DIMINISHING ROLE OF COURTS AND IT'S SIGNIFICANCE UNDER ARBITRATION AND CONCILIATION ACT 1996

Courts often form the first door to get knocked upon, once an injury to any form of right guaranteed under constitution is violated. However, knocking and entering a door forms an act which stands entirely different and much easier than the next steps which are to be followed in the court rooms piled up with the pending cases.

World today has metamorphosed into a global village, with deep interwoven supply chains, demanding constant and uninterrupted flow of goods and services. Big business deals today are cracked within an hour of deliberations over internet, however this pace of commercial activities come to abrupt halt when any dispute arise between the contracting parties. A few years back, the only solution was to reach Courts of appropriate jurisdiction. This formed the very first barrier in the route of resolving the dispute, since the parties often argue upon the forum to reach and bear the fruits of remedies enshrined in the law because the parties often tilt towards the forums which could provide them convenience, speedy and cost effective remedies. Even after crossing this major point of argument, entering the court room began with another round of battle where the dispute is scrapped up to the deepest layer for the sake of serving the ends of justice, this leads to un necessary delays in the cases where even the parties are ready to broker the compromise at both ends and go ahead with the halted projects.

Arbitration and Conciliation Act 1996, has been the answer to the long and unheard prayers of such parties, wherein high degrees of freedom has been granted to the contracting parties to decide the forum and a private judge to decide upon the dispute in a time bound manner with minimum legal complicacies involved in the process.

However, the catch in the speedy remedy carved out for such commercial dispute is the actual time when dispute arises, this when the private arrangement between the parties in form of either Arbitration clause or Arbitration agreement is not respected and abide by one of the parties who knock the doors of the Courts to seek the remedy under the head of a common civil suit. This step defeats the purpose of diligently carving out the legislation dedicated to give remedies at the doorsteps of the disputing parties.

Section 8 of Arbitration and Conciliation Act 1996, comes to the rescue under such scenarios, wherein the party aggrieved by the violation of Arbitration clause or agreement can file an application in the Court seeking the direction for transferring the matter to Arbitration as agreed between the parties. The section says – "*A judicial authority, before which an action is brought in a matter which is the subject of an Arbitration agreement shall, if a party to Arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute , then notwithstanding any judgment, decree or order of Supreme Court or any court, refer the parties to the Arbitration unless it finds that prima facie no valid Arbitration Agreement exists*". The beauty of the provision can be viewed and experienced when a condition arises wherein the plaintiff has been successful in obtaining the ex parte judgment against the defendant; here the defendant is

protected under the provision of Civil Procedure Code 1908 wherein the defendant can seek to set aside the judgment under Order 9 Rule 13 along with the application under section 8. Therefore, it is safe to conclude that judiciary goes hand in hand with the legislative intent of procuring solutions through a method with less complex procedure. Another example of broadening the ambit of the provision is the freedom granted for the locus standi to file the application. In case of MTNL v Canara Bank 2020 (12) SCC 767, Supreme Court held that even a non signatory can be made a party, which can proceed to file an application under section 8. Besides this, the Apex Court propounded the principle of "Group of Companies", wherein if there are more than one company and only the parent company is the signatory of the original Arbitration Agreement/ Clause even then the subsidiary can file an application under section 8 of the Arbitration and Conciliation Act 1996.

This way it is right and safe to conclude that diminishing role of Courts is beneficial for the speedy and cost effective grievance redressal of commercial disputes which forms the backbone of the economy.