



# **V-LRN**

# **VIRTUAL LEARNING NETWORK**



# International Business Environment

Block-4

Unit-16

Settlement Of International Trade  
Disputes

Virtual Learning Network



# Topics To Be Covered

- Introduction
- Areas of International Trade Dispute
- Methods of Settlement of International Trade Disputes
- Role of ICC in Arbitration and Conciliation
- Major Issues in settlement of International trade Disputes
- Overview of Indian Arbitration and Conciliation Act 1996
- Summary



# Introduction

- In international business, disputes are varied in nature and arise mainly on account of omissions and commissions in the contract resulting in a breach of contract.
- Settlement of commercial disputes or differences as and when they arise, in a desirable solution.
- They are resolved and required to be resolved by discussion in view of the high cost, time consuming process, inconvenience involved in settling the disputes by legal proceedings.
- When the method of resolving the disputes fails the parties resort to an outside person, or court to settle the disputes.



# Areas of International Trade Disputes

- Disputes arise when the contracting parties do not fulfill their contractual obligations resulting in a breach of contract.
- When time is considered as the essence of the contract but goods are not supplied within the given time.
- When the promisor expresses difficulty of performance due to some considered events, delays etc.
- When the promisor pleads his inability to perform his obligation due to failure of a third person on whom the promisor relied for supply of goods.
- When the promisor faces some unusual circumstances like strikes or lock-outs of his factory and it becomes difficult for him to meet his commitment.



# Areas of International Trade Disputes(Contd.)

- When the overseas buyer wants to avoid the contractual obligations .
- When the overseas buyer refuses to pay or delays payment of goods.
- When the promisor pleads his inability to perform his obligation due to failure of a third person on whom the promisor relied for supply of goods.
- When the promisor faces some unusual circumstances like strikes or lock-outs of his factory and it becomes difficult for him to meet his commitment.



# Methods of Settlement of International Trade Disputes

## ARBITRATION

- It is a form of alternative dispute resolution which is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons, by whose decision they agree to be bound.
- It is a settlement technique in which a third party reviews the case and imposes a decision that is legally binding for both sides.



# Arbitration (Contd.)

Arbitration is most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions.

The use of arbitration is far more controversial in consumer and employment matters, where arbitration is not voluntary but is instead imposed on consumers or employees through fine-print contracts, denying individuals of their right to access the courts.





# Advantages of Arbitration

- Arbitration proceedings can be commenced and completed within a specified time limit depending on the nature of the dispute.
- The costs and expenses of arbitration are less compared to court litigation.
- Arbitration promotes goodwill and better trade relations between the parties.
- In arbitration, the parties can avail of the services of experts who are experienced and more knowledgeable which is not possible in a court litigation.

# Methods of Settlement of International Trade Disputes(Contd.)

## **LITIGATION**

- The litigation(the process of taking legal action) is initiated and completed according to the rules of the court which exist to ensure the proper conduct of the litigation.
- Litigation however, is costly, time consuming and most inconvenient.
- It creates bitterness and adversely affects the long term commercial interests of the parties.



# Limitations of Litigation

- Court proceedings are slow and time consuming besides being very formal.
- The judge, expert or eminent in the field of law may not be expected to have the same expertise in the lines of international trade and business.
- The time and dates of hearing in a court of law may not be convenient to the parties.
- Court proceedings and judgments being open to public no business secrecy can be maintained.
- Litigation is costly & additionally more difficult in a foreign court.



# Arbitration Clause

- An **arbitration clause** is a commonly used clause in a contract that requires the parties to resolve their disputes through an arbitration process.
- Although such a clause may or may not specify that arbitration occur within a specific jurisdiction, it always binds the parties to a type of resolution outside of the courts.

# Arbitration Clause (Contd.)

- Arbitration clauses are often combined with geographic forum selection clauses, and choice-of-law clauses, both of which are also fully enforceable.
- An arbitration clause may nevertheless be challenged and held invalid if it designates a biased party as the arbitrator.



