mediation: An Analysis**



UPCOMING EVENT

**International Conference on "ADR &
Technology"**

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A PEEK INTO THE SINGAPORE CONVENTION

- ABHISHEK ROHATGI

1. INDIA RATIFIES THE SINGAPORE CONVENTION

India ratified The United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)[1] on 7th August 2019 along with major major economic powers like the USA, China, South Korea bringing the total number of signatories to 53.[2] With the ratification of the Convention, a new era of mediation in International Commercial Disputes has been marked.

2. SCOPE OF THE CONVENTION

The Convention primarily aims to resolve 'Commercial' disputes via mediation & provides for an effective way of enforcing mediation settlements where the parties to the dispute have their places of business in two different participating States.[3] However, the convention excludes the settlement agreements pertaining to personal, family, inheritance, household purposes, and employment law.[4] Further, those settlement agreements (i) That have been concluded in course of court proceedings, (ii) That are enforceable as a judgment in the state of the Court, and (iii) which are recorded and enforceable as arbitral awards.[5]

3. COMMERCIAL DISPUTES

One scathing criticism of the convention roots from its ambiguity in the definition of 'Commercial' disputes. The convention has wholly neglected to define the scope of the term – COMMERCIAL. This can lead to future complications as the same is open to interpretation by the parties. A narrower interpretation will lead to the inefficacy of the Convention.

4. ENFORCEMENT MECHANISM

There are two facets to the enforcement of a settled mediation agreement through Singapore Convention.

-Firstly, it easier for the parties seeking enforcement of a mediated settlement agreement across borders by applying directly to the courts of countries that have signed and ratified the treaty, instead of having to enforce the settlement agreement as a contract in accordance with each country's domestic process.

-Secondly, the convention leaves it to the liberty of the participating states to enforce the settlement agreement according to their rules and procedures, and under the conditions laid down in the convention.[6] The effect to the same would be provided by incorporation of the principles of this convention in municipal laws of the Member States, which the States might or might not take action for. Thus leaving again the question of Enforcement unsolved.

5. THE QUESTION OF PUBLIC POLICY

The participating states have been given the liberty to refuse to grant relief in furtherance of the settlement agreement if they deem it to be opposed to the public policy. This stipulation gives unprecedented power to the participating states to avoid in entirety any settlement agreement reached on grounds of upholding the public policy of the country. Further, there is no review mechanism to ascertain that this ground is not misused. Therefore, the fate of the efficiency of the convention rests in hands of the participating states.

[1] Hereinafter referred to as 'the Convention'

[2] Singaporeconvention.org. 2021. Singapore Convention on Mediation Enters into Force.

[3] Singapore Convention on Mediation (adopted 20 December 2018, entered into force 12 September 2020) Article 1.1

[4] Ibid Article 1.2

[5] ibid Article 1.3

[6] Article 3

SINGAPORE CONVENTION ON MEDIATION : AN OVERVIEW

- PARIDHI RUNGTA AND LAVANYA SREEDHARAN

Sandra Day O'Connor says, that *“The courts of a country should not be a place where the resolution of a dispute begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”*

The United Nations General Assembly on 20th December 2018, took note of the draft submitted by the United Nations Commission of International Trade Law through the decision taken in its fifty-first session hence adopting the United Nations Convention on International Settlement Agreement resulting from Mediation also known as Singapore Convention. It was opened for signature on 7th August 2019 in Singapore and thereafter at United Nations headquarters in New York. It came into force on 12th September 2020 has till now been signed by 53 States and 6 of them have ratified it.

Before the enactment of the convention, there was a dire need raised by member countries of the United Nations to bring in a more uniform and consistent international law for enforcing settlement agreements reached through mediation. Although the New York convention, 1958, and The Hague choice of court convention existed, they didn't fulfill the aforesaid requirement.

