PRESS RELEASE

The Government of India under the dynamic leadership of Hon’ble Prime Minister is committed for speedy resolution of commercial disputes and to make India an international hub of Arbitration and a Centre of robust ADR mechanism catering to international and domestic arbitration, at par with international standards available.

To give an impetus to this endeavor, the Department of Legal Affairs, Ministry of Law and Justice, on 13 January, 2017 constituted a ten Member, High Level Committee under the Chairmanship of Justice B.N.Srikrishna, Retired Judge, Supreme Court of India. Justice R.V.Raveendran, Retired Judge, Supreme Court of India, Justice S. Ravindra Bhat, Judge, High Court of Delhi, Shri K.K.Venugopal, Sr. Advocate and presently Attorney General for India, Shri P.S.Narasimha, Additional Solicitor General of India, Ms. Indu Malhotra, Senior Advocate, Supreme Court of India, Shri Arghya Sengupta, Research Director, Vidhi Centre for Legal Policy, Shri Arun Chawla, Deputy Secretary General, FICCI, Shri Vikkas Mohan, Senior Director CII, were the Members and Law Secretary, Shri Suresh Chandra, was the Member Secretary of the High Level Committee.

The High Level Committee was given the mandate to review the institutionalization of arbitration mechanism and suggest reforms thereto. The Committee held 7 sittings. It submitted its report on 3 August, 2017 to Shri Ravi Shankar Prasad, Hon’ble Minister of Law & Justice and Electronics and Information Technology.

2. The Committee has divided its Report in three parts. The first part is devoted to suggest measures to improve the overall quality and performance of arbitral institutions in India and to promote the standing of the country as preferred seat of arbitration. The Committee in this context have inter alia recommended –

(i) Setting up an Autonomous Body, styled the Arbitration Promotion Council of India (APCI), having representatives from all stakeholders for grading arbitral institutions in India.

(ii) The APCI may inter alia recognize professional institutes providing for accreditation of arbitrators

(iii) The APCI may hold training workshops and interact with law firms and law schools to train advocates with interest in arbitration and with a goal to create a specialist arbitration bar comprising- of advocates dedicated to the field.
(iv) Creation of a specialist Arbitration Bench to deal with such Commercial disputes, in the domain of the Courts.

(v) Changes have been suggested in various provisions of the 2015 Amendments in the Arbitration and Conciliation Act with a view to make arbitration speedier and more efficacious and incorporate international best practices.

The Committee are also of the opinion that the National Litigation Policy (NLP) must promote arbitration in Government Contracts.

3. The Committee in Part II of the Report reviewed the working of ICADR working under the aegis of the Ministry of Law and Justice, Department of Legal Affairs. The Institution was set up with the objective of promoting ADR methods and providing requisite facilities for the same. The Committee has preferred for declaring the ICADR as an Institution of national importance and takeover of the Institution by a statute. The Committee are of the view that a revamped ICADR has the potential be a globally competitive institution.

4. As regards the role of arbitrations in matters involving the Union of India, including bilateral investment treaties (BIT) arbitrations, the Committee in Part III of the Report has *inter alia* recommended for creation of the post of an ‘International Law Adviser’ (ILA) who shall advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations, particularly disputes arising out of BITs. The Committee has emphasized that ILA may be consulted by the Department of Economic Affairs (DEA), at the time of negotiating and entering into BITs.

5. The roadmap of suggested reforms after an in depth examination of the issues, by the High Level Committee can result in a paradigm shift from the current perception of delay in resolution of commercial disputes in India to it being viewed as an investor friendly destination. The suggested reforms will not only lessen the burden of the judiciary, but give a fillip to the development agenda of the Government and aid the financial strength of the country and serve the goal of welfare of the citizens.

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I. EXECUTIVE SUMMARY

The provision of quick and easy means for the resolution of commercial disputes has been a priority for Indian lawmakers for some time now. The enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("Commercial Courts Act") was aimed at revitalising India's commercial dispute resolution ecosystem. The promotion of arbitration as a quick and effective alternative to litigation is another area of focus for the Government of India ("Government").

India's efforts to encourage dispute resolution through arbitration and become a major arbitration hub had long been impeded by the judicial interpretation of certain provisions of its arbitration legislation and excessive court involvement in the arbitral process. The 2015 amendments to the Arbitration and Conciliation Act 1996 ("ACA") were therefore focused on undoing the effect of such judicial precedent and limiting judicial intervention.

