ADR ADVOCACY, STRATEGIES & PRACTICES FOR IPR

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Abstract:
Intellectual Property Rights is considered to be a legal right which is granted to the person who is considered to be the originator or the composer of an original work or invention for a stipulated period of time. In the modernized world, along with the tangible assets, intangible assets also play a vital role. All types of IP rights are considered to be an intangible asset. Protecting these IP Rights is an essential part in business. It is the responsibility of the owner to protect his business IP rights. IP related lawsuits are initially filed in District Court, with appeal to the High Court. Alternative Dispute Resolution is a process used to resolve conflicts outside of the judicial system. The mechanism of arbitration will have legal obligation on the parties whereas the Mediation procedure is not so. Arbitration and Mediation process is used in IP related disputes which will be helpful for speedy disposal of the case and it is cost efficient to the parties which is one of the advantages to the parties. Disputes dealing with Business, Trade, Commerce and contracts, family related disputes, tortious liability can be sorted through ADR process. Similarly, ADR Process is used to solve IP Related disputes also. In order to disburden the judiciary from pending IP cases and for rendering justice without many complications, lawsuit can be filed through ADR mechanism. Based in Geneva, Switzerland, the WIPO Arbitration and Mediation Centre was established in the year of 1994 with the aim to solve the intellectual property disputes through ADR Mechanism. The author will be highlighting the comparative analysis of ADR process with US and UK.
Keywords: Alternate Dispute Resolution, Arbitration, Mediation, Intellectual Property Rights

Introduction:

Intellectual Property Rights are the legal rights that are subjected to protection. It is like intangible property that is incorporated by the companies. It has been Internationally recognized as it covers Patents, Industrial Designs, Copyrights, Trademarks, Know-how, and confidential information (I.E.) Trade Secrets. It will be granted to the persons who make any new creative works by which, the general public is getting advantage. The Scope of Intellectual Property is expanding very fast and attempts are being made by persons who create new creative ideas to seek protection under the umbrella of intellectual property rights. The object of this research is to narrow down a path for analyzing the best mode in cases of IP-related disputes. The adaptability of alternate dispute resolution in an IP-related issue which also has an international perspective due to the globalization of the market is stressed.

Alternate Dispute Resolution (ADR) is a solution whereby the aggrieved parties have the right to file the case and solve the problem without approaching a court of law. In simple words, ADR is the procedure relating to Out of Court Settlement. When the parties failed to reach a solution between themselves and they are not in the state to approach the court of law,

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ADR plays a vital role to resolve the conflicts between them. Also, the judgment passed is legally binding on the parties. As it is a procedure for solving disputes in out-of-court settlements. The research here highlights various advantages of using the ADR mechanism along with its usage in IP disputes.

1. Alternate Dispute Resolution:

Alternate Dispute Settlement is a private proceeding that is cost-efficient and time-consuming. It has existed since the ancient period and continues to sustain the present era with good efficiency for solving various types of disputes arising in the world. Solving problems through ADR Mechanism saves the time and money of the parties concerned. There are various modes under the ADR mechanism such as Arbitration, Mediation, Conciliation, Negotiation, ombudsman, and Lok Adalat. The Apex Court of India hasn't stated any appropriate procedure to be followed for solving the problems arising in Intellectual Property Rights. But, where it appears to the Court that there exist elements of a settlement that 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 any of the modes such as

(a) Arbitration;
(b) Conciliation;
(c) Judicial settlement including settlement through Lok Adalat: or
(d) Mediation.[1]

A Civil Court exercising power under section 89 of CPC cannot refer a suit to arbitration unless all the parties to the suit agree to such reference. If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. If the reference is to any other non - adjudicatory ADR process, the court should briefly record the same[2].

Thus, from section 89 it is understandable that disputes in any field can be sorted through Alternate Dispute Resolution. But it is a general provision and there is no specific legislation that describes solving disputes through ADR alone except the Arbitration and Conciliation Act of 1996.

2. Historical Background of ADR:

From the ancient period, there exists the process of solving disputes through Alternate Dispute Resolution in India. At those time, if any problem arises among the family members it will be solved either by the head or by the clan as people lived in a joint family. The History of ADR is divided into Eras, (I.E.) Pre Independence period and Post Independence period.

2.1. Pre – Independence Period:

Many laws were enacted that radically changed the way India was governed under British rule. Courts In 1772, it received the right to resolve disputes by arbitration, either at the request of the parties or at the discretion of the courts.

