

VOLUME 1 ISSUE 2

“Arbitration for Small Business”

Priya Jha

University Law College, Bangalore University

priyaiha9498@gmail.com

ABSTRACT

Small businesses are businesses that have low budget and low workforce. Their revenue is also low compared to other businesses but like any other business they are involved in disputes with parties they interact in course of their business. Arbitration can be a helpful method of dispute resolution for small businesses as compared to litigation. This method is getting global acceptance by various businesses for the advantages it holds for these small businesses. But many a times there can be a few disadvantages. It is important for businesses to consider both the pros and cons before incorporating the clause of Arbitration in their agreements. Also, it is important for the businesses to understand the process of Arbitration and consider all the factors involved to make an informed decision.

Key Words: *Arbitration, Dispute Resolution, Mechanism, Small Business*

I. Introduction

Alternative Dispute Resolution was formulated as a measure to be cost effective and a sensible means to resolve disputes without putting the courts under additional pressure and to protect the parties from the devastating effects of litigation. Arbitration is a form of alternate dispute resolution which was widely accepted by many corporations which helped them in saving a considerable amount of time and money. Seeing the positive effects of arbitration by the big corporations, even small businesses have taken up including arbitration clause in their agreements. Any business is plagued with multiple disputes with customers, vendors, landlords, employees or any other individual associated with the business. This can lead the business being caught in multiple litigations which are both time consuming and costly. To avoid these situations, businesses are seeking alternatives to litigation.

II. Small Scale Business

A small Business can be said to be a business that is privately owned, or any partnership or sole proprietorship that has fewer employees and even the annual revenue is lesser than a regular sized business or corporation. Some of businesses that can be said to be small business are services or retail operations like grocery stores, medical stores, agro based industries, handloom and power loom, printing, bakeries, small functioning units. These businesses are individually owned and operate locally and serve local community.

According to the definition provided by Ministry of Micro, Small & Medium Enterprises¹, a small scale enterprise is the one where the investment in plant and machinery does not exceed five crore rupees in the Manufacturing Sector and does not cross two crore rupees for investment in equipment in Service sector. The definition is in accordance with the provision of Micro, Small & Medium Enterprises Development (MSMED) Act, 2006² under section 7 of the Act. Small businesses are integral part of any country's economy and even in India it is a major contributing body to the economy. They are the source of innovation and around 40% of the total industrial output is contributed by them. They support large enterprises and promote industries in rural areas while generating employment.

¹ http://www.dcmsme.gov.in/ssiindia/defination_msme.htm

² <https://indiankanoon.org/doc/1265992/>

The nature of the small businesses can be said to be that these businesses often run on restricted budget, are labour intensive as they have scarce human resource and work towards satisfying the needs of local community.

Many small businesses are also going global. Many start-ups are growing overseas as it is the need for finding larger markets. Small Businesses are not restricting themselves to the local community and are striving to cater to the international needs. Businesses like OYO, Ola, Byju etc. are few examples of small businesses that have become international players.

III. Arbitration: Alternate Dispute Settlement

World Intellectual Property Organization has defined Arbitration as a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.³ It is a method of alternate dispute resolution using the assistance of arbitral tribunal which consist of arbitrators. Arbitral tribunal has the power of dispute decisions and administering Arbitral Award. Arbitral Award is binding on parties and final. Award can be challenged in courts of the respective states which are the parties to arbitration but it is possible on exceptional circumstances.

In Indian Perspective, the Arbitration and Conciliation Act 1996 defines Arbitration. Section 2 of the Act provides for the definition⁴. The Act was formulated based on the conciliation rules adopted by the United Nations Commissions on International Trade Law. India is a party to the Convention and thus this law was passed in the year 1996. Under the Act, the arbitration agreement is also defined which is agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship whether contractual or not. The Act lays down the rules and laws concerning to Arbitration in India also when the parties choose arbitration outside India where one of the parties is an Indian organization.

Arbitration is one of the leading dispute resolutions as compared to litigation as it has various advantages. It is cost effective and consumers less time which helps the parties and saves them

³

<https://www.wipo.int/amc/en/arbitration/what-is-arb.html#:~:text=Arbitration%20is%20a%20procedure%20in,instead%20of%20going%20to%20court.>

⁴ <http://legislative.gov.in/sites/default/files/A1996-26.pdf>

from the unnecessary hardships of court proceedings which can be challenging. The process provides greater flexibility in the process and there are more solutions and chances of dispute resolution. This form of dispute resolution has taken over the business world and most of the businesses are opting for alternative dispute resolution for the advantages it has over litigating the disputes in Courts of law.

The Arbitration clause is a common yet most integral part of an agreement and is to be worded carefully so that the parties involved can make the whole process simpler and quick and any ambiguity can be ruled out.

