

# ARBITRATION IN SECURITIES MARKET IN INDIA

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## ABSTRACT

With changing times, alternative dispute resolution (ADR) mechanisms are envisioned as a last resort. It is regarded as the new paradigm for litigating cases. An unusual way that securities arbitration resolves disputes is between trading participants and their clients on the exchange. The governing body that creates bylaws for any kind of stock exchange is called "Securities and Exchange Board of India." Arbitration is described by SEBI as an alternative dispute resolution method for resolving exchange disputes. This essay primarily focuses on strengthening SEBI Act provisions that mandate arbitration as a form of alternative dispute resolution and also provides examples of how the "Market Intermediaries Regulation and Supervision Department" operates in this regard. This essay also covers the topic of dispute arbitrability as well as a number of aspects of securities arbitration and investor dispute resolution.

Securities arbitration, stock exchanges, and investor disputes are common keywords.

## **INTRODUCTION**

An alternative to a traditional court case is arbitration, which is a process for resolving disputes. Instead of having their case heard by a judge and jury, the parties to the arbitration processes had their dispute resolved by impartial persons who are knowledgeable in the relevant fields. The traditional and ineffective legal process of the courts has been recognised to be effectively replaced by arbitration. Arbitration has been noted as a quicker procedure that hastens the conclusion of disputes between the parties' cases. The Arbitration and Conciliation Act 1966, as revised in 2019, which heavily references the UNICITRAL Model Legislation, establishes the arbitration law of India. Securities arbitration is a type of alternative dispute resolution mechanism that is used to settle exchange-related issues between trading participants and their clients. Additionally, the Exchange's own bylaws provide the specifics of how such arbitrations are to be conducted. The Securities and Exchange Board of India (SEBI) carries out official duties and deals with a variety of securities-related issues that have an impact on the general public and economic growth. According to the Securities and Exchange Board of India (SEBI), arbitration is a different dispute resolution procedure that the stock exchange offers to resolve disputes between trading participants and their clients regarding exchanges. Special rights are provided for and governed under the SEBI Act. Courts in India have found that it is against public policy to offer arbitration when there is a law governing particular rights and obligations and the adjudication is reserved only for a single body (SEBI in this case). As a result, there seems to be a cap on the amount of securities cases that can be settled. However, SEBI has implemented some regulations that support arbitration in disputes of this nature. A circular has been written outlining the procedures and standards for arbitration in the resolution of investor disputes. In addition, disputes resulting from trading between members may be resolved

through arbitration per SEBI bylaws. The National Stock Exchange's bylaws also contain comparable language. The conclusion that, so long as the rights involved are in personem, they shall be subject to arbitration if the arrangement so necessitates, is drawn by both Indian company law and Indian securities law.

## **FINANCIAL LAW**

For a better understanding of the aforementioned statutes, comparisons can be established between the functions of the specialised tribunals they comprise and the "Securities and Exchange Board of India Act, 1992" ("the SEBI Act"). "The latter's Preamble allows for the establishment of the Securities and Exchange Board of India ('SEBI'), which would oversee activity on stock exchanges and the securities market as well as safeguard the rights of investors in securities and promote their growth.

According to "Chapter IV of the SEBI Act," SEBI is obligated to stop unlawful and unethical practises, including stock trading, by maintaining oversight, carrying out auditing duties, and managing significant share purchases or takeovers of businesses. Public trust in investors is increased by the investigation and prosecution of such misconduct, which is advantageous for economies and overall economic growth. The "SEBI Act" mandates that "SEBI" carry out necessary public duties. SEBI works with specialised technological facets of securities transactions that have an impact on a wider audience and the expansion of the economy.

Additionally, the "extended" special powers of the "Securities Appellate Tribunal ('SAT')" are specifically granted by Section 15U of the SEBI Act. However, in accordance with "Section

15Y of the SEBI Act, the latter has no power to hear any action or action in any matter," the SAT enjoys the same rights as civil courts (including the right to appeal). According to HDFC Bank, arbitral tribunals are only substitutes for civil courts; as a result, they are not given any special rights or authority.

Without a doubt, "The SEBI Act" is a unique piece of legislation that establishes and regulates particular benefits and obligations that are exceptions to the rule of rights in-personam. Given the previous rulings, especially Kingfisher Airlines, there is an implied ban on securities law arbitration because specialised tribunals like the SAT, which civil courts ignore, are given or control exceptional powers.