Later, after the introduction of the civil process, it provided for the settlement of disputes by arbitration, which is dealt with in sections 312-327, but in 1882 the arbitration clauses were removed. In 1899, the Indian Arbitration Act was passed to provide an alternative dispute mechanism in India that followed English law.

[1] Code of Civil Procedure, 1908, Section 89(1) Settlement of disputes outside the court, No 5 Act of Parliament, 1908. (INDIA)
[2] Afcons Infrastructure Ltd & Anr vs Cherian Varkey Construction Company Pvt. Ltd & Ors (2010 (8) SCC 24)

Later, in 1908, the Code of Civil Procedure was amended and section 89 was added, which affected the settlement of disputes by arbitration. Thus, the Arbitration Act and Section 89 of CPC give the arbitration court an effective role.

2.2. Post-Independence Period:

Currently, the Indian Arbitration Act, of 1940 and the Arbitration (Protocol and Convention) Act, of 1937 are the laws that enable dispute resolution through the alternative dispute mechanism in India. In 1961, India signed the New York Convention and the Foreign Judgments (Recognition and Convention) Act, 1961, which aims to settle commercial disputes through arbitration.

In addition, India signed and adopted the UNCITRAL Model Law in 1985, which focuses on international commercial arbitration. In 1996, all the laws like the Arbitration Law, of 1937 and 1940; The Foreign Awards Act of 1961 were repealed and consolidated into a single statute following the UNCITRAL Model Law known as the Arbitration and Conciliation Act, of 1996.

The Arbitration and Conciliation Act, of 1996 was enacted to ensure a more efficient and effective arbitration procedure along with Section 89 of CPC which was re-enacted by Order X (Rules 1A-1C) in 2002.

3. Intellectual Property Right:

Intellectual Property Rights is a statutory right that is given to the creator of the new invention which benefits the public at large. It is not a physical asset rather it will be protecting those assets of an individual, corporate, Entity, etc., It is an Intangible Asset that protects the Physical Assets. The owner has to protect the intangible assets along with the tangible assets. IPR grants ownership control over the product which is a new invention of the creator, and also it makes the owner claim many advantages along with the monetary benefits. Intellectual Property Rights majorly involve the Copyright, Patents, and Trademark. Along with this, Geographical Indication, Trade Designs, and Integrated Circuits also play an important role in the IPR.

3.1. Copyright:

In Ancient times, creative writers, and musicians wrote and composed their works mainly for fame instead of earning for life or making profits. Copying was a laborious and expensive process. The importance of copyright protection was recognized only after the invention of the printing press in the 15th century which enabled the reproduction of books in large numbers practicable. Copyright subsists in literary, artistic, musical, and cinematographic films and sound recording works. It is a product of the labor, skill, and capital made by an author on his work which is protected and not on the elements or raw materials used in the work. Ideas are not protected by copyright. Even the Question papers are subjected to the protection under the copyright as the person who sets the question paper invests the labor, skill, and time in the preparation. Thus, he is the author of the question paper, and the copyright vests in him.[3] The tenure of copyright is the Lifetime of the author plus 60 years from the date of the death of the author. On the expiry of the term of the copyright, the work belongs to the public domain and anyone can reproduce the work. The principle of "What is Worth Copying is Worth Protecting" is followed by the Copyright legislation in India.

3.2. Patents:

A patent is an absolute right granted to the inventor for inventing a new invention which is either the product or the process which helps for doing some work. The invented product or

[3] Jagdish Prasad vs Parmeshwar Prasad AIR 1966 Pat 33

the process helps the public at large. The product will be patented only when it is New, utilized by all people, must not be a normal improvement, and must be the inventor's invention.[4]The controller of the patent will grant the patent to the applicant only if he shares the technical information (i.e.) Provincial Specification and the Complete Specification about the usage of the product invented to the public at large. The person to whom the patent is granted for his new invention is called a Patentee. If the employee invents something new, he is the inventor. But, if his work is to only invent, the assignee will be the patentable owner.[5]

3.3. **Trade Mark:**

Trade Mark is the most commonly used IP. In the Year 1891, through the Madrid Agreement, the importance of Trade Mark has been recognized globally. From the Madrid to TRIPS Agreement, Trade Mark has been developed in the international legal system. Trade Mark is some symbol consisting in general of a picture, label, word, or words which are applied or attached to goods of a trader so as to distinguish them as his from similar goods of other traders and to identify them as his goods or as those of his successors in the business in which they are produced or put forward for sale[6].

