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The Singapore Convention on Mediation and India

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Abstract

With the adoption of Singapore Convention on Mediation, mediation is likely to get prominence as the settlement agreement conducted between the parties to the dispute through mediation shall be binding and may be enforced in the Party to Convention where the relief has been sought. At national level also, the countries have also promoted mediation for dispute resolution. India is also promoting mediation in its jurisdiction to bring the backlog of cases down substantially. India is yet to bring out a full-fledged parliamentary statute on mediation like it has in case of arbitration and conciliation. It is in the interest of the country to ratify the Singapore Convention.

Keywords: *Singapore Convention on Mediation, Arbitration and Conciliation*

I. INTRODUCTION

The existence of disputes is as old as human civilization. The disputes will continue to exist so long human beings are present on the Earth, and therefore, it is the responsibility of every society to ensure that the disputes are timely decided or amicably resolved. Mediation has been recognized since time immemorial as one of the best methods to resolve the disputes both at national as well as international level. Examples of mediation can be found in Indian epics "*Ramayana*" and "*Mahabharta*" where Angad and Lord Krishna acted as Mediators respectively to avoid the wars. These wars were waged much before the dawn of Christianity.

At international level, many wars have been averted between States with the mediation of a third person or through collective mediation. Mediation, being a cost effective, time saving and effective method of dispute resolution, has gained importance in the Indian judicial system. Mediation improves the "efficiency of dispute resolution". Mediation does not mean adjudication. The role of mediator is not one of the adjudicator but that of a facilitator; a third

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party who "facilitates discussion between the disputing parties to arrive at a mutually acceptable solution".[2]Mediation, being an informal method of dispute resolution, puts the parties in a comfortable zone as they can put forward their case in an informal manner and in simple language without the assistance of any lawyer as no technicalities are involved in the proceedings. It is due to this reason that the mediation proceedings are also stated to be participative, as the parties to disputes are involved directly in these proceedings.

One of the significant benefits of mediation is that it avoids a situation where a dispute may lead to the "termination of a commercial relationship". Once a settlement is reached through mediation, not only that it will preserve the commercial relationship between the parties to the disputes, but also help the parties to strengthen this relationship further.

In the fast increasing international trade, arbitration was considered as an alternative to litigation. The litigation used to be and still is a very time consuming, expensive and cumbersome procedure for deciding the disputes. With the changing time, it was not considered a preferable choice for dispute resolution. The litigations were subsequently replaced by arbitration in most of the cases. It became a trend to have arbitration clause in every commercial agreement where the parties from different countries. Arbitration was considered as most effective, less expensive and less time consuming procedure. However, over the years, arbitration as a method of dispute resolution also started losing its charm and the parties to the case started seeing mediation as an alternative to litigation and arbitration. Timothy Schnabel brings out the distinction between arbitration and mediation in a beautiful manner:

> "[I]n arbitration, the disputing parties consent only to the process for resolving their dispute, but not to the ultimate outcome, yet the agreement to arbitrate and the arbitral award—which otherwise would only be private acts governed by contract law—are given privileged status under the New York Convention. In mediation, by contrast, the parties have agreed to not only the process for resolving their dispute but also to the ultimate outcome— thus suggesting a far stronger

[2] "What is the Singapore Convention on Mediation?" available at**https://www.singaporeconvention.org/convention/the-convention-text/** (05.06.2020 5 P.M)

> justification for according a privileged status to the mediated settlement agreement."[3]

Until recently, international commercial mediation primarily existed as a form of "soft law."[4] With the adoption of Singapore Convention, mediation is likely to get prominence as the settlement agreement conducted between the parties to the dispute through mediation shall be binding and may be enforced in the Party to Convention where the relief has been sought. At national level also, the countries have also promoted mediation for dispute resolution. India is also promoting mediation in its jurisdiction in various types of cases to bring the backlog of cases down substantially. India is yet to bring out a full-fledged parliamentary statute on mediation like it has in case of arbitration and conciliation.

This paper gives an overview of the Singapore Convention on Mediation and also discusses the initiative taken by Parliament and Supreme Court in promoting mediation as a mode of dispute resolution in India.

II. UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL MEDIATION, 2018

The UNCITRAL Model Law was "initially adopted in 2002" as the "Model Law on International Commercial Conciliation". It only covered the "conciliation procedure" in 2002. It was amended in 2018 and few new provisions were added in it on "international settlement agreements and their enforcement". The Model Law of 2002 so amended was renamed as "Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation" of 2018. It is noteworthy that UNCITRAL used the term "conciliation" and "mediation" interchangeably in the Model Law of 2002. Article 1 para 3 of the Model Law of 2002 defines "conciliation" to mean "a process, whether referred to by the expression conciliation, mediation or an expression of similar import …" However, while

[3] Timothy Schnabel, "The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements", 19 *Pepperdine Dispute Resolution Law Journal* 11 (2019)

[4] Andrew Guzman and Timothy L. Meyer, "International Soft Law", 2 *Journal of Legal Analysis* 117 (2010)

amending it, the UNCITRAL used the term "mediation" in "an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law" as amended in 2018. It was, however made clear that the change in terminology from "conciliation" to "mediation" would not have "any substantive or conceptual implications".[5]

The Model Law of 2018 deals with "procedural aspects of mediation" such as appointment of mediators; "commencement", conduct and "termination of mediation" proceedings; "communication between mediator and parties"; "confidentiality"; and "admissibility of evidence in other proceedings". It also deals with "post-mediation issues", such as the "mediator acting as arbitrator", "enforceability of settlement agreements" and grounds of refusal to grant relief.

The Singapore Convention on Mediation is consistent with the UNCITRAL Model Law of 2018. States can use Model Law of 2018 as a basis for the enactment of national legislation on mediation in their territories for implementing the Singapore Convention.

III. SINGAPORE CONVENTION ON MEDIATION: AN OVERVIEW

In international trade, the importance of mediation as "a method for settling commercial disputes" has been recognized by international community as "an alternative to litigation". Keeping that in mind, the "United Nations Convention on International Settlement Agreements Resulting from Mediation" (hereinafter "Singapore Convention") was adopted on December 20, 2018. It was signed by 46 countrieson 7 August 2019. The Singapore Convention establishes an effective "framework for international settlement agreements" which may result from mediation and which are also acceptable to the State Parties having "different legal, social and economic systems". Such a framework will ultimately contribute to the "development of international economic relations" among States Parties.[6]

[5] https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation. (07.06.2020 7 P.M.)
[6] Preamble, Singapore Convention on Mediation.

Article 1 of the Singapore Convention deals with the scope of applicability of the settlement agreements. The Convention applies to a written[7] international settlement agreement which results from mediation and concluded by parties "to resolve a commercial dispute". The Convention is not applicable to those settlement agreements which are concluded "to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes". The Convention will also not be applicable to settlement agreements which are related to "family, inheritance or employment law". The Convention is also not applicable to settlement agreements which are enforceable as a "judgment" or as an "arbitral award".

The Singapore Convention defines "Mediation" as a process "whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons lacking the authority to impose a solution upon the parties to the dispute".[8] The so called third person is known as "Mediator".

Every State party to Singapore Convention is obligated to "enforce a settlement agreement in accordance with its own rules of procedure" as applicable in its territory and as per the Convention. The Convention also deals with a situation where a dispute arises regarding "a matter that has already been resolved by a settlement agreement" as claimed by one of the parties, then a State Party to the Convention is obligated to allow such party "to invoke the settlement agreement" in accordance with its own "rules of procedure" and under the conditions provided in the Convention, "in order to prove that the matter has already been resolved".[9]

It is important to note that like "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" (the "**New York Convention"**), the Singapore Convention also "facilitates the recognition and enforcement of settlement agreements". Thus, "a settlement agreement will be enforced directly

[7] According to Article 2 para 2 of the Convention, a settlement agreement is considered to be "in writing" if "its content is recorded in any form" including electronic form.
[8] Article 2 para 3, Singapore Convention on Mediation.
[9] Article 3, *id*.

by a court instead of it being treated only as a contract, with a civil suit having to be filed for its enforcement".[10]

The settlement agreements concluded through mediation are entered into by parties to dispute on the basis of mutual consent. It is therefore expected that both the parties will honour the settlement agreement. One can very well argue that in such a situation, where is the need to enforce the settlement agreements so reached in the State Parties to the Convention? The argument seems to be sound only for those cases where one of the parties to the dispute does not default. Therefore, "the value of the Convention lies in providing certainty to parties that settlement agreements effected through mediation will ultimately be enforceable in an efficient manner and that they will not be relegated back to a full-blown arbitration or litigation, should the other party default".[11]

A party which relies on a "settlement agreement" under the Singapore Convention is obligated to supply to State Party's "competent authority" where it is seeking relief (i) "the settlement agreement signed by the parties"; and (ii) evidences with respect to settlement agreement that it has resulted from mediation. The evidences may include (a) the settlement agreement duly signed by mediator; (b) a mediator signed document which may indicate that mediation took place between the parties; (c) "institution administering the mediation" making an attestation; or (d) in absence of above, any other evidence which may be acceptable to the competent authority of that State Party.

