

# Kluwer Arbitration Blog

## Enforceability of Awards from Blockchain Arbitrations in India

Ritika Bansal (National Law School of India University, Bangalore) · Wednesday, August 21st, 2019

With the rise of e-contracts and smart contracts in commercial transactions globally, it becomes important to analyse developments in ADR such as blockchain arbitration. The concept of blockchain arbitration is very recent and it seeks to use the advantages of the technology in dispute resolution (how blockchain arbitration works can be read [here](#)). However, one important facet of understanding the feasibility of using blockchain technology in arbitrations in India is understanding whether awards rendered through such a process can be enforceable in the first place. While the 2015 Amendments to the Arbitration and Conciliation Act introduced some changes to bring the Act on par with contemporary technology, there is still lack of clarity in determining whether the peculiar form of blockchain arbitration can be facilitated through the Indian Act.

### Validity of the Arbitration Agreement in Domestic Awards

One problem identified with the enforceability of blockchain arbitration awards is the lack of enforceability of the agreement itself under the New York Convention which requires such agreements to be in writing or through exchange of telegrams/telexes. Similarly, Section 7 of the Arbitration and Conciliation Award also requires that a valid arbitration agreement should be in “writing”. However, unlike Article II of the New York Convention, Section 7 further clarifies that an agreement would be considered as having been in writing if it has been communicated through “electronic means”. The allowance for “electronic means” was introduced through Section 3 of the Arbitration and Conciliation (Amendment) Act, 2015. Electronic means has not been defined under the Act or the Amendment Act despite the recommendation of the 246<sup>th</sup> Law Commission Report.

However, Section 10A of the Information Technology Act, 2000 gives validity to contracts which are formed through electronic means. Electronic means is defined in the section as means used for creation of an “electronic record”. Electronic Record is further defined under Section 2(1)(t) of the Act as “data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or

computer generated micro fiche". Smart contracts are made up of a series of electronic records which are transmitted and stored by the parties, thereby covering the same within the definition of an "electronic means". Therefore it can be concluded that blockchain arbitration agreements would be valid under the amended Section 7 of the Arbitration and Conciliation Act. The question of whether the Amendment Act would apply or not to particular proceedings would depend on the date of the commencement of [such proceedings](#).

### **Difficulty in Determining Territory of the Awarding Country**

India has made the reciprocity reservation under Article I of the New York Convention which means that foreign awards made in only certain Contracting States of the Convention (gazetted by the Central Government) can be enforced in India. As of now, India has gazetted less than 1/3<sup>rd</sup> of all of the Contracting States to the Convention.

An exception was carved out in the case of *Transocean Shipping Agency v. Black Sea Shipping*<sup>1)</sup> where an award of Ukraine was enforced in India despite "Ukraine" not being gazetted officially by the Central Government. However, the reason for the same was that the USSR (which Ukraine was a part of originally) was gazetted by India.

In blockchain arbitration, arbitrators are selected by the dispute resolution service provider once a request for arbitration is made from a smart contract. These arbitrators are usually individuals who have applied to the service providers with their expertise. The arbitral award is then given on the blockchain ledger with the copies of such a decision being made available to the parties on their respective computers (in different countries). The arbitral award in itself, however, cannot be said to have been given in any one country. This then results in the question of whether such an award can be enforced in India in light of the reciprocity clause. A strict interpretation of the Arbitration and Conciliation Act would mean that such an award cannot be enforced in India since the physical space of the internet has not been gazetted by the Central Government. Such an interpretation would, however, be antithetical to the arbitration-friendly approach being increasingly adopted by India. Conversely, allowing all awards given through blockchain arbitration could result in the intention misuse of such proceedings to prevent the application of the reciprocity reservation of India.

This question is better answered in cases where the service provider approaches an established arbitral institution to render an award. In such a case, the country, where the arbitral institution is established in, can be considered to decide whether the same would pass the test of reciprocity and enforceability in India.

### **Evidence of Arbitral Award**

The provisions for enforceability of a domestic and a foreign arbitral award have been laid down under Sections 36 and 48 of the Arbitration and Conciliation Act respectively. An application made for enforceability of either of such awards should

include an “original copy” of the award. This becomes difficult in blockchain arbitration since there is no one “original copy” of the award in these arbitrations and the award is put on the network accessible to everyone.