## **BACKGROUND**

Whether such "public law" issues involving "public interest" can be resolved by "alternative, private decision-making systems" is currently being discussed in relation to arbitration. Examining a dispute's arbitrability, or capacity to be the topic of arbitration, provides an answer to such queries. Three dimensions of arbitrability are included in this concept:

1. whether the disputes—given their nature—could be arbitrated in a private setting or whether they must be brought before a public forum only;
2. Whether the parties' arbitration agreement applies to the disputes; and
3. Whether or not the parties have submitted their disagreements for arbitration

Under "section 81(1)(a) of the English Arbitration Act, 1996," it is unclear whether or not certain disputes are subject to arbitration. Instead, the courts evaluate each case's facts and

circumstances before making an arbitrability determination. According to the court ruling in Fulham Football Club (1987) Ltd v. Rischard, "a case is not arbitrable if the issue in question incorporates 'third partyrights' or problems of public interest which are incapable of being resolved within the boundaries of private contractual proceedings."

In essence, both contractual and extra-contractual trade disputes are subject to arbitration. Fraud, intellectual property rights, employment law, consumer rights, and some antitrust law issues are among the disputes that are covered. Insolvency cases cannot be arbitrated unless they are subject to a regulatory structure. The same is true for family law and criminal cases.

Non-arbitrable disputes are not classified in the Arbitration & Conciliation (Amendment) Act, 2015 in India. Instead, Section 7 suggests that every dispute resulting from any type of legal agreement, regardless of its existence, is subject to arbitration.

However, Indian courts have the authority to nullify arbitral decisions or prevent their implementation under Section 34(2)(b) of the Arbitration and Conciliation Act, 1996, if the dispute's subject matter cannot be resolved by arbitration under the laws now in place.

This ambiguous statutory limit on arbitrability gives the courts the initiative. Important decisions have placed restrictions on the parties' capacity to arbitrate, which has helped to conceptually crystallise arbitrability to some extent.

## **ARBITRATION'S PART IN THE SECURITIES MARKET**

The "SEBI" accepted "Securities Arbitration" as a component of its risk management plan. Additionally, it is mentioned in the major stock exchanges' bylaws. While much of the method is the same as in the USA, there are some specific Indian procedures. Starting with litigation, there are two circumstances in which a complaint against the broker may be made: first, in cases of non-payment, and second, in cases of misconduct. The SEBI Department of the Secondary Sector may be contacted in the event of a delay, and they will then refer the case. For the arbitration process to start, the contract note or purchase and sale note must be present. The flipside of such a letter provides the option for arbitration if there is a disagreement between the parties.

The member may make a complaint with the Stock Exchange or the "Office of Investor Assistance and Education" in addition to arbitration and legal proceedings (OIAE). "The Market Intermediaries Regulation and Supervision Department (MIRSD) includes the OIAE." Receiving complaints about investment concerns is his responsibility. He deals with core issues like payment delays, refund requests, and so forth. Stock exchanges focus mainly on broker-related issues such non-payment and inappropriate behaviour. In order to request arbitration, a member must obtain a form from the relevant Stock Exchange and file a case. For the appointment of arbitrators, India has implemented two fundamental measures. Each exchange has its own panel of arbitrators, to continue. The investor can therefore choose clearly from this panel. The names of the arbitrators, if the negotiator selected them, are presented to the member for approval. When there is a miscommunication or disagreement, the relevant stock exchange steps in to resolve it. The arbitrators required to resolve the conflict are subsequently selected. The SEBI bye-laws stipulate that an award must be granted and a decision must be rendered within three months after the date of entry upon reference. However, in some cases,

an additional three months have been given to award the medal. The maximum period of time an award may be given is therefore six months from the date of reference.

## **ANNULMENT OF THE COURTS**

In the case of "Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Others," the Apex Court held that arbitral tribunals are "private fori" chosen by the parties, instead of courts or tribunals, the "public fori" as per the laws of the country, when dealing with the issue of the arbitrability of disputes. All "right in-personam" disputes are arbitrable, whereas all "right in-rem" disputes are unsuitable for private arbitration and must be decided by courts and public tribunals.

"Booz Allen's ruling closely complied with English law norms and addressed pertinent issues about arbitrability; yet, the viability of securities law as an arbitration subject-matter is still extensively unexplored. Thus, it is crucial to analyse specific decisions that build on the justification provided in Booz Allen in order to decide whether securities legislation is arbitrable or not.

The Bombay High Court further reduced arbitrability in the case "Kingfisher Airlines Limited v. Prithvi Malhotra Instructor." It was decided that if a new statutory statute imposed or regulated unique rights, obligations, and powers (including jurisdiction) on subject-matter dominated courts, then a dispute over any subject-matter is arbitrable. By definition, certain specialised tribunals have no jurisdiction over civil courts.