The Convention also lays down provisions with respect to the situation where the settlement agreement shall be deemed to have been signed by the parties or the mediator in case of "an electronic communication". In order to verify the fact that the parties have complied with the requirements of the Convention, the competent authority of the State Party may ask for any necessary document. The "competent authority" of the Party to Convention is required to act expeditiously while considering the "request for relief".[12]

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[10] Shaneen Parikh and Ifrah Shaikh, "India: The Singapore Convention on Mediation – India's Pro-Enforcement Run Continues, (10.06.2020 10 P.M.)https://www.mondaq.com/india/arbitration-dispute-resolution/838414/the-singapore-convention-on-mediation-india39s-pro-enforcement-run-continues

[11] *Ibid*.

[12] Article 4, Singapore Convention on Mediation.

The grounds for refusal of relief have been laid down in Article 5 of the Convention which enables the competent authority of a State Party to "refuse to grant relief at the request of the party" seeking it if the other party against whom relief is sought furnishes any of the following proofs:

(i) "A party to the settlement agreement was under some incapacity";

(ii) The settlement agreement in question – (1) "is null and void, inoperative or incapable of being performed" under the applicable law; (2) "is not binding, or is not final, according to its terms"; or (3) "has been subsequently modified";

(iii) "The obligations in the settlement agreement – (1) have been performed; or (2) are not clear or comprehensible";

(iv) It "would be contrary to the terms of the settlement agreement" to grant relief;

(v) "There was a serious breach by the mediator of standards applicable to the mediator or the mediation" which formed the very basis for that party to enter into the settlement agreement; or

(vi) "There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement".

In addition, the relief sought on the basis of settlement agreement is also to be denied by the "competent authority" of the State Party if it is found that – (i) "granting relief would be contrary to the public policy" of that State Party; or (ii) "the subject matter of the dispute is not capable of settlement by mediation under the law of that Party".

Article 6 of the Convention deals with the issue of parallel applications/claims. The Convention provides that where "an application/claim relating to a settlement agreement has been made to a court/arbitral tribunal/other competent authority" which may affect the relief, the competent authority of the State Party where such relief is sought may adjourn the decision and may also order the other party to give suitable security, if a party so request.

The Convention is not to deprive "any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties" of the State Party to Singapore Convention "where such settlement agreement is sought to be relied upon".[13]

The Convention enables the State Parties to make reservations under Article 8, if they so desire. The reservations which are not expressly authorized in Article 8 are not permitted. Reservations made by Parties may be withdrawn by it at any point of time. The reservation/withdrawal of reservation is applicable only to those settlement agreements which were concluded after such reservation/withdrawal entered into force for that Party to Convention.[14]

The Convention also lays down rules for the regional economic integration organization ("REIO") which have been duly "constituted by sovereign States", for becoming Party to it. According to Article 12, an REIO may "sign, ratify, accept, approve or accede" to the Convention like States. It will have the same rights and obligations under the Convention. However, an REIO is not to be counted "as a Party to the Convention in addition to its member States that are Parties to the Convention". An REIO is required "to make a declaration specifying the matters in respect of which competence has been transferred to [it] by its member States." The Convention is not to prevail over "conflicting rules of an REIO" (i) if relief is sought in a State that is member of REIO and all the States relevant are members of that REIO; or (ii) "as concerns the recognition or enforcement of judgments between member States" of that REIO.

Article 13 deals with those Parties to the Convention which have "two or more territorial units" with different systems of law. Such Parties may declare that the Convention will "extend to all its territorial units or only to one or more of them". Where no such declaration is made, the Convention will extend to all territorial units.

