



ARBITRATION & MEDIATION

ICSI, THANE CHAPTER

25TH MAY, 2024

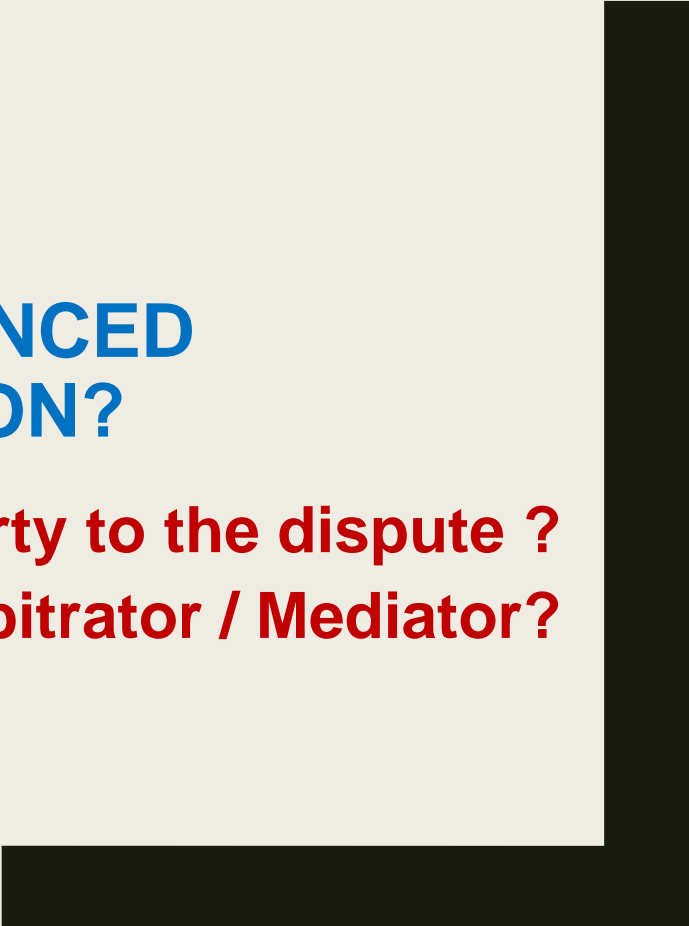
GC- ATUL JUVLE

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- Information shared is only for academic purpose and only for use of the intended participants.
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- Law stated is on the date of presentation.

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LITIGATION STRATEGIES



**HOW MANY OF YOU EXPERIENCED
ARBITRATION OR MEDIATION?**

**As a Party to the dispute ?
As a Arbitrator / Mediator?**

Dispute Resolution - HISTORY

- **Mediation & Arbitration** was part of Indian dispute resolution system
- The MAHAJANS were respected and were used to settle business disputes.
- **Panchayat System** used to handle social / family disputes
- **The East India Company took control of divided India sometime in 1753 & British style courts were established in 1775**
- Alternate Dispute Resolution – 1908- CPC
- Arbitration & conciliation- 1940 & 1996...amendments
- ADRs

A D R

- ALTERNATE
DISPUTE
RESOLUTION



CIVIL DISPUTES

OCCUR WHEN A PERSON'S RIGHTS HAVE BEEN INFRINGED OR AN INDIVIDUAL HAS BEEN INJURED

Alternate Dispute Resolution

involves settling a civil legal dispute
by a method other than a decision before a court

Types of ADRs

- 1. Negotiation
- 2. Arbitration
- 3. Conciliation
- 4. Lok Adalat
- 5. Mediation
- 6. Hybrid ADRs
- 7. ODRs

1. NEGOTIATION

Negotiation is usually carried out without legal representatives or without THIRD PARTY, but each party can take their own representatives or legal representative to assist.



1. NEGOTIATION to be successful

■ Best Practices –

- *Complete Information of the matter*
- *One level up seniors to meet & discuss*
- *Avoid involving the Managers to dispute*
- *Bring objectivity to the matter*
- *Look at the larger picture*
- *Look at future business opportunities.*
- *Finish it quickly*
- *Document the discussions*

2. ARBITRATION

- Arbitration involves an independent third party who actually makes suggestions and actually imposes a decision on the parties.



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ARBITRATION & CONCILIATION ACT-1996

Arbitration- so far.....

