

## Need for Arbitration Body for Financial Disputes

### What is the issue?

The rising number of financial disputes and their changing nature highlights the need for an arbitration body for financial disputes in India.

### What is litigation and arbitration?

- **Litigation** is a process followed in the courts which are under the administration of the state to resolve disputes between parties.
- In **arbitration**, the parties can consult an arbitration tribunal on their own.
- In this, hearing is done in a private setting and it provides some amount of control to the parties.
  - To note, while arbitration is typically a binding process, **mediation** is a non-binding process.
- The process of litigation is generally expensive than arbitration.
- Arbitration does not get stuck in formal procedures to be followed and therefore is able to avoid delays.

### What is the practice so far?

- Financial institutions and banks have **traditionally opted for litigation** instead of arbitration for dispute resolution.
- Litigation, traditionally, offered a more potent forum for recovery of money and resolving financial disputes.
- This is because the judges are vested with stronger powers than an arbitrator is.
- Litigation, as opposed to arbitration, allows judges to exercise multiple powers vested in them.
  - These include interim measures, summary judgments, warrants for non-appearance, etc.
- These options are not available in arbitration.
- In addition, the public nature of disputes in courts and media attention allows the banks to create pressure on the defaulters.

### What is the changing trend?

- The traditional view of litigating in financial disputes changed following the 2008-09 financial crisis.

- This is due to the highly complex nature of financial transactions and a need for confidentiality.
- The financial institutes felt a need for adjudicators who possess a deep knowledge of finance and an understanding of complex transactions.
- In addition to these, the institutions opted for a private forum for adjudications, to keep things confidential.
- This is because financial disputes of large quantum often lead to public distress, resulting in negative variations in listed stocks.
- So, banks and financial institutions are **increasingly opting for arbitration** instead of litigation.
- Another reason is that it is easier to enforce an arbitral award as opposed to a court judgment which can be appealed multiple times.
- Given this change, many arbitral institutions have created panels of arbitrators specialising in banking and finance.
- The arbitral institutions have themselves altered their rules to accommodate the peculiar needs of financial disputes.

### **Where does India stand?**

- There is a rise of financial disputes in India, including defaults by some of the biggest Indian corporations.
  - These include Anil Ambani's Reliance Group, Vijay Mallya's Kingfisher and Nirav Modi's Firestar Diamonds.
- Considering this, there is a need for providing a specialised institution to deal with financial arbitrations.
- Presently, no such body for financial arbitration exists in India.
- Any such arbitration continues to be adjudicated by retired judges.
  - These are, notably, generalists and do not possess a specialised knowledge of finance and financial markets.
- An alternative would be a body such a P.R.I.M.E. Finance rendering assistance to financial arbitrations.
  - P.R.I.M.E. Finance - Panel of Recognised International Market Experts in Finance

### **What is the way forward?**

- The Institute of Chartered Accountants of India (ICAI) is one such institution that possesses a body of some of the most prominent financial experts in India.
- Perhaps, the government should create a panel in consultation with the ICAI for facilitation of financial arbitrations.
- The Government has been making strides towards establishing India as an

arbitration friendly jurisdiction.

- Given this, such a move would attract arbitrations in India from other countries as well.

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