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Arbitrability of Intellectual Property Dispute: Where Does India Stand?

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'When will mankind be convinced and agree to settle their difficulties by arbitration?'[1]

-Benjamin Franklin

With technological boom and exponential growth in commercial business, the focus of economic forum has shifted its focus to Intellectual Property laws. This extensive growth of IP rights is leading to consequential growth of IP disputes across the globe. Due to the transfer and assignment of IP rights in multiple jurisdictions, it has an international and commercial dimension that makes International Commercial Arbitration an amicable and steady dispute resolution process. However, the question of arbitrability of IP disputes is still uncertain in most jurisdictions and if at all it is arbitrable, another question arises that what kind of IP disputes are arbitrable? The judiciary while, on one hand, is promoting the Arbitration as an alternative dispute resolution but on the other hand is not ready to divulge their powers or stir their authority. The absence of statutory regulation and uncertainty in legal decisions has led the Indian position on arbitrability of IP disputes in limbos. With the issue of IP arbitrability pending before Supreme Court in case of Eros International, the article by understanding the concept of arbitrability will look into various approaches across the globe to deal with the issue so as to achieve certainty and clarity in Indian laws. The article is woven with the thread of public policy and its relevance in settling the issue of arbitrability of IP disputes in India.

Keywords: Arbitrability, Rights *in rem,* Rights *in personem,* Public Policy, Public Interest, E*rga-omes,* Intellectual Property Rights

With increasing popularity of intangible assets, the importance of intellectual property rights (hereinafter referred as 'IP rights') has been steadily increasing, thereby leading to consequential growth of Intellectual Property disputes (hereinafter referred as 'IP disputes') across the globe. Disputes involving the parties from different countries strongly demands for an alternate yet effective dispute resolution mechanism owing to several problems like parallel proceedings in respective countries, conflicts in applicability of substantive and procedural laws, or presumed biasness of the judiciary or juries.[2] The resolution of disputes through arbitration in such situation has always been considered to be an appropriate dispute resolution mechanism. However, the issue of arbitrability of a dispute in domestic as well as international arbitration has always been a debatable. Due to monopolistic character of use and commercial exploitation granted by the state to these intangible assets, most of the countries restrict the jurisdiction to deal with related issues with respective national Courts only. Arbitrability is one such important issue where jurisdictional and contractual facet of International Commercial Arbitration strikes on.[3] Due to the transfer and assignment of IP rights in multiple jurisdictions, it has an international and commercial dimension and makes International Commercial Arbitration an amicable and steady dispute resolution process for the parties involved. However, the question of arbitrability of IP disputes is still uncertain in most jurisdictions and if at all it is arbitrable, another question arises that what kind of IP disputes are arbitrable? The courts in India have attempted to deal this issue, however, the subsequent rulings by High Courts and Supreme Court have made the position of the issue of arbitrability of IP disputes in limbos. The issue of arbitrability has also been often confused with the scope of arbitration by the courts.[4] The judiciary while, on one hand, tries to promote arbitration as one of the most feasible alternative dispute resolution mechanisms,[5] on the other hand doesn't seem to divulge their powers or stir their authority.

The authors have taken the issue of arbitrability of IP disputes to have better understanding of interaction of the laws related to intellectual property rights and Arbitration. two The article seeks to highlight the issue of uncertain and conflicting test of arbitrability

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while paying special attention to the arbitrability of IP dispute in India. The paper will be providing pro-arbitrability arguments and intend to suggest a robust mechanism like in the USA, and Switzerland, which allows Arbitration as the IP dispute resolution mechanism in all kinds of IP disputes.[6]

Owing to this unsettled judicial position and insufficient legal engagement on the issue in India this paper will be focusing on the question "*Whether or not the International Commercial Arbitration is a viable and better dispute resolution mechanism to resolve the international IP disputes in India?"*

For discussing the issue of arbitrability of IP disputes in India, this research work establishes a general understanding of the concept of arbitrability and the various tests to determine the same and moves towards discussing the global approach on the issue and the position as according the New York Convention[7] and WIPO. The authors finally discussed various arguments in favour and against the arbitrability of IP disputes to have a wholesome idea of why the arbitrability of IP dispute is required for the overall enhancement and development of the two disciplines. This account deconstructs the legal jurisprudence around arbitrability of IP disputes to highlight the horizons of approaches and recommendations for legal framework around it.