- Arbitration, as a dispute resolution process was recognized as early as 1879 and also found a place in the Civil Procedure Code of 1908.
- When the Arbitration Act was enacted in 1940 the provision for arbitration originally contained in Section 89 of the Civil Procedure Code was repealed
- The Arbitration and Conciliation Act in 1996, making elaborate provisions for conciliation of disputes arising out of legal relationship, whether contractual or not, and to all proceedings relating thereto.
- Amendments..... so far up to the date

Arbitration And Conciliation Act, 1996

■ Part I – Arbitration

- Chapter I-General Provisions (Sec 1-6)
- Chapter **II-Arbitration Agreement (Sec 7-9)**
- Chapter III- Composition of Arbitral Tribunal (Sec 10-15)
- Chapter IV- Jurisdiction of Arbitral Tribunals (Sec 16-17)
- Chapter V- Conduct of Arbitral Proceedings (Sec 18-27)

Arbitration And Conciliation Act, 1996

■ Part I – Arbitration- continued

- Chapter VI- Making of Arbitral Award and termination of proceedings
- Chapter VII- **Recourse Against Arbitral Award (Sec 34)**
- Chapter VIII- Finality and Enforcement of Award (Sec 35-36)
- Chapter IX- **Appeals (Sec 37)**
- Chapter X- Miscellaneous (Sec 38-43)

Arbitration And Conciliation Act, 1996

- **Part II – Enforcement of Foreign Awards:**
 - Chapter I – New York Convention Awards (Sec 44-52)
 - Chapter II – Geneva Convention Awards (Sec 53-60)

- **Part III – Conciliation: (Sec 61- 81)**

- **Part IV- Supplementary Provisions: (Sec 82-86)**

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FEW IMPORTANT / RECENT
JUDGEMENTS

1. Does Arbitration Agreement in writing is Mandatory?

■ **Yes.**

- It has to be –Section 7(2) An arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of separate agreement. (3) An arbitration agreement shall be in writing.
- **SC -in SIp No.15989 of 2021- Babanrao Rajaram Pund vs Samarth Builders & Developers- 7th Sept, 2022.**

2. Does STAMPING of Arbitration Agreement is Mandatory?

- The decision in **N.N. Global Mercantile Pvt Ltd** v/s Indo Unique Flame Ltd & others – it was held by SC that – if the substantive contract is not admissible in evidence due to non-payment of required stamp duty, whether arbitration agreement will be valid / void?. (SLP No.13132-13133- of 2020)
- **13.12.2023- Constitutional bench** – held that non-stamping or insufficient stamping of an agreement is a curable defect. Arbitration clause of insufficiently stamped or unstamped agreement is valid.

3. Can Arbitration Agreement bind NON-SIGNATORIES?

- **YES**, only if
- (1) there is defined legal relationship between signatories and the non-signatories.
and
- (2) the parties intend to be bound by it through their conduct.
- Cox & Kings Ltd vs. SAP India Pvt Ltd, December 2023.
- SC upheld Group of Companies doctrine

4. Can Arbitration Agreement oust jurisdiction of Consumer Forum?

■ NO.

- National Consumer Disputes Redressal Commission held that Consumer Forum's remedies are in addition to Arbitration & Conciliation Act, 1996.
- Dharamvir Singh vs Jai Prakash Associates Ltd & others. December 2023.

5. Can all the matters be referred to Arbitration Agreement, if there is an Arbitration clause

- **Not Necessary** , if
- ANY specific part doesn't fall under Arbitration Agreement.
- DLF Homes developers Ltd. V. Rajapura Homes P.Ltd.
(Arbitration petition no.17 of 2020)

6. Whether section 11- (appointment of arbitrator) can be allowed, when disputes are pending with MSME Council?

■ No.

- Because in case of MSME the provisions of MSMED Act were applicable and only the Facilitation Council should decide the issues.
- Bombay High Court- October 2023 – Bajaj Electricals Ltd v. Alpha Communication Ltd.

7. Can Section 138 proceedings will continue, if Arbitration provisions are invoked

- **Yes.**
- Both are separate proceedings and can run simultaneously
- Delhi High Court- Nov. 2023 – Newton Engineers & Chemicals vs. UEM India Pvt Ltd.