The Delhi High Court "examined the legislative intent underlying the establishment of multiple specialised tribunals, as well as the nature of the rights and obligations imposed upon them" in "HDFC Bank v. Satpal Singh Bakshi". It was determined that because the "Rent Control Act" and "the Industrial Disputes Act" both give specific rights and specific powers to industrial adjudicators or tribunals, issues arising under these statutes "cannot be resolved by arbitral tribunals, which are effectively replacements for civil courts," because these powers "are not available to civil courts."

The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) ruled in "Aircel Digilink India Ltd. V. Union of India" that the Telecom Regulatory Authority of India Act, 1997 was a special piece of legislation intended to safeguard the interests of service providers and customers in the telecom sector. Its development required efficient operation of the many parties in the sector as well as prompt adjudication by a specialised tribunal with the necessary knowledge and competence of the industry, such as the TDSAT. To emphasise this, the TDSAT was given exclusive jurisdiction; civil courts and arbitrators were not permitted to interfere with this jurisdiction.

## **ARBITRATION AND SECURITIES DISPUTE ANALYSIS**

Whether or not securities law disputes should be arbitrated is a complex matter. The matter becomes controversial when parties bound by an earlier, private contractual arrangement disagree. The partnership may be established through a shareholders agreement, a joint venture, or a joint partnership agreement between shareholders or stockholders of either company. It may be difficult to define the arbitral tribunal's jurisdiction or scope in deciding such a subject-



matter if the agreement contains a clause demanding arbitration for all problems arising from or connected to the conflict.

According to these agreements, there are specific regulations allowing arbitration that were established under a 2013 SEBI press circular and provide guidance and detailed instructions on the arbitration procedure for the resolution of investor grievances. According to the circular, arbitration is the best option for accelerating stock exchange processes for resolving investor disputes and increasing overall effectiveness in maintaining investor protection.

In addition, the SEBI's bylaws stipulate that claims, conflicts, or disagreements among trading members may be settled by arbitration. Similar clauses can also be found in the bylaws of the National Stock Exchange (NSE).

Without a doubt, arbitration between trading members on a stock market and investor-broker arbitration are both provided for under the circulars and bylaws. These regulations imply a propensity for instantaneous arbitration of securities disputes for the purpose of effective investor protection and compensation. This runs counter to the widely held belief derived from research on arbitrability case rules.

It should be emphasised, however, that under the aforementioned regimes, securities concerns are seen as arbitrable simply because they are rights in-personam, or rights that only impact certain individuals, such as investors, brokers, or participants in the stock market. The rights connected to securities, on the other hand, are exceptions to the rights in-personam, according to the case statutes indicated above.

In support of this argument, it has been decided that, even if the parties have an agreement to submit all disputes to such forums, "any subject relating to the rights of or benefits to the shareholders in their capacity as members of the company is not obliged to be referred to arbitration." A petition filed pursuant to "Sections 241-244 of the 2013 Companies Act is an in-rem process. It is a move made by shareholders to the greater good of the business. Similar to this, a securities dispute won't be arbitrable if it might have an impact on the general public or the economy.

## **CONCLUSION**

It is not always clear what defines a "right in-rem and a right in-personam" when it comes to securities.

The nature of securities law rights, including whether they can be resolved by a private arbitration tribunal or if they must only be decided in public forums, has been acknowledged in this study (courts). By examining the relationship between court decisions on arbitrability and the securities regime in India, the research highlights the law's equivocal position on the arbitrability of securities issues.

The framework of obligatory arbitration of securities disputes has several shortcomings and inadequacies, according to a recent review conducted in the United States. The rate of return for investors has dramatically decreased over the past ten years, falling from 59 percent in 1999 to 44 percent in 2004. Additionally, compensation ratios have significantly lowered, and it was

shown that the size of the brokerage company had an impact on how much money might be recovered through arbitration. Despite the criticisms, it is indisputable that securities arbitration has helped tens of thousands of participants over the years and has proven to be a fair and effective way to resolve a significant number of customer conflicts. A recent study found that issues brought to securities arbitration are resolved 40% more quickly than cases brought to court. Furthermore, this platform is much more accessible than courts case procedures, regardless of what is said or done.

The current structure is therefore in the best interests of investors. In accordance with pre-dispute arbitration agreements, investors may file minor claims. It lowers the costs for investors looking for answers to their questions. It requires arbitrators who are highly qualified, competent, and knowledgeable about the financial industry. Justice and impartiality are so served. To enable the growth of an investor-friendly market, such kinds of arbitration inside India's various stock exchanges must be formed more quickly, with more regulations and norms.