3.4. **Geographical Indication:**

Every Region is famous for the goods which are produced in their place of origin. There is a specific link between the goods and the place of production that evolved resulting in the growth of geographical indication. By hearing the name of the goods, people will tend to recognize the place of their origin. Presently, there is no specific law governing the geographical indication of goods in the country which could adequately protect the interests of the producers of such goods. Unless and until a geographical indication is protected in the country of its origin, there is no obligation under the TRIPS Agreement for other countries to extend the geographical indication. Indications that identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristics of the good is essentially attributable to its geographical origin[7].

3.5. **Trade Designs:**

In order to catch the attention of the buyers an article must be visually attractive. Visual attraction enhances the marketability of the articles. Design is primarily of an aesthetic nature. Although, the design of a product may also have technical or functional features, industrial design, as a category of IP law, refers only to the aesthetic nature of a finished product, and is distinct from any technical or functional aspects. It is important to protect industrial design as it encourages creativity in the industrial and manufacturing sectors and further helps in the economic development of the nation.

3.6. **Trade Secrets:**

Trade Secrets though in a stage of question on its admission as an Intellectual Property across the globe, India has started to recognize it as an IP that is to be protected in certain circumstances. It mentions the confidentiality of the Intellectual Property. It is a matter of common knowledge, under a system of free private enterprise and therefore of competition, it is to the advantage of a trader to obtain as much information as possible concerning the business of his rivals and to let him know as little as possible of his own. The information

[4] Section 2(1) (J) of the Indian Patents Act, 1970
[5] Darius Rutton vs Gharda Chemicals (2019) 14 SCC 277
[6] Firm Koonerji Bechari Lal vs Firm Adam Haji Pir Mohammed AIR 1944 SIND 21
[7] Art. 22 of Trade Related Aspects of Intellectual Property Rights Agreement

may be a trade secret. In a contract, though confidentiality has not been mentioned expressly, it should not be breached. If a breach of a trade secret occurs, it is a ground for claiming compensation as a breach of trade secrets though mentioned impliedly.

4. Forms of ADR:

As the author already mentioned in this article, there are many kinds of Alternative Dispute Resolution. Arbitration, Mediation, Negotiation, and Conciliation are the forms of alternate dispute resolution. The main form of ADR is Arbitration and Mediation. Without the process of the trial procedure, the parties may solve the disputes by means of arbitration and mediation.

4.1. Arbitration

Arbitration is the first and foremost important form of Alternate Dispute Resolution. This is a final resource of the ADR Mechanism which provides the clients to solve their disputes other than the litigation process. The person who will be providing the verdict as a judge is called an Arbitrator. In this method, parties are having the option to choose the arbitrator. There will be either one or three arbitrators present in the panel to provide the verdict. The arbitrators will be qualified in a particular field of law to pass the judgment. The judgment passed will be binding on the parties to follow. An appeal can be made against the order passed in the arbitration tribunal to the High Court by the aggrieved party[8]. Also, the arbitral award can be set aside on the grounds of parties being incapable to compete, the invalidity of the contract, not providing the notice of summons to the parties involved, the arbitral procedure being illegal, and the arbitral award is against the public policy[9].

4.2. Mediation:

As Mediation is focusing on solving problems instead of determining the parties it is more efficient and effective in dispute settlements. It allows the parties to determine the solution to their problem by mutual agreement between them. The person who is appointed to solve the problem is called a Mediator. The mediator is acting as a Facilitator who will be helping the parties to reach a solution. There is no appeal as it is not a law-binding process. If mediation is not satisfied a fresh suit can be filed. It is focusing more on the interest of the parties and the mutual gains they are incurring from the solution rather than deciding the winners and losers from the judgment passed. As a result, mediation grants the parties to boost their relationship with each other either by strengthening through trust and respect or end their relationship. It is the best result for solving the Intellectual Property Rights dispute.

Apart from these, there are many other modes as discussed above and the Act is limited to defining and regulating Arbitration and Conciliation. The other forms of ADR are discussed in relevant statutes, such as the Ombudsman have their regulations in RBI regulations, SEBI regulations, and guidelines, etc. The research from here shall continue to enter the object of this research.