8. Can Arbitration clauses be inconsistent with the Constitution?

■ NO.

- The Supreme Court, held that arbitration clauses must not be inconsistent with the Constitution.
- It asserted the Court's authority to assess whether such clauses violate Article 14 of the Constitution when appointing an arbitrator.
- It held that for an arbitration clause to be legally binding, it must align with the Constitution, as the same is a fundamental aspect of the rule of law
- **Lombardi Engineering Ltd v. State of Uttarakhand- June 2023**

9. Whether Instruments executed by Govt are exempted from the payment of Stamp Duty?

■ YES

- The Delhi High Court ruled that no stamp duty is applicable to instruments executed by or for the government. It held that Section 3 of the Stamp Act exempts government instruments from stamp duty, making the government-executed agreement exempt from payment.
- M/s SVK Infrastructure v. DTTDC [October 2023- 668 of 2023]

10. Whether the Court can Partially Set Aside AWARD

■ YES

- The Delhi High Court ;under Section 34 of the A&C Act can set aside a portion of an arbitration award while preserving the rest. The Court emphasized the explicit recognition of the doctrine of severability in Section 34(2)(a)(iv) of the Act, highlighting that different components of an arbitration award are independent, enabling the removal of an offending part without affecting the remaining components. NHAI v. Trichy Thanjavur- (August 2023)
- The Allahabad High Court ;the doctrine of severability to arbitral awards, allowing the separation of independent and unaffected portions. The Court clarified that the Act imposes no restrictions on the Court's power to apply severability under Section 34, emphasizing that the Court can set aside part of the award while preserving the rest, as long as it doesn't modify the tribunal's findings on any issues Hindustan Steelworks Construction v. NOIDA [September 22, 2023]

11. Can you appoint current or ex-employee as Arbitrator or Mediator – Unilaterally?

- **YES & NO. Not advisable.**
- Prior to the Arbitration and Conciliation (Amendment) Act, 2015 , unilateral appointments were allowed in India without any restrictions. Such appointments, specially by PSU's and few corporates continued.
- Post the 2015 Amendment, the law with respect to unilateral appointment was made a bit stringent. Still many continues to appoint.
- A person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.
- *Perkins Eastman Architects DPC & Anr. V. HSCC*

12. Venue / Seat in Arbitration Agreement

- The seat of an arbitration will decide the law applicable to the proceedings and the courts having supervisory jurisdiction over the award delivered
- The venue/place is only the geographical location where the arbitration proceedings will be physically conducted.
- In absence of specific mention/agreement with regards to the seat of the arbitration, the venue/place shall be considered as the seat of arbitration.
- **Bharat Aluminium Co vs. Kaiser Aluminium Technical Service Inc. (2012) 9 SCC 552**
- **Roger Shashoua vs. Mukesh Sharma, [2009] EWHC 957 (Comm.):**

3. CONCILIATION

Conciliation involves a third party, who may make suggestions to the parties.

Conciliator plays active role in putting forward suggestions of compromise.

It's structured to bring disputing parties to acceptable agreement through consensus.



4. Lok Adalat

- Best performing A.D.R. system
- Introduced by Legal Services Authorities Act, 1987
- Periodical Lok Adalat – all disputes
- Permanent Lok Adalat – Public utility Services only



5. MEDIATION

- Mediation involves an impartial third party who listens, directs and facilitates the discussion
- **but does not suggest outcomes.**
- Confidentiality.



5. MEDIATION..so far

- The concept of mediation was recognized first time in the **Industrial Disputes Act, 1947**. The conciliators appointed under **Section 4**.
- In 1999, the CPC Amendment Act of 1999 inserting **Sec.89 in the Code of Civil Procedure 1908**, providing for reference of cases pending in the Courts to ADR which included **mediation**. The Amendment was brought into force with effect from 1st July, 2002.
- The Commercial Courts Amendment Act -2018 introduced the Commercial Courts (Prestitution Mediation and Settlement) Rules, 2018.
- Consumer Protection/ Securities laws – provide base for Mediation
- **The Mediation Act, 2023**

MEDIATION ACT- 2023

- The Mediation Act 2023 recognizes pre-litigation mediation, online and community mediation.
- Provisions for enforcing domestic mediated settlement agreements introduced;
- Establishes the Mediation Council of India to regulate mediators and mediation institutions.