Arbitration as Dispute Resolution Mechanism: Concept of Arbitrability

It is imperative to note that the arbitrability of a dispute has not only been a debatable issue for the IP disputes but also includes wide range of disputes relating to Competition law, Law on Trusts, Consumer Protection Laws and Frauds etc. The issue of arbitrability can be broadly tested on the subjective and objective parameters in general, however there are various tests developed through judicial decisions to test the arbitrability of IP disputes specifically. Before going into detailed discussion on the issue raised, understanding of the term arbitrability for the purpose of this paper is required.

Defining Arbitrability

The term arbitrability can be understood differently in different context, in relation to jurisdiction of an arbitral tribunal the issue of arbitrability includes subject matter of dispute to be settled by arbitration or not, reference of the dispute for arbitration and the issue relating to dispute being covered under the arbitration agreement or not.[8] Arbitrability for the purpose of this paper can be understood as the capability of a dispute by its nature to be resolved or not outside the national courts or public forum through a private tribunal chosen by consensus of the parties.[9] The issue of arbitrability has its roots in New York convention which empowers the national courts on the ground of subject matter being not arbitrable to not enforce the arbitral award.

The Concept of Subjective and Objective Arbitrability

The Arbitrability can be further understood in two types- Subjective Arbitrability and Objective Arbitrability. The test of Subjective arbitrability is used to decide the issue involving authorization to enter into an arbitration dispute wherein one party to the dispute is state or a public forum.[10] However, the test of Objective arbitrability is used to test whether the subject matter of dispute is capable of being sent for resolution through arbitration as generally in most of the jurisdictions the disputes relating to rights *in rem* are subjected to public forum and not arbitration.[10]

WIPO on Arbitrability of IP Disputes

WIPO Arbitration and Mediation Centre with its offices in Switzerland, Geneva and Singapore is an international, neutral and dispute resolution provider specializing in Intellectual Property and other commercial disputes.[11] WIPO arbitration provides and accept the rule of limiting the power of an arbitrator to decide inter-parties right only and not effective third-party rights, be it in case of providing interim reliefs or final arbitral awards.[12] WIPO centre has covered wide range of IP related disputes including patents (which includes roughly 30% of caseload of WIPO centre), Trademark coexistence agreement, know-how and software license, mergers and acquisitions involving IP assets, publishing, music and film contracts.[4] As per WIPO blogs the IP disputes have some particular characteristics that can be better settled or resolved by an Arbitration than the court litigation. That could be said to have ability to provide technical, urgent, final and confidential award for the international IP disputes.[13]

New York Convention and Global Approach

The IP disputes such as infringement, transfer or ownership of rights are arbitrable globally with few exceptions.[14] New York Convention itself doesn't provide as to what law should be applicable to access the arbitrability, however, the combined reading of

Article II(1) and Article V(2)(a), opines that the law of the country where the recognition or enforcement is sought shall be law decisive for the assessment of arbitrability.[4] The New York convention, however, puts certain limitations on the member nations to consider in arbitrability an exception and does not distinguish between the national and international disputes.

As according to the report of International Chamber of Commerce[15], the legal positions in countries on arbitrability of IP dispute can be classified in four approaches broadly, that includes Liberal, Conservative, mixed and unclear approach.

Conservative Approach

Conservative approach depicts the legal approach in countries who completely denies that arbitrability of IP disputes, for examples South Africa, who explicitly denies the patent disputes to be arbitrable.[16] *Liberal Approach,* on the other hand, depicts the completely opposite approach of the countries like United States (US) and Switzerland who allows all kinds of IP disputes to be arbitrable. Under US laws the disputes relating to validity and infringement of patents are explicitly arbitrable.[17] However, the statute provides for the implication of award only on the parties to the dispute and no effect on the public at large.[18] In US, the patent disputes by the obligation under statues[19] has a binding arbitration for dispute resolution unless otherwise provided in contract. However, with regards to Copyright and Trademark issues though there is no legal binding arbitration obligation but the similar obligation has been created through case laws.[20] Similar is the case in United Kingdom and Germany through understanding and interpretation of their respective laws.[21]

In Switzerland an arbitral award has been considered equivalent to a judicial decision and thus have *erga-omes* effect.[22] All property disputes including tangible and intangible assets from which financial gain can be derived by the parties are capable of being resolved by an arbitration in Switzerland. However arbitrability of IP disputes is a unique and novel position and is very contradictory the nature of arbitration proceedings which has only inter parties binding effect.[23]

