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SEBI Celebrates First Year Anniversary of Online Dispute Resolution in Indian Securities Market

To cater efficient and smooth dispute resolution process, the SMART ODR portal was developed for resolving disputes arising in the Indian Securities Market through online conciliation and arbitration.

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The Securities and Exchange Board of India (SEBI) in collaboration with **the National Stock Exchange of India (NSE)** celebrated the first anniversary of the introduction of Online Dispute Resolution ('ODR') platform for the Indian Securities Market. This two-day event witnessed the participation of various dignitaries including senior partners from different law firms, in-house counsel, industry experts, compliance professionals, stockbrokers, executive directors & senior officials from SEBI, and empanelled arbitrators/conciliators from ODR Institutions.

There were several presentations, training sessions and panel discussions spread over these two days for the participants to trace the journey of ODR in the securities markets, reflect on

the significant progress it had made so far, and to collectively arrive at concrete and meaningful solutions for tackling the challenges that lay ahead.

The Panel discussion on '**Institutional Dispute Resolution: Lessons for SMART ODR and scaling ODR across Digital Public Infrastructure**' commenced with Mr. Pramod Rao's (Executive Director, SEBI) opening remarks, who was the moderator for this Discussion.



Taking cue from Rao's concern in relation to huge pendency of cases (which could take as long as 325 years to be resolved) Mr. Vyapak Desai, Partner, Nishith Desai Associates, was of the view that that cost and time efficiency were essential facets that influenced the choice of arbitral institutions.

According to him, if SMART ODR could further both these objectives, and facilitate awards capable of standing the scrutiny of challenge before the Courts, then it would lead to a simple and a much desirable outcome for the parties.

This he mentioned would not be possible without efficient rule management; a proper mechanism for the scrutiny of awards; and appointment of 'right' arbitrators.

Mr. Desai explained the mechanism of ODR with some real-life examples. For instance- the registration of complaint by a passenger on the UBER platform for the failure of the driver in reaching on time or the issuance of virtual challans by the Regional Transport Office for over speeding. He mentioned that in both cases a fair procedure was followed and not questioned. Similarly, ODR was a simple and transparent process and 'confidence' had to be placed in SMART ODR whilst appreciating SEBI's efforts in facilitating that confidence building process.

He concurred with the SCC suggestions on the streamlining of the ODR process and agreed that there should be a proper mechanism and adequate support for the parties at the pre-arbitration stage to iron out the procedural creases which may help avoid challenges to arbitral awards at later stages on procedural grounds.

Ms. Neeti Sachdeva, Secretary General and Registrar, MCIA reflecting on her eight years long experience at MCIA, highlighted the ground-level challenges in setting up and running an arbitral institution. She stressed on how important it was for the ODR institutions to get the 'right arbitrators' (a major challenge), as ultimately, arbitrators are the face of arbitral institutions, and they are ones who render the award.

She mentioned even though ODR platforms have a large volume of cases, they may be of considerably small value. However, be it a Rs. 10 dispute or a Rs. 10,00,000 dispute the responsibility of the institution in terms of finding the right arbitrator capable of delivering a fair and timely award would always be there.

According to her it was the need of the hour to invest in a large pool of arbitrators having the subject market expertise. She also emphasised on the timely training of young arbitrators – *"Catch them young, Train them young"*.

In addition, she mentioned that 'credibility' of an arbitral institutions, depends on the adoption of the right process. Moreover, it was essential to educate the market participants through discussions at such events.



Mr. BG Mahesh, Chief Executive Officer, Sahamati, being at the forefront of developing Digital Public Infrastructure (DPI) for data transmission, discussed the key aspects of ODR and its deployment across DPI highlighting the need for the development of cross-sectoral expertise to make people's lives easier.

The next panel discussion on – ***“Technology, Mediation and Arbitration: Views on SMART ODR; What more can SMART ODR platform do for the Indian Securities Market and beyond”*** commenced with **Ms. Anusha Jegadeesh, Partner, AZB Partners** highlighting the importance of adherence to strict timelines in arbitration for effectively resolving disputes. Ms. Jegadeesh shared that earlier when she was told that, a dispute could be resolved within the timeline of eighteen months in India, she could not believe it. However, she was happy to see that over the last four years many awards were rendered within specified timelines, inspiring businesses to come and invest in India contributing to its growth as an investor and business friendly destination. She however expressed concerns about the delayed execution of awards and time spent in contesting a challenge to an award which according to her took about four to five years on an average.



Mr. Abhileen Chaturvedi , Partner, Cyril Amarchand Mangaldas stated, *“We are learning on the job, and we are also changing ourselves with the advent of technology”*. He added that technology had significantly improved, and it was definitely here to stay. It had greatly impacted the dispute resolution landscape in the country in improving various arbitral processes quite well.

He mentioned that technology had simplified tasks to a great extent where files and documents could be shared with just an airdrop or at the click of a button on portable devices, considerably reducing the burden of carrying bundles of physical files. With softwares such as Opus and Arbitrator Intelligence all files could be stored at one place and conflict checks could be conducted for arbitrators. However, he pointed out that one challenge he usually faced with technology was in conducting online cross examinations which could be done better in person.

He also shared an interesting anecdote involving Section 44 proceedings before a London Court wherein his client sitting in India and the opposite party sitting in Turkey, could participate virtually only with the help of technology which had become more accessible and cost-effective with the passage of time.