IV. Arbitration for Small Business

Keeping in mind the various advantages associated with the process of Arbitration it is becoming highly common for small businesses to adopt arbitration as dispute resolution option when compared to litigation. Many contracts of small businesses are including clause where it provides that all disputes arising out of the claim should be referred for arbitration rather than litigation. Since every business is likely to be involved in dispute, quick resolution is the most feasible option to protect time and cost. And, there is more flexibility in the process and solution and the parties have a mutual consent on the dispute resolution so there are more chances of the dispute being resolved peacefully. The small businesses are always started with a low budget and smaller human resource. Litigation is a time-consuming process and proves costly for such businesses. Moreover, the litigation brings loss of goodwill of the business in the community to which they serve and can affect their business in the long run. Maintaining business relationship by effectively and timely resolution of differences makes commercial sense. A business can avoid all these hardships if they mandate that all disputes be resolved through arbitration and will be binding on them. But many a times this advantage might backfire for some businesses and they do suffer more than gain from this arbitration clause as dispute resolution in their agreements.

Pros of Arbitration for Small Business

As already mentioned, time and money are most valuable to any business including a small business which runs on restrained budget. Spending their time and money on litigations can jeopardize the effort in starting and running a business. In Arbitration, there is an agreement

between the parties that in case of any claim, the matter will be mandatorily referred to arbitration. There will be an Arbitrator who is a third party to the parties who will decide the case. The Arbitrator can be decided by the parties. This process provides an opportunity to the parties to select an arbitrator who has certain level of expertise on the matter of dispute and can apply the law without any bias and prejudice. Arbitration can be binding or non-binding. The binding method makes the award of the arbitrator to be binding and the parties cannot challenge the award in court or opt for a trial of the matter. In non-binding arbitration, the arbitrator suggests solutions which can be accepted or denied by the parties and they can opt for trial. The method of arbitration is cost effective for small businesses. It saves the parties from paying court fees or other associated fees of litigation which is generally very high.

The method of arbitration saves a great amount of time for small businesses which can be further invested in their business activities. The process moves swiftly. Also as mentioned earlier the process provides flexibility of the process and the parties can decide the place and time for the arbitration proceedings to take place. There is not much complexity as in the case of court proceedings. The procedure can be made to fit the needs of the case. The process is comparatively faster and more streamlined.

The process of arbitration is kept confidential and not made public unlike litigation. This protects the businesses from tarnishing their brand reputation and the goodwill will takes a very long time to be created and they can decide complex matters without the fear of the same. The arbitration is a relatively successful process with a higher chance of dispute resolution.

The process of Arbitration helps the parties to avoid hostility as they have to work in coordination from the beginning to resolve the dispute. This doesn't bring differences between the parties which is very important for small businesses. Small businesses cannot afford to lose their suppliers, customers over dispute that might arise during business. The aim of alternate dispute resolution methods is to have a cordial settlement of claims and arbitrators work towards resolving the case and to try that business relations are not affected due to the disputes.

Cons of Arbitration for Small Business

Arbitration can have many advantages when it comes to dispute resolution for small businesses. But every coin has two sides. Sometimes it works against the business itself. Arbitration is binding and there is no appeal against the award except in a few circumstances.

Arbitrator has decision making power and discretionary power. He can be biased in some circumstances and in these cases the small businesses can be at the receiving end. In arbitration there is no formal discovery of evidence. This might lead to incorrect decision by the arbitrator and there is no appeal process. This might lead to the business being getting adversely affected without any recourse to the award granted by the Arbitrator.

It is also seen that many a times the cost of arbitration is more than what it should be. With the increase in the demand of arbitration for dispute resolution and increasing fees of the Arbitration. If there is a panel of Arbitrators involved in the process, the cost increases multiple folds. Since there is no reviewing of the decision of the arbitrator, there exist lack of transparency in the process of Arbitration.

Further it can be a difficult task for the small business to execute the arbitral award. The enforcement of the arbitral award can be done through court judgements which again can be tedious. So, the whole process at the end becomes tiresome for the parties to execute the arbitral award. However advantageous the entire process of arbitration be, the process of its enforcement needs the parties to approach the court and follow the procedure and bear the cost. It can be fiercely fought by the parties in the court room against the award.

These disadvantages can be faced by small businesses who adopt Arbitration as a method of Dispute resolution and sometimes completely defeat of purpose of opting for the alternative dispute resolution option.

V. Conclusion

It can be understood that Alternate Dispute Resolution like Arbitration can be of great advantage to the small businesses in terms of cost and money. Arbitration is a good alternative to litigation. Even though it can be disadvantageous in certain circumstances, more and more businesses are adopting Arbitration as dispute resolution method. In today's era when small businesses are going global and involve parties from different parts of world which have different legal systems, Arbitration is the desired dispute resolution when compared to litigation. It saves the business from going through the complicated process of court proceedings and understanding the legal system of the disputing party. It saves the business from being involved in various litigations.

Thus, Arbitration is becoming more and more widely used and proving to be more efficient in settling claims of parties without the small business tarnishing its brand value.

VI. References

1. Resolving IP and Technology Disputes Through WIPO ADR by WIPO ADR, Arbitration and Mediation Centre
2. The Arbitration and Conciliation Act, 1996, Universal, LexisNexis 2020 Edition