To sum up, the cultural predisposition always existed towards adjudicative means of dispute resolution particularly in the West. The Singapore Convention seeks to promote the use of mediation bridging some of the cultural gaps in legal

[13] Article 7, *id*.
[14] Article 9, *id*.

systems.[15] Further, it is expected that Singapore Convention will bring "certainty and stability to the international framework on mediation, thereby contributing to the Sustainable Development Goals (SDG), mainly the SDG 16".[16] The SDG 16 is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".[17]

Since the Singapore Convention is consistent with the "UNCITRAL Model Law" of 2018, the States have been provided with the "flexibility to adopt either the Convention, the Model Law as a standalone text or both the Convention and the Model Law as complementary instruments of a comprehensive legal framework on mediation".[18]

IV. MEDIATION IN INDIA

In this second most populous country of the world, docket explosion is a serious concern. The Indian Law Commission made several studies on the backlog of cases and made its recommendations. For example, in its 129th Report, the Law Commission referred to the huge pendency of cases in the courts. Justice Malimath Committee also conducted a study on "Alternative Modes and Forums for Dispute Resolution" in which it endorsed the recommendations of Law Commission made in 124th and 129th Reports and stated that there should be necessary amendments in law to compel the litigants to resort to arbitration or mediation. The Malimath Committee was of the view that by conferring such powers on courts will reduce the burden of courts right from trial courts to appellate courts.

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[15]Kennedy Gaston, "The Singapore Convention on Mediation and Disputes Involving Multinational Corporations" in V. K. Ahuja, et.al., Mediation, 30 (2020),

[16] See https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements, (06.6.20 8 P.M)

[17] See https://sustainabledevelopment.un.org/?menu=1300 (07.06.2020 8 P.M)

[18] See https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements (09 .06.2020 4P.M)

The impact of the recommendations of Malimath Committee Report, Law Commission's 129th report and the Committee on Subordinate Legislations (11th Lok Sabha) was so strong that on 14th August 1997, the Code of Civil Procedure (Amendment) Bill, 1997 was introduced in the Rajya Sabha, keeping in view *inter alia* "that every effort should be made to expedite the disposal of civil suits and proceedings".[19] The Bill proposed to insert a new provision section 89 in the CPC for "Settlement of Disputes outside the Court".

In 1999, section 89 was finally inserted in Civil Procedure Code, 1908 which came into force on 1 July 2002. Section 89(1) of the CPC provides that "where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for ... mediation." Section 89(2) provides that "where a dispute has been referred ... for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed".

The initiative of legislature of introducing section 89 was a good step in the direction of expeditious disposal of civil cases including commercial cases. Section 89 authorized the courts to refer the cases to mediation where it appeared to them that there existed "elements of a settlement" in the case. The outcome of having section 89 was not very encouraging as the cases kept on mounting and the effect of having mediation as a method of dispute resolution was not very much visible.

Another significant step towards the speedy disposal of commercial cases was taken by legislature in 2015 by the enactment of "The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act". "Commercial dispute" is defined to mean "a dispute arising out of— (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents; (ii) export or import of merchandise or services; (iii) issues relating to admiralty and maritime law; (iv) transactions relating to aircraft, aircraft

[19] V. K. Ahuja, "Making ADR Techniques Mandatory in India: Proposed CPC Amendment", II *National Capital Law Journal*, 39-39 (1997)

engines, aircraft equipment and helicopters, including sales, leasing and financing of the same; (v) carriage of goods; (vi) construction and infrastructure contracts, including tenders; (vii) agreements relating to immovable property used exclusively in trade or commerce; (viii) franchising agreements; (ix) distribution and licensing agreements; (x) management and consultancy agreements; (xi) joint venture agreements; (xii) shareholders agreements; (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services; (xiv) mercantile agency and mercantile usage; (xv) partnership agreements; (xvi) technology development agreements; (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits; (xviii) agreements for sale of goods or provision of services; (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum; (xx) insurance and re-insurance; (xxi) contracts of agency relating to any of the above; and (xxii) such other commercial disputes as may be notified by the Central Government". [20]

It is also important to note that "a commercial dispute shall not cease to be a commercial dispute merely because— (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property; (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions".

The aforesaid definition of "commercial dispute" is quite comprehensive and exhaustive. The last clause (xxii) is residuary in nature and enables Central Government to notify more disputes which may fall in the definition of commercial disputes. Therefore, with the passage of time and requirement, more disputes may be notified as commercial disputes.

Mediation as a mode of settlement of commercial disputes was added in the 2015 Act by an amendment Act of 2018. The amendment, which became effective from 3 May 2018 inserted *inter alia* section 12A which provided for the mandatory "pre-institution mediation and settlement" in commercial disputes. Mediation as such was not included in 2015 Act as originally enacted.