The promotion of institutional arbitration in India by strengthening Indian arbitral institutions has also been identified as being critical to encouraging dispute resolution through arbitration. Though various arbitral institutions have been set up in India, particularly in the last five years, they have not been preferred by parties, who have leaned in favour of ad hoc arbitration or arbitrations administered by arbitral institutions located abroad. It was in this context that the High Level Committee ("Committee") was set up to identify the roadblocks to the development of institutional arbitration, examine specific issues affecting the Indian arbitration landscape, and prepare a roadmap for making India "a robust centre for international and domestic arbitration."

The Committee had extensive deliberations and consultations with stakeholders to identify specific areas of reform for the development of institutional arbitration. In Part I of this Report, the Committee recommends the strengthening of institutional arbitration in India through measures such as the grading of arbitral institutions, the accreditation of arbitrators, the creation of a specialist arbitration bar and bench, and the provision of governmental and legislative support for institutional arbitration. The Committee also recommends further amendments to the ACA to clear ambiguities in the legislation and promote the use of India as a seat of arbitration.

In Part II, the Committee recommends the development of the International Centre for Alternative Dispute Resolution ("ICADR"), an arbitral institution receiving significant funding from the Government, as a flagship arbitral institution. In Part III, the Committee examines the issues of management and resolution of bilateral investment treaty ("BIT") arbitrations involving the Union of India, and makes specific recommendations for effective dispute resolution, dispute management and prevention.

Key recommendations

1. Arbitration Promotion Council of India – An autonomous body styled the Arbitration Promotion Council of India ("APCI") and having representation from various stakeholders may be set up by amendment to the ACA for grading arbitral institutions in India. (See Chapter VI, Section A)

2. Accreditation of arbitrators – The APCI may recognise professional institutes providing for accreditation of arbitrators. Accreditation may be made a condition for acting as an arbitrator in disputes arising out of commercial contracts entered into by the government and its agencies. (See Chapter VI, Section B)

3. Creation of a specialist arbitration bar – Measures may be taken to facilitate the creation of an arbitration bar by providing for admission of advocates on the rolls of the APCI as arbitration lawyers, encouraging the establishment of fora of young arbitration practitioners, and providing courses in arbitration law and practice in law schools and universities in India. (See Chapter VI, Section C)

4. Creation of a specialist arbitration bench – Judges hearing arbitration matters should be provided with periodic refresher courses in arbitration law and practice. These courses could be conducted by the National Judicial Academy and the respective state judicial academies. (See Chapter VI, Section D)

5. Amendments to the ACA (See Chapter VI, Section E)
   - Applicability of the 2015 Amendment Act – Section 26 of the 2015 Amendment Act may be amended with retrospective effect to provide that unless parties agree otherwise, the 2015 Amendment Act shall apply only to arbitral proceedings commenced on or after the commencement of the 2015 Amendment Act and to court proceedings arising out of or in relation to such arbitral proceedings.
   - Amendment to section 2(2) of the ACA – Section 2(2) may be amended to provide that clause (b) of sub-section (1) of section 37 shall also apply to international commercial arbitrations, even if the place of arbitration is outside India, instead of clause (a) of sub-section (1) of section 37.
   - Amendment to section 17(1) of the ACA – Section 17(1) may be amended to delete the words “or at any time after the making of the arbitral award but before it is enforced in accordance with section 36”.
   - Timelines under section 29A of the ACA – Amendments may be made to section 29A: (a) to limit its application to domestic arbitrations only, and not international commercial arbitrations; (b) to provide for a 6-month period for the submission of pleadings; (c) to provide that the time limit for completion of arbitral proceedings
starts to run the aforementioned 6-month time period; (d) to provide for the continuation of the mandate of the arbitral tribunal during the pendency of an application to extend the time limit; (e) to provide that the application is deemed granted if it is not disposed of within the period mentioned in section 29A; and (f) to provide for sufficient opportunity for hearing the arbitrator(s) where the court seeks to reduce the fees of the arbitrator(s).

- **Amendments to Section 34 of the ACA** –
  
  - An amendment may be made to section 34(2)(a) of the ACA substituting the words “furnishes proof that” with the words “establishes on the basis of the arbitral tribunal’s record that”.
  
  - An amendment may also be made to section 34(6) of the ACA substituting the words “in any event,” with the words “an endeavour shall be made to dispose of the application” so that the time limit specified therein is construed as being directory only.

- **Reference to arbitration under section 45 of the ACA** – Section 45 may be amended to clarify that the court shall refer parties to arbitration on the basis of only a prima facie conclusion that the arbitration agreement is not null and void, inoperative, or incapable of being performed.