5. Why ADR has to be used in IP-related disputes:

Intellectual Property is a statutory right that is granted to the creator of a new work for a certain period of time for the creation of that work which is helpful for the public at large. By availing the IP for his/her work the creator enjoys certain advantages including the monetary benefits. There will be disputes for the work in relation to Intellectual Property Rights and solving them through the ADR is a method that will benefit the parties. The Out – 0f – Court settlement is more convenient and effective for the parties in comparison with

[8] Arbitration and Conciliation Act, 1996, Section 39, No. 26 Act of Parliament, 1996 (INDIA)
[9] Arbitration and Conciliation Act, 1996, Section 34, No. 26 Act of Parliament, 1996 (INDIA)

the court procedure. As intellectual property rights play an important role in the modern economy, it faces many hurdles. As IP plays a vital role, the disputes relating to it will be solved through the Alternative Dispute Mechanism. ADR will be providing certain benefits which are considered of paramount importance to intellectual property issues. The benefits include confidentiality, Expert Opinion, and most importantly the solution is based upon the problem to be solved instead of the determination of the parties. The author would like to mention the advantages of using the ADR Mechanism in solving IP-related disputes.

5.1. **Party Concerned:**

In Alternate Dispute Resolution, the parties have the choice to decide the time, venue, judge, and language the proceedings have to be conducted along with the procedure of the law. Whereas, in the court of law, the proceedings will be conducted according to the procedure established by law. ADR is party oriented.

5.2. **Non-Biased:**

The Judges in the ADR Mechanism either the Arbitrator or the mediator will provide the judgment in a rational manner and they will be more concerned with the benefits after passing the verdict. The proceedings will be conducted in the language more convenient to the parties and the laws are based upon the opinion of the parties. Whereas in the Trial Court, sometimes, the judgment will be granted in a biased manner.

5.3. **Expert:**

The Judges in the out-of-court settlement have the qualification in the legal, technical, administrative, and commercial aspects. He should be knowledgeable to solve problems in all fields of law. The parties are having the opportunity to choose a person as either the Arbitrator or Mediator.

5.4. **Confidentiality:**

ADR is a private proceeding. The verdict passed through the ADR Mechanism is kept confidential. Other than the parties involved, the problem will not be known to other 3rd parties. As a result, there will be no confusion relating to Intellectual Property Rights among the public. Confidentiality in the Judgement passed in this dispute through ADR benefits the Intellectual Property's Trade Secret.

5.5. **Cost Effective:**

In litigation, there is a chance of incurring more cost whereas, ADR stands unique by way of leading the parties to amicably settle their disputes which ultimately stands cost-effective.

6. ADR in the Intellectual Property Regime:

6.1. **ADR in Copyright dispute:**

The Main issue involves in the copyright is whether the act has been infringed by the infringer or not. And whether the infringer has unlawfully copied the content is the second main issue. There is no clear-cut provision stating which allows or disallows arbitrability. The Bombay High Court held that Section 62 of the Copyright Act states that, the jurisdiction of the arbitration panel cannot be ousted and this section does not confer exclusivity or define the arbitrability. Also, this is the first case that allowed for arbitration in a copyright dispute.[10] Once there is any infringement in the copyright it can be solved by initiating the suit in a court of law or it can also be sorted through out-of-court settlement. Once the suit is filed, the court will consider the evidence of the infringed article with the original content

[10] Eros International Media Ltd vs Telemax Links India Pvt Ltd 2016 (6) ARBLR 121 (BOM)

of the author and the judgment will be passed based on the evidence produced at hand. Similarly, the arbitrator will weigh the similarity of the contents of both the owner and the infringer and provide a verdict based on the comparison. There are many benefits to solving the copyright dispute through ADR Mechanism. As the arbitrator is well aware of the technical, legal, and administrative knowledge, the parties will be getting many benefits once the dispute is sorted through ADR. The arbitration is a private proceeding that does not involve more time to settle the matter and also it is cost-efficient which saves the time of both the Arbitrator and the Parties involved.

6.2. **ADR in Patent dispute:**

In any proceedings under this section, the High Court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to an official referee, commissioner, or arbitrator on such terms as the High Court may direct[11]. Whenever patent issues arise along with technological matter issues, the best way to solve the problem is through Alternative Dispute Resolution. Because the arbitrator is well qualified in the technical matters along with the legal matters. As a result, patent issues will be sorted easily. When the patent issue matter is filed in the court of law it will take more time for solving the case whereas, through arbitration, the arbitrator will provide the judgment within 6 months but sometimes, it may exceed 12 to 15 months. Further, the arbitration will provide a Win–Win situation to both parties in the patent disputes, thus, the arbitration is chosen by the parties with a mutual agreement between them. It is observed that the cost of the arbitration is less when compared to other judicial dispute resolutions for issues related to patent infringement[12]. Thus, the parties tend to choose the arbitration method to solve their proceedings instead of approaching the court of law.