[20] Section 2(1)(c), Commercial Courts Act of 2015.

The 2018 amendment filled this void to make justice dispensing system under the 2015 Act more meaningful and effective as far as commercial disputes are concerned.

Section 12A provides that except for a suit which "contemplates any urgent interim relief under the Act", no suit is to be "instituted unless the plaintiff exhausts the remedy of pre-institution mediation" in accordance with prescribed manner. For the purposes of pre institution mediation, "the Authorities constituted under the Legal Services Authorities Act, 1987" may be authorized. Such Authorities are required to "complete the process of mediation within a period of three months from the date of application made by the plaintiff". The period of three months, however, may be extended by a "further period of two months with the consent of the parties". The "period during which the parties remained occupied with the pre-institution mediation", is not to be "computed for the purpose of limitation under the Limitation Act, 1963".

Where a settlement is arrived at by the parties, it is to be reduced to writing and shall be "signed by the parties and the mediator". Such a settlement is to have "the same status and effect as if it is an arbitral award on agreed terms" under Section 30(4) of the "Arbitration and Conciliation Act, 1996". Section 30(4) of the "Arbitration and Conciliation Act, 1996" provides that "an arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute."

The "Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018" were adopted to give effect to the provisions of the Commercial Courts Act, 2015 as amended in 2018. "Mediation" is defined under the Rules to mean "a process undertaken by a Mediator to resolve, reconcile and settle a commercial dispute between the parties thereto."[21] "Mediator" means "a person empanelled by the Authority for conducting the mediation".[22]

Detailed procedure for the initiation of mediation process has been laid down in Rule 3 of the 2018 Rules. Rule 3 enables parties to a "commercial dispute" to make an application to the Authority (which is notified under the Act) for the "initiation of mediation process".

[21] Rule 2(1)(e), Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.
[22] Rule 2(1)(f), *id*.

The Authority is required to "issue a notice to the opposite party to appear and give consent to participate in the mediation process" within 10 days. If the opposite party does not respond, the Authority is required to issue a final notice to it and where such notice remains "unacknowledged or where the opposite party refuses to participate in the mediation process", the Authority is to "treat the mediation process to be a non-starter" and make "a report and endorse the same to the applicant and the opposite party".

"Where both the parties appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator". The Authority is obligated to "ensure that the mediation process is completed within a period of three months" unless an extension is given for two months with the consent of the parties. The premises of the Authority shall be the venue for conducting mediation.[23]

The role of Mediator is to "facilitate the voluntary resolution of the commercial dispute between the parties and assist them in reaching a settlement".[24] Parties to commercial dispute are obligated to "appear before the Authority or Mediator, as the case may be, either personally or through their duly authorized representatives or Counsels".[25]

Rule 7 of the 2018 Rules lays down detailed provisions for conducting mediation. According to Rule 7, when the mediation commences, the Mediator is duty bound to explain the mediation process to the parties. The Mediator in consultation with parties shall fix the date and time of each mediation sitting. During the course of mediation, the Mediator has the discretion to hold the meetings with the parties jointly or separately. The parties have the discretion to share "their settlement proposals with the Mediator" in separate sittings. They can give specific instructions to the Mediator regarding the part of the settlement proposal which can be shared by him with the other party.

The parties are free to exchange their settlement proposals with each other. The Mediator is duty bound to maintain confidentiality of discussions made in the separate sittings with each party. The Mediator can share "only those facts

[23] Rule 4, *id*.
[24] Rule 5, *id*.
[25] Rule 6, *id*.

which a party permits" him to share with the other party. "If the parties reach to a mutually agreed settlement", the same is to be reduced in writing by the Mediator. The settlement shall be signed by the parties and the Mediator. Thereafter, the Mediator is required to "provide the settlement agreement to the parties" and give a copy to the Authority. However, "where no settlement is arrived between the parties" within the stipulated time frame or where "the Mediator is of the opinion that settlement is not possible", he will submit a report to the Authority citing the reasons.

It is noteworthy that the Authority and the Mediator are not allowed to "retain the hard or soft copies of the documents exchanged between the parties" or notes prepared by the Mediator beyond six months. They can, however, retain the "application for mediation", "notice issued", "settlement agreement" and the "failure report".