# Alternative Dispute Resolution (ADR)

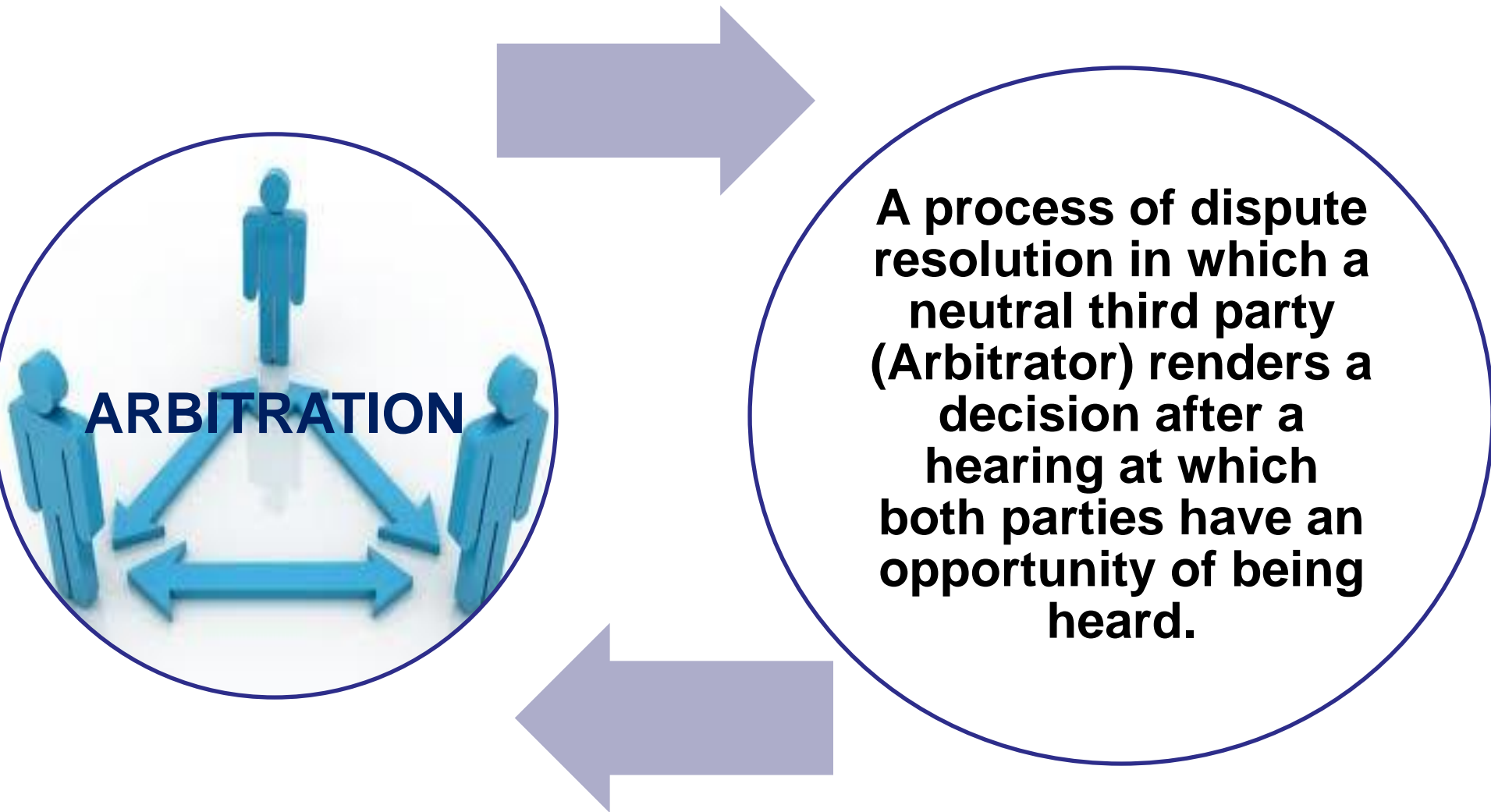
- Alternative dispute resolution (ADR) includes dispute resolution processes and techniques that fall outside of the government judicial process.
- ADR is generally classified into at least four types: negotiation, mediation, collaborative law, arbitration and conciliation.
- ADR traditions vary somewhat by country and culture. There are significant common elements which justify a main topic, and each country or region's difference should be delegated to sub-pages.



