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# DISPUTE MANAGEMENT IN THE HOSPITALITY SECTOR

## DISPUTE MANAGEMENT & THE HOSPITALITY SECTOR

Query	Response
 <p>In the event disputes have arisen from a Hotel Management Agreement (HMA), are the disputes referred to arbitration or litigation before courts?</p>	<ul style="list-style-type: none"> <li>▪ The mode of dispute resolution is generally prescribed in HMA.</li> <li>▪ Parties are at liberty to specify the applicable mode of dispute resolution which may be arbitration or litigation. If the HMA does not contain a dispute resolution clause, courts will have jurisdiction to adjudicate upon any dispute which may arise between the parties.</li> </ul>
 <p>Are most of the arbitrations in the hospitality sector ad-hoc arbitrations or institutional arbitrations?</p>	<ul style="list-style-type: none"> <li>▪ In our experience, generally institutional arbitration is the preferred mode of arbitration. Parties are however at liberty to have the disputes administered by an institute or to opt for ad-hoc arbitration under the Arbitration and Conciliation Act, 1996 (Arbitration Act).</li> </ul>
 <p>Are there any arbitral institutions in India?</p>	<ul style="list-style-type: none"> <li>▪ Yes, there are several arbitration institutions in India which administer arbitrations. Some of the preferred arbitration institutions are Mumbai Centre for International Arbitration, the Delhi International Arbitration Centre and Indian Council of Arbitration.</li> </ul>
 <p>What is the language of an arbitration arising from an HMA?</p>	<ul style="list-style-type: none"> <li>▪ Parties are at liberty to agree to the language of the arbitration at the time of executing the HMA. It is advisable for parties to specify the language, particularly when parties to the HMA may belong to different nationalities. If the HMA is silent on the language of the arbitration, the parties shall take recourse to the procedure Arbitration Act or the rules of the designated arbitral institution.</li> </ul>
 <p>Can two Indian parties opt for a foreign seat of arbitration?</p>	<ul style="list-style-type: none"> <li>▪ Yes, the Supreme Court of India recently held that two Indian parties can opt for a seat of arbitration outside India.</li> </ul>
 <p>Is there any time limit for pronouncement of an arbitral award in India?</p>	<ul style="list-style-type: none"> <li>▪ The Arbitration Act provides a statutory time frame of 6 months within which parties shall complete filing of their pleadings. After the filing of pleadings is completed, the arbitral tribunal is expected to pronounce the award within a period of 12 months which is extendable by a further 6 months with the consent of the parties. If the arbitration proceedings are yet not completed, a party to the arbitration proceedings can make an application to the Court, asking for directions to extend the time period for pronouncement of the award.</li> <li>▪ Parties involved in time sensitive disputes, may opt for fast-track arbitral proceedings as provided under the Arbitration Act. In a fast-track proceeding, a sole arbitrator shall deliver the award within six months of his/her appointment. The procedure adopted is generally restricted to document only proceedings, with oral hearings requested by the arbitrator only when necessary.</li> </ul>
 <p>Are decisions of emergency arbitrators recognized in India?</p>	<ul style="list-style-type: none"> <li>▪ Yes. In context of an arbitration seated in New Delhi, an order was passed by an 'emergency arbitrator' under the arbitration rules of the Singapore International Arbitration Centre. The Supreme Court, inter alia, held that the order</li> </ul>

	<p>passed by the emergency arbitrator in the India seated arbitration, is enforceable under the Arbitration Act.</p>
 <p>At what stages in an arbitration is court intervention likely to occur?</p>	<ul style="list-style-type: none"> <li>Courts have the jurisdiction to intervene and aid the parties at certain stages of the arbitration. Generally, the jurisdiction of a Court is, inter alia, invoked for (i) reference of disputes to arbitration; (ii) granting interim measures; (iii) assistance in constitution of the tribunal; (iv) assistance in taking evidence; (v) extending the time limit to make an award; (vi) decision on applications for setting aside/annulment of arbitration awards; (vii) enforcement of awards</li> </ul>
 <p>Can a final award passed by an arbitral tribunal be challenged before the courts?</p>	<ul style="list-style-type: none"> <li>Yes, the Arbitration Act allows the award debtor to prefer an application before the appropriate court to set aside an award passed by an arbitral tribunal. The application must be filed within the time limit provided in the Arbitration Act. The limited grounds on which an award can be set aside, are set out in the Arbitration Act.</li> </ul>
 <p>Where will a petition for enforcement of an award be filed?</p>	<ul style="list-style-type: none"> <li>The party seeking to enforce the award can file an execution petition before a civil court where the assets of the award-debtor are located. The award is enforced in the same manner as a decree of the court under the Code of Civil Procedure, 1908 (Civil Code) read with the Arbitration Act. An arbitral award can be enforced after the time for making an application to set aside such an award has expired.</li> </ul>
 <p>Can a party enforce a foreign award in India?</p>	<ul style="list-style-type: none"> <li>Yes, a foreign award can be enforced in India in accordance with the procedure provided in the Arbitration Act read with the Civil Code.</li> <li>India is a party to the New York Convention, 1958 (<b>Convention</b>) which provides for enforcement and recognition of foreign awards; awards rendered in international arbitration proceedings seated in any of the countries which are signatories to the Convention, will be enforceable in those countries subject to the limitations prescribed under the local laws and the reservations of the countries under the Convention.</li> </ul>
<p>We hope you have found the information helpful. For further details please reach out to the author:  <b>Naresh Thacker, Partner – Dispute Resolution, Economic Laws Practice – <a href="mailto:NareshThacker@elp-in.com">NareshThacker@elp-in.com</a></b>  <b>Abhileen Chaturvedi, Associate Partner –Dispute Resolution, Economic Laws Practice – <a href="mailto:AbhileenChaturvedi@elp-in.com">AbhileenChaturvedi@elp-in.com</a></b></p>	



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