Parties to the dispute are obligated to "participate in the mediation process in good faith with an intention to settle the dispute".[26] The Mediator, parties or their authorized representatives or counsel are obligated to "maintain confidentiality about the mediation". Apart from that, the mediator is not to "allow stenographic or audio or video recording of the mediation sittings".[27]

The ethics to be followed by the Mediator are laid down in Rule 12. The Mediator is obligated to "(i) uphold the integrity and fairness of the mediation process; (ii) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process; (iii) disclose any financial interest or other interest in the subject matter of the commercial dispute; (iv) avoid any impropriety, while communicating with the parties; (v) be faithful to the relationship of trust and confidentiality reposed in him; (vi) conduct mediation related to the resolution of a commercial dispute, in accordance with the applicable laws for the time being in force; (vii) recognize that the mediation is based on the principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary agreement; (viii) refrain from promises or guarantees of results; (ix) not meet the parties, their representatives or their counsels or communicate with them, privately except during the mediation sittings in the premises of the

[26]Rule 8, *id*.
[27]Rule 9, *id*.

Authority; (x) not interact with the media or make public the details of the commercial case, being mediated by him or any other allied activity carried out by him as a Mediator, which may prejudice the interests of the parties to the commercial dispute".

The inclusion of mediation in Commercial Courts Act, 2015 as a method of dispute resolution is a welcome step. To make mediation successful, the parties are required to change their mindset. Sometimes, parties are advised by their counsels that their case is very strong and there is every possibility of winning the case. The parties, therefore do not take interest in mediation. Sometimes, one of the parties is interested in delay in the outcome, it is due to this reason also it does not come forward for mediation. Since the 2018 Rules *inter alia* take care of confidentiality of the mediation proceedings and also provide for the ethics for mediator, mediation is likely to have a promising future provided the parties join the proceedings with positive mindset leaving behind vested interest, if any.

It is also noteworthy that "Mediation and Conciliation Project Committee (MCPC)" of the Supreme Court which was constituted in 2005 is playing a significant role in promoting mediation as a mean of dispute resolution. The MCPC undertakes training of trainers programme, mediation training programme, awareness programme and referral judges training programme. In order to ensure the credibility of the mediation, the MCPC decided that for a mediator, 40 hours training and 10 actual mediations were essential. This means that only those persons who fulfil the criteria laid down by MCPC can mediate. If mediation is resorted to with the positive mindset of parties in all those cases where it is allowed, then there is no reason why backlog of cases will not be dropped significantly.

It is important to note that with the promotion of mediation in India, an effective dispute resolution system is being created as most of the cases are likely to be resolved by the parties themselves. The parties may prefer mediation over litigation or arbitration to resolve disputes. The legislature however is required to bring in place a codified law on mediation as it brought for arbitration and conciliation. Once a full-fledged law on mediation is enacted, India should ratify the Singapore Convention. At present, India is a signatory to the Convention. If we have to attract more FDI in India and if we really want to bring more multinational corporations in India, we need to have mediation as an additional mode of dispute resolution. By becoming a party to Singapore Convention,

India will attract more foreign investors. Further, it will also be in the interest of our companies which have invested abroad. Therefore, it is in the interest of the country to become a party to Singapore Convention.

V. CONCLUSION

The adoption of Singapore Convention on Mediation is an excellent step by the international community. The Convention being an efficient, uniform and harmonized framework to resolve cross border commercial disputes through mediation, has helped the businesses to use mediation as an additional mode of resolving their dispute. Mediation has been proved *inter alia* to be a cost effective, time effective, informal, confidential, and procedure controlled by parties and having potential to maintain healthy relationship between the parties to the disputes after the dispute resolution. Mediation overcomes the flaws of the litigation and arbitration system, i.e. cost and complexity. An international instrument was strongly required to give credibility to mediation at international level and enforceability in the Parties territories. The Singapore Convention has given a boost to the mediation as the settlement agreements concluded between the parties become binding and may be enforced in the State/REIO Party to the Convention in a streamlined procedure. The Singapore Convention has the potential of becoming game changer in the area of commercial cross boundary dispute resolutions. However, the signing of Singapore Convention on 7 August 2019 by 46 countries only shows that most of the States/REIO including the UK, the European Union and Australia did not show interest in it by not signing. It's success, however will depend on how many countries will become parties to it. The countries may take time and see its functioning for some time before ratifying or acceding to it. It may be hoped that large number of countries may become Parties to the Singapore Convention and mediation may become the most preferred choice of the businesses in the near future particularly in cross border disputes.