He also complimented Mr. Karia for spearheading the change for arbitrations in India making them more efficient and adaptable to technology. He emphasised that transcription of proceedings should be taken up pro-actively, as it could form a permanent record leaving little elbow room for opposite side to object. Commending the ODR system for having received 7500 complaints in just one year, he said it could inspire similar such systems.

Mr. Tejas Karia, Senior Partner, Shardul Amarchand Mangaldas & Co (SAM) started by congratulating SEBI on the first-year anniversary of SMART ODR highlighting that the change in mindset towards arbitration and mediation was an interesting to note in the past decade.

According to him- amendments in the legislation; promotion of institutional arbitration; streamlining of processes with the state-of-the-art technology; better transcription and translation facilities were all important steps in the right direction. He also highlighted the need for re-instilling confidence in the courts by bringing in reforms for the grant of interim relief, constitution of the tribunals, and appointment of the arbitrators. The enforcement or the setting aside of fruits of the arbitration (awards) had to adhere to the strict- timelines provided for in the legislation. He agreed with the other panellists, stressing that time and cost were indeed the pain points for the users of ODR and technology had helped in saving both.

He was optimistic about the future integration of technology and dispute resolution, not denying that there might be some challenges initially on account of security and reliability. For instance- training of Artificial Intelligence (AI) algorithms. He emphasised the importance of advanced technological solutions that had greatly helped in proper document management and simplification of procedural complexities. According to him, technology has been a boon for cross-border disputes, it having considerably reduced the cost and time spent by the parties travelling for hearings with virtual hearings coming to the rescue since Covid. Even mediations were being conducted in virtual or hybrid mode making it easier and more accessible to people.

Mr. Karia placed some valuable suggestions before the panel including the introduction of transcription services and automated processes to augment arbitration, mediation and conciliation proceedings. He narrated a recent incident where the transcription service was of great avail in getting his client the much-needed relief before the Delhi High Court in a Section 34 challenge to an arbitral award on the ground of arbitrator exercising jurisdiction in the absence of an arbitration agreement. The transcript could prove that the ground was never given up by the client at any stage of the proceeding.

Reflecting on the concern of SMART ODR having two steps, conciliation and arbitration, he stated that once the Mediation Act, 2023 is implemented, the terminology may have to be changed as conciliation would be subsumed into mediation to ensure compliance with the Indian law. Another novel suggestion by Mr Karia was to have a cost calculator for the Parties to estimate and assess the total costs likely to be incurred in the proceedings including the fees of arbitrators.

Mr Karia found favour with SCC suggestions on exploring how smart contracts, block chains, machine learning and artificial intelligence could play a role in streamlining ODR and arbitral processes by reducing human involvement and the need for regulations for the same in line with the international developments.

"Technology is the way forward". Echoing Mr. Karias sentiments, **Ms. Jegadeesh** agreed that 'transcription' indeed allowed the parties/ litigants to understand the complex arbitral processes. It also made the arbitrators and the parties accountable for their statements. She cautioned that without transcription, the arbitrators and parties could speak loosely creating

a room for prejudice, bias and further delays. She was of the view that technology had made lives easier for the arbitrators and parties with arbitral institutions employing third party solutions for a host of tasks including document management, translations, and filings. Many novel digital applications such as the ones having Optical Character Recognition (OCR) simplified tasks making it easier for everyone to access documents, speeding up the documentation and filing process by a very good margin.

Considering how comfortable people were with using their phones in place of their laptops, **Ms. Jegadeesh** proposed the introduction of more such applications.



Mr. Anubhav Ghosh , Partner, Trilegal adding to Mr Karia's points mentioned that what had worked for ODR or arbitration in India was the creation of space which was now occupied by tailored rules.

He concurred with the panel and mentioned that there were challenges in terms of delayed executions of awards and pendency of cases on account of challenge to awards vitiating the purpose of strict timelines. In the case of ODR, he highlighted the overdependencies in terms of the process citing the example of a lack of a framework or guidance for the conciliator/mediator to determine an admissible claim.

In the context of app-based solutions, taking the example of document-based arbitrations, he suggested improving app-based access to data for intermediaries through technology integration to ensure that quality evidence could be obtained timely as it ultimately affects the quality of the award.

According to him there was a pressing need to ensure that the Parties derive satisfaction from the arbitral process, and the process inspires confidence at a granular level. This is where tailored rules catering to the specific sectors of the market could be helpful where the nature of disputes in each sector were different. Further, technology could help in addressing the challenges such as identification of falsified documents. He stressed that it was important to identify the processes that could be automated and bridge the gaps at the very inception for making people's lives easier.

The session concluded with **Mr. Rao's** vote of thanks. He was happy to share that in a brief period ODR had been able encompass roughly a 4 trillion-dollar securities market which deserved a pat on the back. He commended the success of SMART ODR in delivering on its promises and boosting investor confidence, whilst expressing his heartfelt gratitude to the panellists and participants for providing their meaningful suggestions.



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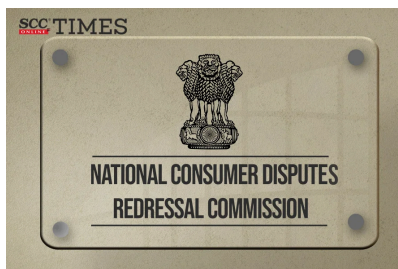


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