- **Enforcement of foreign arbitral awards** – A new sub-section (4) may be inserted in section 48 of the ACA providing that an application for enforcement of a foreign award under section 47 shall be disposed of expeditiously and an endeavour shall be made to dispose of such application within a period of one year from the date on which the application is filed before the court.

- **Amendments to section 37 and 50 of the ACA** – In sub-section (1) of section 37 of the ACA, the words “Notwithstanding anything contained in any other law” shall be added before the words “An appeal shall lie”. Similarly, in sub-section (1) of section 50 of the ACA, the words “Notwithstanding anything contained in any other law” shall be added before the words “An appeal shall lie”.

- **Costs in proceedings under Part II of the ACA** – A provision akin to section 31A pertaining to imposition of costs in connection with court proceedings under Part II of the ACA should be incorporated.

- **Typographical error in the Fourth Schedule** – The Fourth Schedule may be amended to provide that the model fee where the sum in dispute is above INR 10,00,00,000 and up to INR 20,00,00,000 is 12,37,500 plus 0.75 per cent of the claim amount over and above INR 10,00,00,000.
o Immunity for arbitrators – A new provision may be inserted to provide for immunity for arbitrators for acts or omissions in the discharge or purported discharge of his functions as arbitrator except in case of bad faith.

o Confidentiality of arbitral proceedings – A new provision may be inserted in Part I of the ACA providing for confidentiality of arbitral proceedings unless disclosure is required by legal duty, to protect or enforce a legal right, or to enforce or challenge an award before a court or judicial authority.

o Default rules of procedure – Model arbitral rules of procedure as provided in Annexure 2 to this Report may be incorporated in the ACA to operate as the default rules of procedure for arbitrations, unless parties exclude its operation (wholly or in part) by mutual consent at any time.

o Amendments to section 11 of the ACA – In order to ensure speedy appointment of arbitrators, section 11 may be amended to provide that the appointment of arbitrator(s) under the section shall only be done by arbitral institution(s) designated by the Supreme Court (in case of international commercial arbitrations) or the High Court (in case of all other arbitrations) for such purpose, without the Supreme Court or High Courts being required to determine the existence of an arbitration agreement.

o Recognition of emergency awards – Amendments may be made to section 2 of the ACA to enable the recognition of awards given by emergency arbitrators.

o Insertion of a separate chapter establishing the APCI – A new Part IA may be inserted after Part I of the ACA establishing the APCI and providing for its composition, and functions and powers.

o Depository of awards – The APCI may maintain an electronic depository of all arbitral awards made in India and such other records as may be specified by the APCI. Courts may access the depository for getting a copy of an award.

o Incorporation of arbitral institutions – An amendment may be made to the ACA providing that all arbitral institutions shall be incorporated as companies under section 8 of the Companies Act 2013, or registered as societies under the Societies Registration Act 1860 or the corresponding state legislation.

6. Other measures that can promote arbitration practice in India – Measures that promote access to the jurisdiction by permitting foreign lawyers to represent clients in international arbitrations held in India and promote India as a venue by easing restrictions related to immigration, tax, etc. may be adopted. (See Chapter VI, Section F)

7. Role of the government and the legislature in promoting institutional arbitration – Measures to promote institutional arbitration such as facilitating the construction of
integrated infrastructure for arbitration in major commercial hubs, adopting arbitration policies providing for institutional arbitration in commercial disputes involving the government, amending the ACA swiftly to keep abreast of developments in arbitration law and practice internationally, etc. may be adopted. (See Chapter VI, Section G)

8. Changes in ADR culture – Measures may be taken to promote the use of ADR mechanisms, including requiring the provision of mediation facilities by arbitral institutions. The Government may also consider the feasibility of a separate legislation governing mediation. (See Chapter VI, Section H)

9. The International Centre for Alternative Dispute Resolution – The ICADR should be taken over and be re-branded as the India Arbitration Centre in keeping with its character as a flagship arbitral institution. There must be a complete revamp of its governance structure to include only experts of repute who can lend credibility and respectability to the institution. (See Part II)

10. Bilateral investment arbitrations involving the Union of India – Recommendations for effective dispute management and resolution, and dispute prevention include: (a) appointing the Department of Economic Affairs as the Designated Representative of the Government in existing BITs; (b) creating the post of an International Law Adviser, who shall advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations, particularly disputes arising out of BITs; (c) establishing a 5-member permanent Inter-Ministerial Committee in order to ensure effective management of disputes arising out of BITs entered into by the Government; and (d) tasking the Department of Economic Affairs with the preparation and implementation of dispute prevention strategies in order to prevent disputes from arising or escalating to formal dispute resolution proceedings. (See Part III)