It can, however, be argued that the Act also allows for “duly certified” copies of the original award to be presented to the Court. The mechanism of blockchain theoretically makes it impossible for anyone to merely alter their copy of the arbitration award, which means that a copy of the award taken from the blockchain would be duly certified in itself. To make it more secure, Courts can be allowed access to the blockchain to procure a direct copy of the award.

However, unlike a foreign award<sup>2)</sup>, a domestic award is further required to be stamped in order to be enforced under Section 36 of the Arbitration Act. Section 3 of the Stamp Act read with Schedule I, Article 12 of the Act suggests an arbitral award made in “writing” should be stamped. The question of a “written” arbitral award is similar to the question of a written arbitration agreement discussed above. The Stamp Act currently does not include “electronic means” in the definition of a written arbitral award. Pending a legislative amendment to this effect, the Stamp Act could be read to allow for “electronic” arbitral awards in keeping with the trend demonstrated in the Arbitration and Conciliation Act and the Information Technology Act towards facilitating technological advancements in commercial transactions.

Further, section 17 of the Registration Act requires domestic awards to be registered when it affects rights related to an immovable property. Only such an award which is then duly stamped and/or registered can be presented to the Court for enforcement<sup>3)</sup>. This means that giving direct access of the blockchain to the enforcing Court would not be sufficient since such an award also needs to be duly stamped and/or registered first. Direct access, in domestic awards, can be given for the purposes of proving the original award while stamping and registering the document. The copy of the award which is then duly stamped and/or registered can be considered as “original” for the purpose of making an application under Section 36 of the Arbitration and Conciliation Act. For foreign awards, direct access can simply be given to the Court in which an application for enforcement of the foreign award is made.

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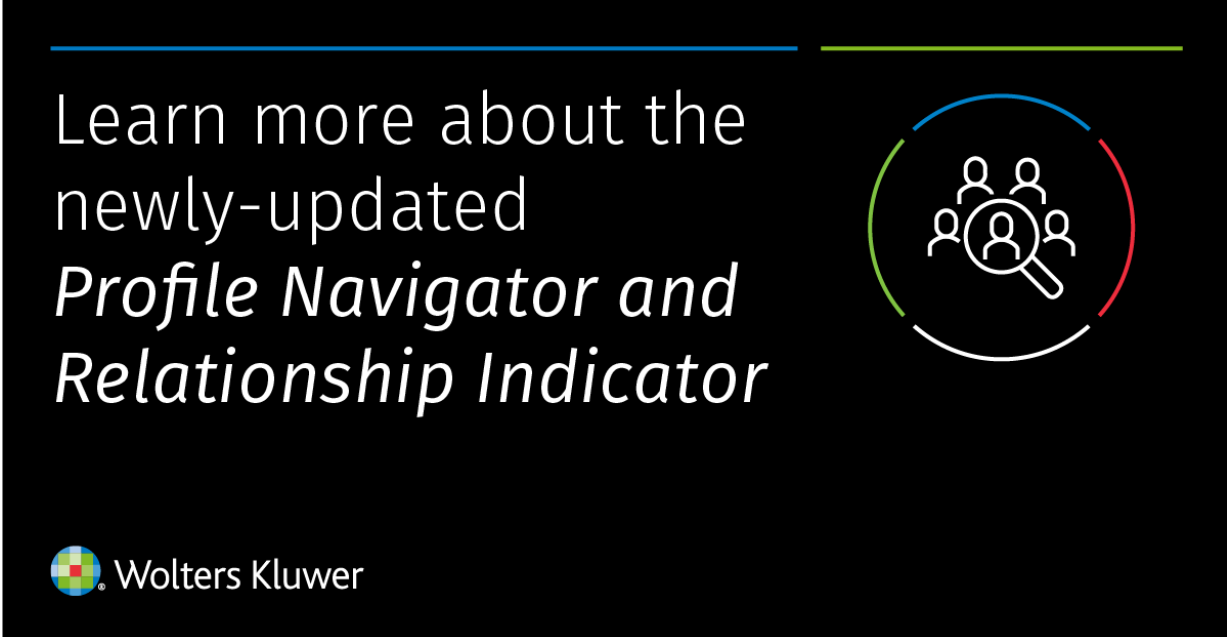
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## References

↑1 (1998) 2 SCC 281.

↑2 EPC Limited v. Rioglass Solar SA, (2018) SCC Online 1471.

↑3 M. Anasuya Devi v. M. Manik Reddy, (2003) 8 SCC 565

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