MEDIATION ACT- 2023

- Set **time limits of 120 days** (with further extension of sixty days with the consent of the parties) for mediation proceedings,
- Maintains confidentiality,
- Guidelines for mediator appointments.
- Introduces amendments to existing statutes, to align them with the new mediation framework.

Difference -Conciliation & Mediation

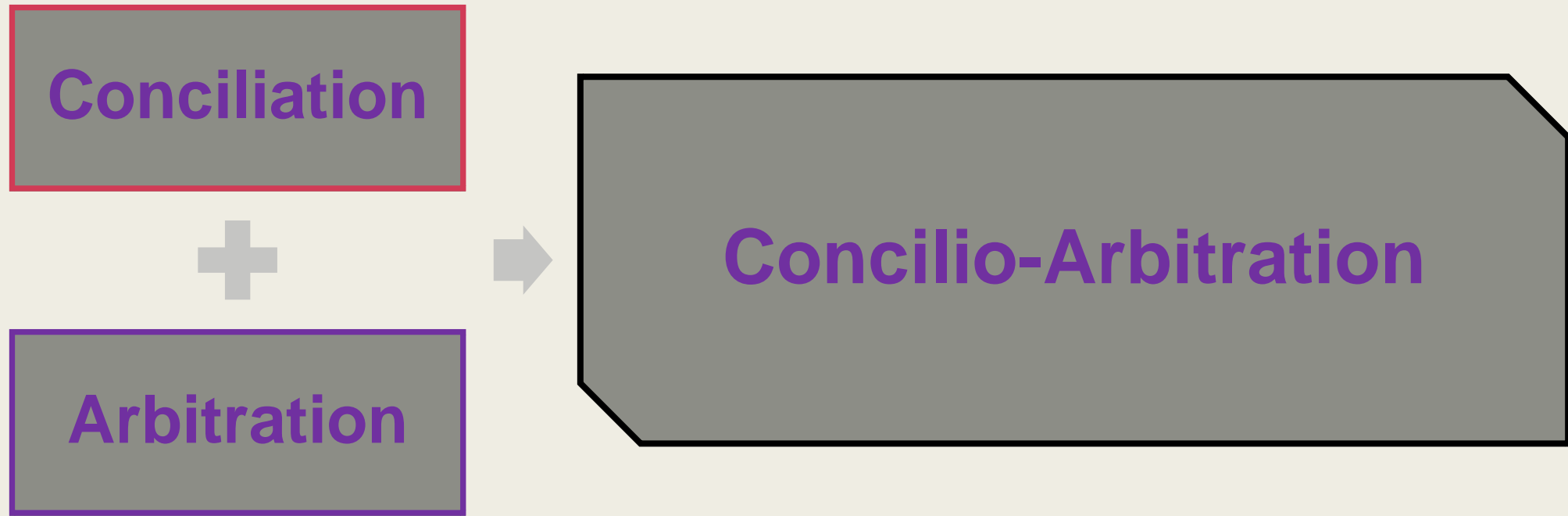
CONCILIATION

- Arbitration & Conciliation Act, 1996
- Facilitate, evaluate / intervene
- End result- Agreement enforceable by law