Mixed Approach

Mixed approach depicts the position of the countries restrict the enforcement of an award or qualifies the issue of arbitrability on grounds of public policy. Public policy has its genesis and roots to New York Convention,[5] and thus is followed by most of the countries in different forms and degrees. Where in Italy and France the power of arbitrator can be restricted on the ground of *odre Public* in India the enforcement of arbitral award can be challenged on the ground of public policy. However, the exact interpretation of public policy has always been point of contention and varies from countries to countries. Under the different arbitration rules in France enforcement and recognition of an arbitral award can be challenged on the ground of being '*manifestly contrary to international public policy'.*[24] In Italy, trademark and patent validity cases can be intervened by the public prosecutors under both trademark and patent laws.[24] Further, in India, the public policy through various judicial interpretations includes interest of country, fundamental policy of Indian law, justice morality[25] and grounds of patent illegality.[26]

Unclear Approach

The unclear approach depicts the countries where in issue of arbitrability of IP dispute has not been addressed or dealt with in neither of legislations nor of judicial decisions.

Hong Kong Law Approach

The Arbitration (Amendment) Ordinance became the law in Hong Kong for governing the IP disputes through arbitration in early 2017.[27] IP disputes relating to ownership, scope, validity, subsistence and infringement of IP rights could be adjudicated through arbitration proceedings under Section 103D[28] of the Ordinance. Further Section 103F[29] of the Ordinance provides for the arbitration can be chosen as dispute resolution medium by the parties even when some other forum under Specific laws already has requisite jurisdiction to deal with the dispute.

IP Arbitrability: A Blanket Ban in India

In the quest of becoming a global arbitration hub, arbitration laws in India has travelled a long way. Where in most developed countries rule is arbitration and litigation are an exception, in India it is other way round.[30] The unpleasant condition of Alternative Dispute Resolutions in India could be very well understood by the observation of Hon'ble Supreme Court in case of *Guru Nanak Foundations*[31]*,* that *"Arbitration in India has made lawyers laugh and legal philosophers weep".*[31] However, with the advent of 1996, Act[32] and giving effect to Section 89 of CPC,

the efforts to make Indian laws arbitration-friendly and to get in line with The United Nations Commission on International Trade Law (hereinafter referred to as UNICTRAL)[33] law can definitely be seen evolving. In India one of the grounds to set an arbitral award aside is when dispute itself cannot be settled by an arbitration proceeding.[34] However, the legal statues in India except Patent Act, 1970 (provides for arbitration expressly for disputes with Government),[35] are silent on what all disputes are in-arbitrable, and legal position on arbitrability of IP disputes is extremely contentious and thus has been subject to various interpretations by the judiciary in India.

In absence of legal statutes, to understand the position of Indian laws on issue of arbitrability of IP disputes we will have to analyse the take of judiciary on the matter. Before dwelling in judicial decisions, it is important to note that in India disputes are held to be non-arbitrable largely on three ground which are being in conflict with public interest, against public policy contravening the jurisdiction of Special Forums. The Hon'ble Supreme Court in *Booz Allen*[36] observed that unless the arbitration has been excluded expressly or by necessary implications, the civil and commercial disputes can be adjudicated by the Arbitration. The court here in laid down a wider principle that the thumb rule to decide arbitrability on basis of dividing disputes in rights *in rem* and rights *in personem* is not a rigid or inflexible rule. The court thus keenly noted that, disputes relating to subordinate rights *in personem* arising from rights *in rem* shall deemed to be amenable to arbitration.[36] Intellectual Property rights by their nature universally are considered to be rights *in rem*. It is to be noted that though Hon'ble court didn't decide about the arbitrability of IP disputes in the mentioned judgment but laid the discussed broader principle which paved the way for eventual affirming the arbitrability of IP disputes.

As discussed earlier, the only disputes concerning rights *in personem* are amenable to arbitration, The *erga-omnes* effect of the arbitral award makes it highly resistible to be adjudicated by arbitration. In India, there is no blanket bar on arbitrability of IP disputes. Instead, arbitrability is determined on the basis of nature of claims raised.[37] This position received an indirect confirmation of judiciary through *obiter-dictum* of Court in *Ayyaswamy*[38] where in court declared disputes pertaining to Copyright, Trademark and Patents to be non-arbitrable[38] and led to blind reiteration of the contention that "IP disputes are inherently non-arbitrable". It is the series of varied judgments after this which has led to the issue of arbitrability of IP disputes in limbos.