# Role Of ICC In Arbitration And Conciliation

- The International Chamber of Commerce, Paris, is a highly successful and most popular global organization/institution.
- The ICC system combines the security and the safeguards of institutional arbitration with the flexibility of ad-hoc arbitration. The ICC system consists of a Court of Arbitration and a permanent Secretariat which supervises each arbitration and conciliation, together with a comprehensive set of rules for guiding the procedure.

# Indian Arbitration and Conciliation Act 1996





# Objective of Arbitration

- To comprehensively cover both international and domestic arbitration and conciliation.
- To make provisions for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration.
- To provide that the arbitral tribunal gives reasons for its arbitral awards.
- To ensure that the arbitral panel remains within the limits of its jurisdiction



# Objective of Arbitration (Contd.)

- To minimize supervisory role of courts in the arbitral process
- To permit an arbitral tribunal to use meditation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes.
- To provide that every final arbitral award is enforced in the same manner as if it were a decree of the court.
- To provide the settlement reached by the parties as a result of conciliation proceeding will have the same status on agreed terms.

# Arbitration Agreement

- It means an agreement by the parties regarding disputes to arbitration whether contractual or not.
- It shall be in writing and may be in the form of Arbitration Clause in any other document.
- It may be in the form of exchange of letters or confirmation through letters or verbal communication.
- It may be a separate comprehensive independent agreement.

# Number of Arbitrators

The parties are free to decide the number of arbitrators, but it shall not be an even number, if the parties fail then arbitral panel shall consist of a sole arbitrator.



# Appointment of Arbitrator

- Person of any nationality agreed by the parties
- Subject to failure of appointment procedure agreed by the parties, every party is free to appoint single arbitrator and the third one will be selected by two of them.
- Failure of above procedure within 30 days, then appointment on request of parties by Chief justice or person or institution designated by him and similar manner for sole arbitrator.
- The Chief justice should consider qualifications, independent and impartial qualities of arbitrator.

# Conciliation

Adjustment and settlement of a dispute in a friendly manner by using a non binding procedure.

Party wanting conciliation shall “INVITE” other party to conciliate.

Proceedings commence only when a reply is received within 30 days, else deemed rejection of invitation

On rejection ,first party to re-inform the other.

# Conciliators

- Number: can be one or if parties then two or three (that suggests that it cannot be more than three)
- Appointment:
  - By mutual agreement of parties.
  - One each, by each party.
  - One by each party and 3<sup>rd</sup> by mutual agreement.

# Relevant Provisions at a Glance

- Conciliators not bound by Code of Civil Procedures 1908 or The Indian Evidence Act 1872.
- Guided by principles of objectivity, fairness and justice.
- Proceedings in the manner as conciliator regards appropriate.
- Conciliator may take administrative assistance.
- Place of conciliation determined by conciliator after consultation with parties.





# Settlement Agreement- The Outcome of Conciliation

- Where it appears to the conciliator that there exists elements of settlement he shall formulate terms of settlement.
- Observations to be submitted by parties on the draft formulation.
- Conciliator to reformulate the agreement.
- After reaching to an agreement, a formal settlement shall be drawn up and signed by the parties.



# Settlement Agreement- The Outcome of Conciliation(Contd.)

- The settlement agreement shall now be final and binding on all the parties concerned.
- Conciliation proceeding terminate
  - On signing of the agreement
  - Written declaration by conciliator
  - Written declaration by parties
  - Written declaration between parties.

# Summary

- In international business, disputes are varied in nature and arise mainly on account of omissions and commissions in the contract resulting in a breach of contract. Settlement of commercial disputes or differences as and when they arise, is desirable. They are resolved or required to be resolved amicably by discussion in view of the high cost, time consuming process, inconvenience involved in settling the disputes by litigation or arbitration.
- The arbitration or conciliation is normally initiated on the basis of a written agreement between the parties separately entered into or on the basis of a clause to that effect in the contract

*Thank  
You*