Thus, the convention aims at bringing in a uniform legal framework for the parties to the convention. The purpose is to harmonize the right to invoke and enforcement of international settlement agreements reached through mediation.[7]

However, while understanding the nexus between the objectives of the convention and the provisions that fulfill it, major concerns regarding the loopholes which defeat the purpose of the objectives has been deduced. For instance, one of the main objectives of the Singapore Convention is to establish a harmonized legal framework for the enforcement of Mediated Settlement Agreements, nevertheless, Article 8(5) provides for a party that makes a reservation to withdraw it at any time and at the same time in scenarios wherein one party is a government agency and the other isn't, the government agency opting out of the agreement

would leave the other party hanging and cause monetary loss thus defeating the said objective along with disrupting commercial and international relations between the countries. This would also overthrow the objective to contribute to SDG-16. Hence, in such cases, gradually mediation won't be chosen as an appropriate mechanism for dispute resolution which setbacks the objective of the convention to promote mediation. Further, the convention aims at creating a uniform law on mediation. However, Article 4(1) (b) requires the mediator's signature on the settlement agreement or on a document to indicate that the mediation was carried out. In practice, the mediators do not usually provide a signature to maintain the confidentiality of the mediation. [8]

Now, in absence of an institution of mediation, it would be very difficult for the party seeking relief to provide proof to the competent authority. The different authorities, in that case, might opt to different methods according to their systems for providing relief, which would defeat the purpose of a uniform international law. Moreover, nothing has been provided in Article 1 or 2 of the convention regarding the qualifications of mediators, in such absence, the reliance of the same would be on varying domestic laws, again defeating the objective

Although, apart from the loopholes, there are beneficial impacts of the convention in momentous magnitude as well. With a subsequent rise in trade and commerce over the last couple of decades, there has been a rise in disputes as well. Such disputes when resolved through the medium of courts and arbitration consume ample amount of time and cost. The Singapore Convention removes this gap by facilitating International Trade by providing effective and efficient mechanism for resolving trade disputes. The question is what new impact would this convention have? Well, traditional dispute resolution often leads to termination of commercial relations on a large scale. Thus, the convention will facilitate the administration of international transactions by commercial parties and develop a fiduciary relation encouraging investment in other countries,

trade agreements, import-export, collaborations, etc. It would enhance international cooperation as even if a cross-border dispute arises, there would be a scope of resolving it amicably through the basic flexible provisions of the convention. This would also inspire the countries, like India, which do not possess adequate mediation laws, to enact the same, hence encouraging Mediation.

Mediation in India has been promoted time and again by the judiciary, the most famous example of it being the Supreme Court referring Ayodhya Dispute to mediation. The introduction of Section 89 in the Civil Procedure Code, 1908 by the amendment made in 1999 added that a dispute can be legally referred to mediation as well.[9] Among other well-known examples lies the case wherein matters that require mediation were listed.[10] As of now, settlement agreements concluded through mediation can only be enforced as contracts; However, India signing the Singapore Convention has displayed its seriousness about complying with international ADR practices thus attracting foreign investors.

Thus, it can be concluded that the Singapore Convention on Mediation is a step ahead taken by United Nations to encourage the practice of Mediation for dispute resolution. It will contribute to the ambitions laid down in Sustainable Development Goals (SDG) – 16 which aims at peace and justice for all by establishing strong institutions to ensure the same. Concluding in the words of former CJI Bobde, *“It is time to devise a comprehensive legislation which contains a remedy for the biggest drawback in a mediation agreement, that is to say, the un-enforceability of an agreement arrived at mediation.”*

[7] United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the “Singapore Convention on Mediation”) | United Nations Commission on International Trade Law.

[8] The Serpentine Trust Limited v HMRC, [2018] UKFTT 535 (TC)

[9] Salem Bar Association v. Union of India, 2005 (6) SCC 344

[10] Afcons Infrastructure v. Cherman Varkey Construction Co. Ltd, (2010) 8 SCC 24

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NEXT WEEK: The month of April 2021 has marked various developments in the field of Arbitration.

The next issue would be a recapitulation of the month

**Thank you for Reading!!
We look forward to your
valuable comments &
suggestions**



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