6.3. **ADR in Trade Secrets disputes:**

As the author already mentions in this article, a trade secret is a piece of information that is considered to be confidential. Mishandling of the information which is considered to be confidential leads to misuse of the trade secret by the opponents which is considered either as the breach of contract of trade secret which is referred to as the non-disclosure agreement by the parties. Trade secrets have to be protected as it is considered vital information involving the business transaction. The usage of trade secrets by competitors deteriorates the business of the owner. Once there occurs a breach of trade secrets, the owner has the full right to claim compensation and file a suit against the person who misappropriates the information. Mishandling of the information is considered an infringement. A civil suit can be initiated against the infringer for committing the breach of trade secrets. Instead of litigation, ADR is the most prominent method to solve disputes relating to trade secrets as the arbitrator is well versed in a particular field of knowledge and will be providing the exact result for the dispute which will not affect any of the parties. As the arbitrators are experts in one or another field of knowledge it makes them understand the problem at hand and provide the most convenient solution to both the parties and also the arbitration will be providing the faster remedy in comparison to the litigation.

7. Remedies Available for the Infringement:

Intellectual Property Rights are enforced by an action for infringement of those rights before the Hon'ble District Court or before the Hon'ble High Court. Criminal Prosecution is also

[11] The Patent Act, 1970, Section 103 (5), No. 39 Act of Parliament, 1970 (INDIA)

[12] WIPO, A Cost Effective Alternative, https://www.wipo.int/wipo_magazine/en/2010/01/article_0008.html

possible in respect of Trademark and Copyright. The Remedies available against the infringement of different intellectual property rights bear a close resemblance. The author would like to state the remedies for different types in detail.

7.1. **Patents:** In the case of Infringement of a patent, the patentee may obtain an Injunction restraining the infringer from using the patent and either Damages or an Account of Profits,

7.2**. Designs:** The Remedies available against Infringement are an Injunction, of a registered design are similar to patents namely, An Injunction and either Damages or an Account of Profits.

7.3. **Trademark:** In respect of Trademarks, the civil remedies available against infringement are an Injunction, either Damages or an Account of Profits, and the Deliver –of the infringing articles for erasure or destruction. In addition, there is a criminal remedy also against an infringer under which the person accused of infringement may be punished by imprisonment and fine.

7.4. **Copyright:** Civil & Criminal Remedies are available against infringement of copyright. The civil remedies are; An Injunction, and either Damages or an Account of Profits. In addition, damages can be claimed for conversion which may be very substantial. Criminal remedies include Imprisonment and Heavy Fine and Seizure of infringing copies of the work which will be delivered to the copyright owner.

There are no Criminal remedies available for infringement of a patent or of a registered design.

8. International Character and the Convention of Intellectual Property:

The Enormous technological development of transport and communications has resulted in the globalization of trade and commerce. This has an impact on intellectual property which is becoming international. Intellectual property can travel effortlessly from one country to another country. As a result, piracy of intellectual property has become international. The international character of intellectual property is recognized in the various international conventions for the protection of such property. India is a member of both the Berne Convention and the Universal Copyright Convention. It has also become a member of the "International Convention for the Protection of Industrial Property (Paris Convention)" dealing with patents, designs, utility models, trademarks, trade names, and so on.

8.1. International Conventions:

The author would like to mention certain international treaties or conventions in relation to intellectual property rights where India is a member county as follows;

- Berne Convention for the Protection of Literary and artistic work
- Agreement establishing the World Trade Organization (WTO)
- Convention establishing the World Intellectual Property Organization (WIPO)
- World Trade Organization Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPS Agreement)
- Paris Convention for the Protection of industrial property
- Patent Co-operation Treaty (PCT)

In the year of 1886, the Berne Convention was adopted for protecting the interests and rights of the authors who create literary, artistic, musical, and cinematographic films, and sound recording works. The convention was established by the French Writer Victor Hugo. It is an international convention that was endorsed by 175 countries where India is a member country. Being a signatory member, India adopts certain principles in the Intellectual

Property Regime based on its 3 basic principles. This convention is overseen by the World Intellectual Property Organization (WIPO).

The 3 basic principles that the convention adopts are National Treatment, Automatic Protection, and Independence of Protection. All the member countries are subjected to form copyright policies based on these 3 principles. The protection which is granted to the author is that it controls the work of them regarding its usage, how it is to be reproduced, and who is having the right to reproduction of the original work of the author. The protection is subjected to the production of the work whether it is literary, artistic, or musical in whichever form it may be[13].