The High Court of Bombay in *Eros International*[39], specifically dealt with the issue of arbitrability of IP disputes. While deciding on the issue court observed and pointed out two very pertinent aspects. Firstly, that Section 62 of Copyright Act of 1957 and Section 134 of Trademark Act, 1999 doesn't oust the jurisdiction of arbitration tribunal, rather ensures that the actionable claims are not brought to the Board instituted or the registrars under the mentioned laws. Secondly, while discussing the scope of rights *in rem* observed that it includes the disputes affecting the rights of public at large or a third party. Thus, by dismissing the contention of inherent non- arbitrability of IP disputes, Justice Patel observed that disputes relating to IP infringement and passing off shall be rights *in personem* and shall be arbitrable excluding the claims relating to validity of registration of these IPs. Similarly, the Madras High Court in *Lifestyle Equities*[40] has shown the pro-arbitrability approach for IP disputes acknowledging that impugned paragraph from the *Ayyaswamy* Judgment is merely an *obiter-dictum* and not the ratio of Supreme Court.[40]

Further, the in-depth analysis of the nature of dispute can be seen in Indian Performing Right Society (*IPRS*) Judgment[41] of the Bombay High Court. Herein, the issue before the Court was of the validity of arbitral award. The arbitral tribunal has decided on issue of copyright infringement relating to broadcasting of sound recording with the permission of owner of copyright in sound recording but without the permission of owner of copyright in literary or musical work.[41] The Court here in observed that validating the arbitral award in this particular case will not only decide the rights of the parties to the dispute but will also have third party implications and held it to be *in rem,* and thus non-arbitrable.[41] However, the similar factual analysis could not be seen in Hyderabad Court's judgement in *Impact Metals*[42] where in Court declared the dispute to be arbitrable only because the dispute under Copyright act has not been listed under the illustrative list of non-arbitrable disputes in *Booz Allen.* Such an approach of court equally destructive to blindly holding the IP disputes to be inherently non-arbitrable.

In beginning of 2021, Supreme Court in its decision of *Vidya Drolia*[5] while propounding *fourfold test* explicitly mentioned that the issues relating to *grant and issue of patents or registration of trademark* are sovereign functions conferring monopoly rights. For the reason of applicability of the rights and obligations rising from such decisions, the court declared them to be non-arbitrable. Where the decision was interpreted and construed as absolute bar on arbitration of IP dispute, the Delhi High court through its decision in *Hero Electric Vehicles*[43] and *M/S. Golden Tobie Private Limited*[44] clarified the position of Hon'ble Supreme Court on the specific issue. Delhi High Court in these cases allowed arbitration observing that the disputes in question are not to grant or registration of trademark but are relating to assignment or license of trademark arising out of contractual agreement. In *Vijay Munjal*[45], the Hon'ble Delhi High Court, while dealing with a Section 11 application under the Arbitration Act, categorically held that the assumption that all matters relating to trademarks are outside the scope of arbitration is plainly erroneous. Focussing on the breach of contractual law and not infringement of Trademark Act and in absence of exercise of any sovereign right, the disputes were amenable for arbitration.

From careful analysis of the judicial decisions on the issue, we can conclude that the issue of arbitrability of IP disputes in India is largely dealt by segregating the disputes either in rights *in rem* or rights *in personem*, or contractual or non-contractual disputes. Delhi High Court stand on recent dispute further positively clarifies that the Supreme Court Decision in *Vidya Drolia* is not an absolute bar over arbitrability of IP disputes but rather a limitation on matters relating to grant, issue or registration of any intellectual property.

Thus, at this juncture by thorough analysis of judicial precedents in India, the Authors deduce that it is the test of nature of underlying rights and the nature of dispute that decides the question of arbitrability of IP dispute in India.

Arbitrating the Non-Arbitrable: Preferred Way of IP Dispute Resolution?

As there are always two sides of a coin, and as every story has two sides of it, so does the legal issues. The issue of arbitrability of IP disputes similarly has its own favouring and contending arguments. As Intellectual Property Rights cannot be segregated broadly in category of rights *in rem* and rights *in personam.* The Author here in thus, having been discussed the legal position around the world and India will be focussing the major arguments against and in favour of settling IP disputes through arbitration.

Why Arbitrating IP Disputes is not a Viable Option?