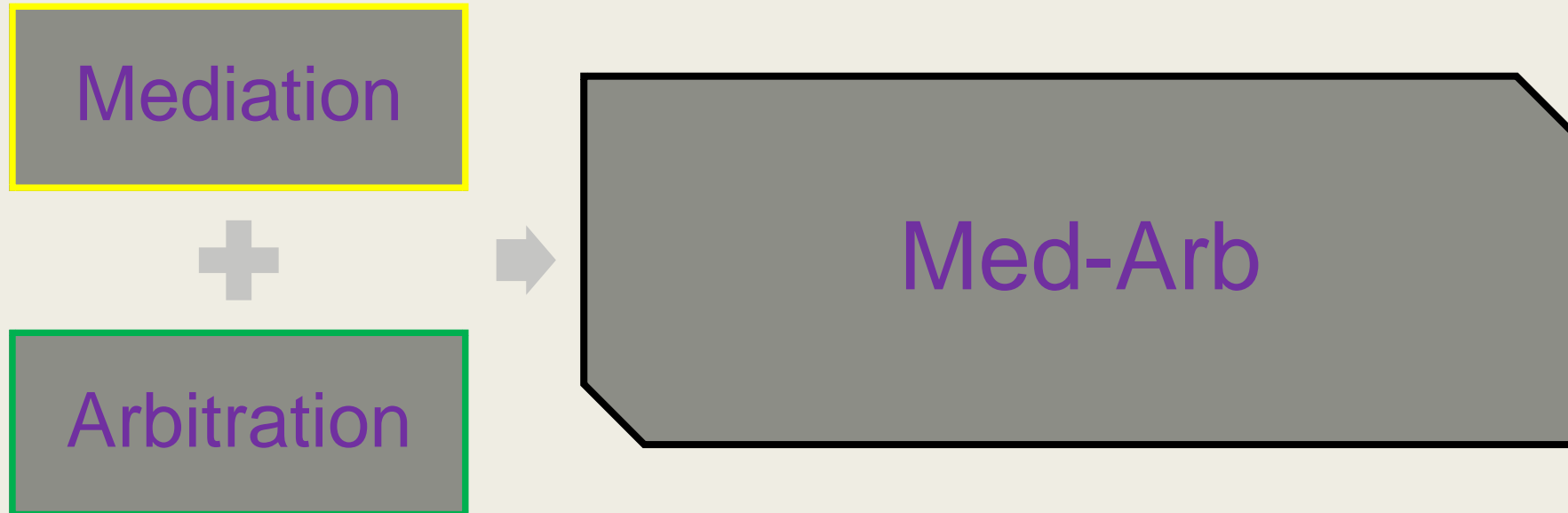
MEDIATION

- Mediation Act, 2023
- Facilitate
- End result- Settlement Agreement enforceable as decree.