8.2. **India's Approach to Alternate Dispute Resolution in the IP dispute:**

Even before the enactment of the Arbitration and Conciliation Act of 1996, there existed the ADR Mechanism. Before the enactment of the 1996 Act, the statute which was in force was the Indian Arbitration Act, of 1908. Based on the recommendation of the UNCITRAL Model, the new act of 1996 was enacted. After the establishment of arbitration and mediation methods through the Arbitration and Conciliation Act 1996, there was no anticipation of solving IP disputes through ADR. Various IP laws also stated to solve the problem through out-of-court settlements. Section 103 of the Indian Patents Act states that the High Court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to an official referee, commissioner, or arbitrator on such terms as the High Court may direct.

The Delhi High Court held that the alternate dispute resolution is paving the way for solving the problems without much cost and in a speedy manner. Hence, the High Court has passed orders to introduce the ADR Mechanism to Intellectual Property Disputes as well[14]. The Indian Judiciary has adopted to widen the scope of alternate dispute resolution to the problems related to intellectual property disputes through section 89 of the Code of Civil Procedure 1908. The ADR is not restricted only to speedy disposal of the cases but also provides for resilience, time management, confidentiality, etc.,

The Supreme Court held that the cases will be solved through arbitration based on 2 maxims which are right in rem and right in personem. Mostly the cases falling under right in personem will be suitable for the ADR mechanism whereas, the cases of right in rem are not so. But, once the case falls under the category of right in personem as a result of right in rem, the arbitration will be suitable for solving those disputes. Hence, the IPR disputes are subjected to be solved through the ADR mechanism[15]. Further, the Hon'ble Bombay High Court held that, when there is a dispute between two claimants relating to either the infringement or passing off the copyright or trademark, it is a nature of right in personem. Therefore, the action or the remedy granted will be falling under the category of right in personem for which the arbitration will be involved[16].

Disputes arising from the patent licensing contract in the patent law can be solved by arbitration which will be the effective tool for claiming the remedy. When there is any dispute relating to intellectual property rights it can be solved through arbitration, but when the dispute is having any conflict with the public policy in India then the matter will be adjudicated by the appropriate court of law and not by the arbitration. Also, when the

[13] Article 2(1) of the Berne Convention for the protection of literary and artistic work

[14] Bawa Masala Co. vs Bawa Masala Co. Pvt Ltd & Anr AIR (2008) 149 PLR 38

[15] Booz Allen & Hamilton Inc vs SBI Home Finance Ltd & Ors AIR 2011 SC 2507

[16] Eros International Media Ltd vs Telemax Links India Pvt. Ltd & Ors 2016 (6) ARBLR 121 (BOM)

arbitral award is granted which is against the public policy, then it will also be challenged and mostly set aside by the appropriate court of law.

Presently, arbitration is the most preferable method for solving intellectual disputes by the parties and it is being guided by the World Intellectual Property Organization (WIPO). The arbitration for IP disputes is largely accepted by the WIPO like other type of disputes which falls under the category of right in personam. Therefore, arbitration stands as an effective alternative that is to be adopted to solve disputes relating to domestic and IPR disputes.

8.3. **United States of America's Approach for Alternative Dispute Resolution in IP disputes:**

In the era of late 1960s, based on the recommendation from the civil rights movements and the legal reforms, the United States of America incorporated Alternative Dispute Resolution as a substitution for court proceedings as the cases filed were pending before the court of law. In the period of early Dutch and British colonial rule, commercial arbitration has been established. After the independence and the establishment of the new government, arbitration got its place in the statute. Where the patents act of 1970 mentions that, the patent dispute claims can be heard and decided by the Alternative Dispute Resolution. But, until the late 19th century, ADR was not recognized at large.

In the early 20th century, ADR has its place in the US statute. In the year 1920, many states introduced various arbitration laws whereby enhanced the nature of US arbitration. The US Arbitration Act mentions that,

A. A contract has to be expressly made stating that, Arbitration is the method to be followed for solving disputes.

B. Instituting the court to grant arbitration awards.

C. Instituting the court to recruit the arbitrators.

Alternative Dispute Resolution in the United States follows 16 hybrid modes of out-of-court settlement which include the early neutral evaluation, mediation, arbitration, summary jury trial, minitrial, etc., The aim of ADR is that it will be providing a platform for the parties to solve their disputes in a consensus ad idem manner, a voluntary act. It not only reduces the time, money, and ambiguity of the parties but also builds communication between them. The court of appeal held that, if anyone of the party is not giving consent to solve the dispute through the court, then it may take any other step for managing the case which includes the hearing of an Early Neutral Evaluation which aims to help the parties to settle the case[17].