The major contentions challenging the arbitrability of IP disputes around the world includes the ground of being in conflict with statutory authority of state, e*rga-omnes* effect of the arbitral award and being against the public policy of the nation.[4] The author here in will be dealing with all the contentions against the arbitrability of IP dispute and will be de-constructing the same sequentially.

Conflicting Statutory Authority

The question of conflicting statutory authority is the major issue that pops out while dealing with arbitrability of IP disputes. As the grant of monopolistic rights with regards to specific intangible assets like trademark and patents is exclusively dealt by the state.[46] Thus, it is widely debated that the issue relating to validity of such rights is a bargaining between the state and the right holder, wherein the arbitrator appointed by the parties to dispute has not authority to adjudicate upon.[46] It is contended that only disputes relating to infringement of IP rights can be dealt by the arbitration as arbitral award here has effect only on the parties and not *erga-omnes.* However, the major practical problem that is faced with this contention is that the claim of validity of IP right say trademark or patent is always raised in an infringement suit. The solution of this proposition varies in jurisdiction where at one hand the countries with Liberal approach in absence of any contrary legal bar allows the arbitrator to decide the question of validity of IP right with limited effects to only parties of suit.[47] On the other hand, countries like India with mixed approach only allows the disputes concerning rights *in personem* only to be dealt by arbitration.

This contention in author's view is highly faulty as instead of denying arbitrability of disputes concerning rights *in rem.* It is accepted that the arbitration can decide the rights *inter partes* and not right towards the third party but it is at this instance the author is suggesting to follow the liberal approach that of Switzerland, wherein the arbitration is indeed deciding the rights between the parties but it is the state law extending the effect of arbitration award on

everyone if required. Such an approach will avoid the conflict between the jurisdiction of the court and that of an arbitrator and will help in promoting the alternative dispute resolution culture.

Affecting Third Party Rights

The very nature of an arbitration agreement depicts the consensual and confidential treatment of rights *in personem* of the parties. Thus, it is widely accepted proposition that the arbitration cannot be resorted to decide the issues concerning rights *in rem.*[48] However, with the constant evolution in law and judicial decisions the subordinate rights *in personem* arising from broader rights *in rem* are also considered to be arbitrable. It is contended the private arbitrator or the tribunal chosen by the parties to the dispute lacks the authority to decide the rights of somebody who is not party to the suit. To prevent the *erga-omnes* effect of an arbitral award, it can be restricted to only the parties to the dispute so as to protect the rights of third party and sanctity of the arbitration agreement.

Contravening the Public Policy or Public Interest

The issue of arbitrability is the subject matter of national statutes and is generally weighed on the principles of public interest and public policy of that nation. Public Policy of a jurisdictions leaves few matters only to be dealt by the national courts on the ground of covering matters for which remedy required can be granted by the Arbitral Tribunal.[49] However, it has been vehemently argued that the element of public interest in a dispute doesn't provide for the automatic presumption of exclusion of Arbitration.

New York Convention declares an arbitral award unenforceable on the ground of being in contravention with the 'Public Policy' of that particular state. However, what is public policy itself is disputable, uncertain and a matter of evolving jurisprudence. Though, public policy as a broader ground exists for all kind of disputes, it still has its own dimensions in relation to IP disputes. The resolution of a dispute through arbitration of matter which is of public importance *viz.* validity or invalidity of a Patent claim will affect the interest of public at large due to non-availability of the same in public domain. The onus here is on the arbitrator appointed by the parties to resolve the issue by balancing the interests between the public policy and confidentiality.[4] Historically, the disputes involving public interest or public law are considered to be non-arbitrable. The major arguments in favour of such non-arbitrability include the ineffective procedural aspects, the inability to apply public law and questions as to the application of rules protecting the public interest.

In response to all these arguments, the authors herein contend that although arbitration is substantially different from the judicial proceedings, it is definitely not a compromise to the fair trial.[4] It is argued that the mere existence of public interest shall not render a dispute non-arbitrable, however, the disputes relating to insolvency, succession and criminal matters shall still be dealt by national Courts.