6. Hybrid ADRS- 1



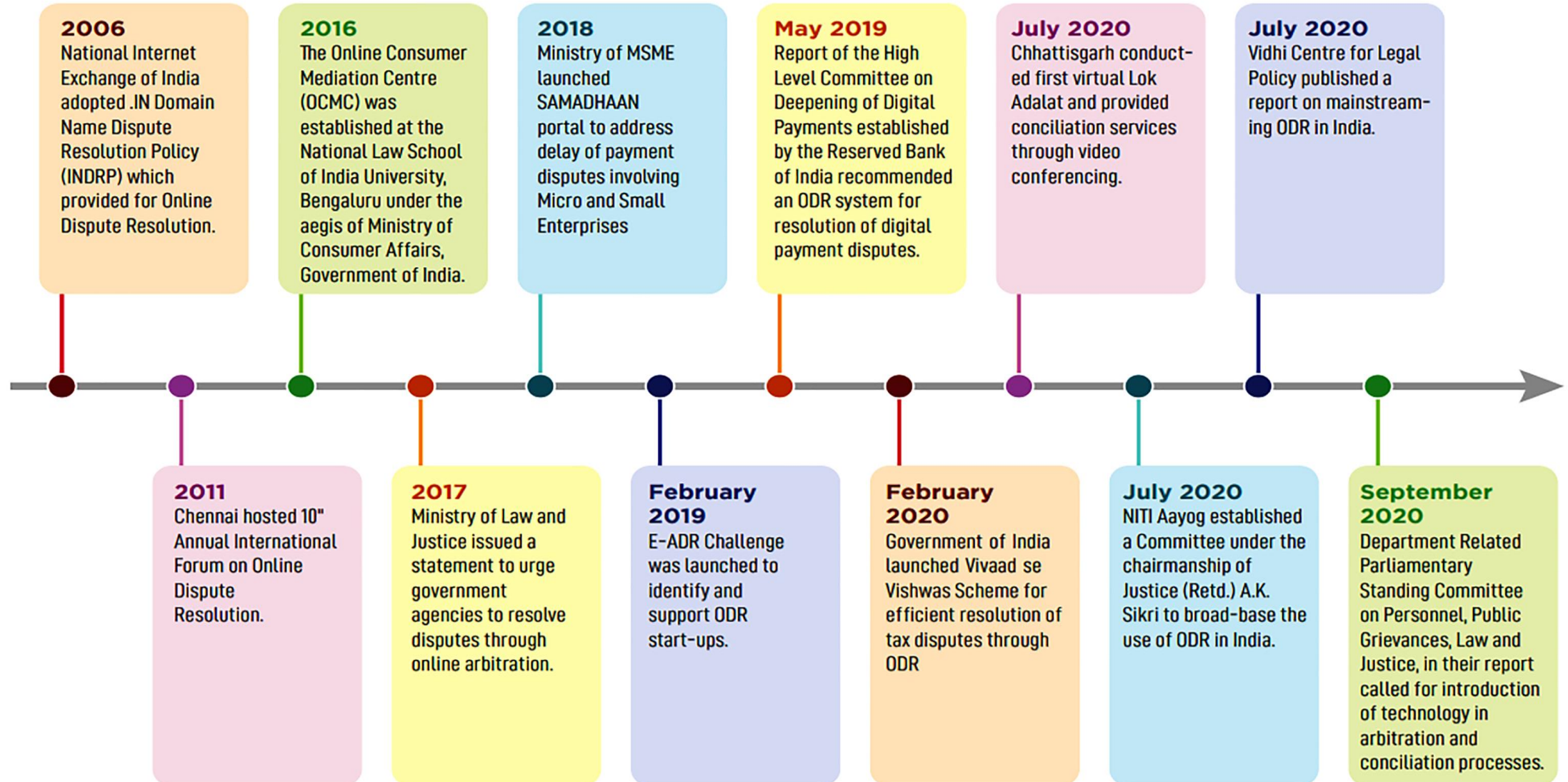
6. Hybrid ADRs- 2



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FUTURE OF DISPUTE RESOLUTION

ODR in India ... so far



7. ODRs- Online Dispute Resolution.

- 1. Arbitration

- 2. Mediation



ONLINE DISPUTE RESOLUTION- ODR

IS THE RESOLUTION OF DISPUTES
MAJORLY **SMALL AND MEDIUM-VALUE CASES**,
USING DIGITAL TECHNOLOGY
AND TECHNIQUES OF ADRS-
NEGOTIATION, MEDIATION, AND ARBITRATION.

Benefits of ADRs

- **Low Costs**
- **Expeditious**
- **Confidentiality**
- **Win-Win**
- **Possibility of continuing business**

1. Matters which can be subject to ADRs

- **Disputes arising out of contracts (including all money claims);**
- **Disputes relating to specific performance;**
- **Disputes between suppliers and customers;**
- **Disputes between bankers and customers;**

2. Matters which can be subject to ADRs

- . Disputes between developers/builders and customers;**
- . Disputes between landlords, tenants/licensor and licensees;**
- . Disputes between insurer and insured;**
- . Disputes relating to Relationships**
- . Disputes relating to securities laws.**

1. Matters which can not be subjected to ADRs

- Matters which involve public interest or interest of numerous persons who are not parties before the court.
- Disputes relating to election to public offices.
- Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

2. Matters which can not be subject to ADRs

- Cases involving serious and specific allegations of fraud, forgery, impersonation, coercion etc.
- Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against government.
- Cases involving prosecution for criminal offences.



QUESTIONS

THANK YOU



ATUL JUVLE

atuljuvle@gmail.com- +91 992082436

Professional Journey

Mr. Juvle has professional experience of over 3 decades+ with 3 decades+ as General Counsel & Compliance officer. Worked with Bank of India, Shriyam Securities, Tata International, OTIS elevator, HDFC Life, Godrej Agrovvet & Schindler India.

Presently - Independent Director with ArcelorMittal Nippon Steel Group & Consulting GC.

Award & Accolades

Mr. Juvle has been featured as Top GC in the Forbes India Legal Power List, for 3 consecutive years 2020-2022.

EY- recognition – Ethics Champion of the year – 2019

ACFE Mumbai recognition – CFE of the year - 2021

He has also featured in the Top 100 India GC list- 2016-2023.



Academics

Atul Juvle after completing his M.Com., CAIIB, FCS and LLB, has done his MFPM from Jamnalal Bajaj Institute of Management Studies.

He is also Certified Fraud Examiner [CFE] from US and Member of the Chartered Institute of Arbitrators [MCI Arb] – UK.

Industry Presence

2023-24- CII- Legal Affairs & DP sub-committee

2018-2024 : CII - National Regulatory Committee

2022- Mentor @ MentorMyBoard

2021-2024 : Advisory board Member -Ind.Business School, Powai