In the year of 1996, Administrative Dispute Resolution Act has been established for providing the ADR Mechanism as a tool for solving disputes in a speedy manner. It is an amendment act to the Administrative Dispute Resolution Act of 1990. The Federal Authority has conferred the right to solve the disputes through the ADR mechanism if the parties are having a consensus on it[18]. Relating the disputes involving the infringement or the validity of the patents granted can be solved through the process of Alternative Dispute Resolution which was stated explicitly by the Patents Act provided the arbitral award has to be produced before the controller of patents or the registrar of the trademark.

Based on the United Nations Commission on International Trade Law (UNCITRAL) Alternative Dispute Resolution has been established in the USA. And it has paved the way for the development of the ADR. The USA is a member country of the World Intellectual Property Organization (WIPO). WIPO is a convention that is an intergovernmental organization dealing

[17] Lomax vs Lomax (2019) 1 WLR 6527

[18] Administrative Dispute Resolution Act, 1996, Section 572 (a), (UNITED STATES)

with the services, and policies related to Intellectual Property Rights. This convention mentions that intellectual property disputes can be solved by Alternative Dispute Resolution by which the USA is following the ADR mechanism for solving the disputes of IP rights. In the year of 1998, the federal courts have been regulated by the ADR mechanism by the Alternative Dispute Resolution Act.

8.4. **United Kingdom's Approach to Alternative Dispute Resolution in IP disputes:**

In England, the Alternative Dispute Mechanism commenced in the year 1066. During that period, the citizens of England solved their disputes by an informal court based on their convenience. This paved the way for the King's Court to adopt the method of arbitration for solving the case as people tend to solve disputes in their way without approaching the King's Court. Also, the working of the first arbitration system occurred in the 17th century when traders preferred to refer their matters to arbitration as it is time efficient and incurring reasonable cost over the litigation. At those time, the arbitration was effective in the agreement relating to insurance and construction contracts. In those agreements, it was expressly mentioned the number of arbitrators and their specialization. It not only looked at the facts of the case but also the communication and the relationship between the parties and helps to provide a kinship between them. As there are many advantages, the traders opined to establish the arbitration system in an effective manner for solving their disputes. Eventually, arbitration has developed into two types which are based on the discretion of the parties and based on the discretion of the court. But it also results in certain disadvantages.

Thus, in the year 1698, the parliament of England enacted legislation called an "Arbitration Statute" which is also known as the "Locke Act" which provides the first legal criteria for broadening the trade and granting the arbitrator's award more powerful for all the cases. Meanwhile, in the 18th century, statutory arbitration which is called the third statute was enacted which adds up the number of arbitration while the other acts provide for the public policy of England in favor of the arbitration. Currently, England is following the Arbitration Act of 1996.

For solving Intellectual Property disputes, international arbitration plays a vital role. Historically, the matters related to the intellectual property disputes were heard and decided only by the national courts as it is associated with the public policy which piloted to the delusion that, the IP disputes are not arbitrable. But the current scenario is that IP disputes are recognized worldwide and are subjected to arbitration like other personal disputes.

Nowadays, parties are expressly mentioning their opinion in the enforceable agreement that arbitration is a resort for solving disputes relating to Intellectual Property. In the Act of 1996, there is no statutory definition for solving IP disputes by arbitration but the United Patents Act of 1977, mentions that arbitration is used for solving the disputes of Intellectual Property in certain situations.

- Where an application under sections 48 to 51 is opposed, and either–

(a)the parties consent, or

(b)the proceedings require a prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the comptroller conveniently be made before him,

the comptroller may at any time order the whole proceedings, or any question or issue of fact arising in them, to be referred to an arbitrator or arbiter agreed on by the parties or, in default of agreement, appointed by the comptroller.[19]

Additionally, it has been recognized judicially. In the UK, the disputes relating to Trademark and Copyright are fully arbitrable.

Recently, in the year of 2015, the United Kingdom followed the law of Europe called Alternative Dispute Resolution (ADR) which conveyed the need of solving disputes arising out of contracts or other disputes through an alternative way other than litigation.

8.5. **Australia's Approach to Alternative Dispute Resolution in IP disputes:**

In Australia, there is no specific statutory provision for solving the intellectual property dispute through Arbitration. But the Australian court observed that, if the case is suitable to be filed and the claim can be granted by the court of law, then it is subjected to Arbitration[20]. Further, the Supreme Court of New South Wales held that matters relating to patents can be addressed through the Alternative Dispute Mechanism[21].