Arbitrating IP Disputes: Definitely a Preferred Way of Dispute Resolution

The author hereinafter will be providing the pro-arbitration arguments while pointing out several lacunas in the complex litigation of IP disputes before the domestic courts. The major pro-arbitrability arguments under the broad heads include confidentiality, governing law, the scope of arbitration, provisional orders, non-monetary reliefs, recognition and enforcement of foreign awards etc. Further, the arguments more specifically favouring the arbitrability of IP disputes includes dealing with cross-border claims without multiplicity of suits, technical expertise equipped arbitrators, avoiding unintentional native biasness,[50] and speedy effective remedies for the continuous infringements. Thus, the major contentions to put forth that the arbitration is an effective and viable medium of dispute settlement for international IP disputes are as follows:

Confidentiality

Confidentiality, irrespective of the nature of dispute is a major reason for parties to choose arbitration as dispute resolution mechanism.[51] In context of IP disputes, it becomes even more important; *viz.* disputes relating to Trade Secrets and know how, where even a little disclosure of same will nullify the whole concept of statutory protection.[52] In such situations, arbitration provides for better enforcement in comparison to judicial mechanisms, since in latter, there is high risk of divulging the secret to public domain.[42] The parties to the dispute, thus, through direct or indirect choice of certain arbitral rules can adopt a procedure to protect such IP rights. However, parties while framing these arbitration clauses need to be careful about the issue of validity and enforcement of an arbitral award.[53] In most jurisdictions, the validity of an arbitral award is challenged in the national courts and is then measured on various parameters of public policy or public interests, which ultimately will again generate the risk of

divulging secrecy. Thus, it is suggested that the parties after careful consideration of the national laws and arbitral rules of the country shall take appropriate measures, while incorporating and drafting confidentiality clause in their contracts for protecting their interest and confidentiality.[53]

Governing Laws

Another advantage of submitting an international IP dispute to arbitration over national courts is the choice of single governing law than opting for multiplicity of suits. [54] This could be better understood with the help of an example of global co-exist Trademark agreement, wherein parties, if allowed to register a trademark in a particular jurisdiction on the priority claim of the other party in absence of confusion.[4] In absence of any specific choice of law pre-agreed by the parties, the issue relating to infringement and validity will be dealt according to the national laws of the country where such dispute arose. Thus, through international arbitration agreement parties are able to decide that all the contractual and non-contractual disputes shall be settled and dealt by a single law.[55] This will definitely save the cost, time and will provide a flexible resolution of the dispute, which is not possible, to a large extent, while referring the matters to the national courts.

Tailored Non-Monetary Remedies and Preliminary Order

Enforcement and recognition of the foreign arbitral award are two more positives to prefer resolving IP disputes through arbitration.[56] As discussed earlier, these points, at one hand, provide the advantageous position to the parties, at the same time also require careful consideration of the parties while drafting the agreement.

Conclusion

Until countries across the globe take a strong pro-arbitration approach, the arbitrability of IP disputes and other related disciplines will continue to be disputed. Where on one hand the contentions against IP arbitrability cannot be disregarded completely, at the same time it cannot be accepted to close the doors for IP arbitration and deny an efficacious out of court remedy. An analysis of the global approach and Indian judicial Pronouncements on the issue of arbitrability of IP disputes definitely demonstrate the shift in traditional approach that IP disputes are ought to be adjudicated by the courts. More specifically, while comparing the situation with USA, it could be better seen that both the countries follow inter parties' effect of an arbitral award. In USA, issue of IP arbitration, finds its place in state policies, legal statues and court judgments, India has a long way ahead. However, owing to diversified jurisprudence to deal with the issue across the world and uncertain judicial approach in India, still makes it a matter of sound legal analysis and to take the position of IP arbitrations slowly out of limbos. Being conscious of the fact that 'one field one law' formula cannot be used to ascertain the arbitrability of IP disputes, we strongly suggest to bring Indian laws in line with the international framework and to formulate a special framework following the approaches of jurisdictions like USA and WIPO which provides for IP dispute resolution through arbitration but with inter party effect only and not affecting the rights of third parties. As accepting an approach like Switzerland treating an arbitral award equivalent to judicial decisions[57] might definitely conflict the jurisdiction of Courts.

The Delhi High Court decision in *M/S. Golden Tobie Private Limited* in addition to Supreme Court decision in *Vidya Drolia* is a welcome step for pro-arbitrability of IP disputes in India. Thus, with adequate legal support and proper mechanism for implementation, the current position is definitely a step forward to make India a global arbitration Hub.

In light of the current turmoil and lack of clarity over this issue, we find a vehement need for guidelines specifying parameters and criteria to decide on the issue of arbitrability, if not by the legislature, definitely by the apex court of the country. These guidelines will ensure that there is certainty in the way the issue of arbitrability of IP disputes is decided. In the current shape, this issue can be settled with measures that provide clarity and certainty in the way the courts deal with it, especially in India.

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