8.6. **Singapore's Approach to Alternative Dispute Resolution in IP disputes:**

The Intellectual Property (Dispute Resolution) Act of 2019 amends the Arbitration Act of Singapore for domestic arbitration activity and International Arbitration Act for international arbitration activity allowing Alternative Dispute Resolution to be used for solving IP disputes. The Arbitration will be effective in the fields of Copyright, Trade Mark, Patents, Designs, Trade Secrets, Geographical Indication, and Plants Variety, etc., There are no mandatory provisions stated in the International Arbitration Act specifying the rules to be followed by the parties but specifies that the parties to the contract must comply with the provisions and principles mentioned under the UNCITRAL Model Law. All the disputes are subjected to arbitration provided it should not conflict with the public policy and the public interest[22]. The limitation period for filing the case in arbitration is similar to that of the proceedings filed in the court of law for litigation. If the Singapore law applies, the party is having a period of 6 years for commencing the case and for setting aside the arbitral award[23]. Whereas if the foreign law applies, the period of limitation is to be followed according to the law of that foreign country[24].

8.7. **Germany's Approach to Alternative Dispute Resolution in IP disputes:**

In the year of 1998, Germany follows the Arbitration Act. As German follows the UNCITRAL Model Law, it was subjected to incorporate the Arbitration clause for solving the disputes which applies to both the International and the Domestic Cases. Germany follows Arbitration for solving IP disputes. For patent-related disputes, the parties can approach the out-of-court settlement over litigation, and License for the patent can also be acquired through arbitration[25]. The Arbitration followed in Germany is so friendly and for the enforcement and the recognition of the arbitral award, a declaration has to be received from the competent court or a Higher court in Germany[26]. It endorsed the European Convention on International Arbitration (ECICA) in the year of 1961 which includes the scope of Arbitration for IP disputes.

[19] United Patents Act, 1977, Section 52 (5) (UNITED STATES)
[20] Elders CED vs Dravco Corp. (1984) 59 ALR 206
[21] Larkden Pty Ltd vs Lloyd Energy Systems Pty Ltd (2011) NSWSC 268
[22] International Arbitration Act, 1974, Section 11(1)
[23] Singapore Limitation Act, 1959, Section 6 (SINGAPORE)
[24] Foreign Limitation Period Act, 1984, Section 3 (UNITED KINGDOM)
[25] German Patent Act, 1980, Section 15 (GERMANY)
[26] German Code of Civil Procedure, 1877, Section 1062 (1) (GERMANY)

CONCLUSION:

Knowing the scope of IP in the globalized market and its importance the need for speedy justice stands as a spark that triggers the development of ADR in IP disputes and the adaptability of ADR mechanisms in IP-related disputes. On going through all the above discussions that relate to ADR and IPR it is convinced that IP disputes fall under all the requirements that are needed for a base to establish the suitability of ADR in solving it. This research would be incomplete without dealing with the interpretation made by the Indian Supreme Court in **Afcons Infrastructure Limited and Another V. Cherian Varkey Construction Company Pvt. Ltd. And others**[27]that establishes the legislative intent behind section 89 of the Civil Procedure Code. The Court lays down certain disputes such as disputes related to the public interest, election disputes, and cases involving prosecution for criminal offenses shall not be dealt with under the ADR mechanism. Thus, an IP dispute which is a mere contractual dispute and a statutory right-protecting task, it gets very well fits into the scope of ADR to get resolved.

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I, GOWSHINI ATHREYA D, final Year B.Com; LLB (Hons) of SASTRA Deemed To Be University, Thirumalaisamudram, Thanjavur, India, acknowledge that, this article is the outcome of my research and analysis and that is free from plagiarism.
I do hereby declare that, the above - mentioned facts are true to the best of my knowledge.

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15 Booz Allen & Hamilton Inc vs SBI Home Finance Ltd & Ors AIR 2011 SC 2507
16 Eros International Media Ltd vs Telemax Links India Pvt. Ltd & Ors 2016 (6) ARBLR 121 (BOM)

[27] Afcons Infrastructure Limited and Another V. Cherian Varkey Construction Company Pvt. Ltd. And others (2010) 8 SCC 24

17 Lomax vs Lomax (2019) 1 WLR 6527
18 Administrative Dispute Resolution Act, 1996, Section 572 (a), (UNITED STATES)
19 United Patents Act, 1977, Section 52 (5) (UNITED STATES)
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