Need for Arbitration Body for Financial Disputes

What is the issue?

The rising number of financial disputes and their changing nature highlights the need for an arbitration body for financial disputes in India.

What is litigation and arbitration?

- **Litigation** is a process followed in the courts which are under the administration of the state to resolve disputes between parties.
- In **arbitration**, the parties can consult an arbitration tribunal on their own.
- In this**,** hearing is done in a private setting and it provides some amount of control to the parties.
    - To note, while arbitration is typically a binding process, **mediation** is a non-binding process.
- The process of litigation is generally expensive than arbitration.
- Arbitration does not get stuck in formal procedures to be followed and therefore is able to avoid delays.

What is the practice so far?

- Financial institutions and banks have **traditionally opted for litigation** instead of arbitration for dispute resolution.
- Litigation, traditionally, offered a more potent forum for recovery of money and resolving financial disputes.
- This is because the judges are vested with stronger powers than an arbitrator is.
- Litigation, as opposed to arbitration, allows judges to exercise multiple powers vested in them.
    - These include interim measures, summary judgments, warrants for non-appearance, etc.
- These options are not available in arbitration.
- In addition, the public nature of disputes in courts and media attention allows the banks to create pressure on the defaulters.

What is the changing trend?

- The traditional view of litigating in financial disputes changed following the 2008-09 financial crisis.

- This is due to the highly complex nature of financial transactions and a need for confidentiality.
- The financial institutes felt a need for adjudicators who possess a deep knowledge of finance and an understanding of complex transactions.
- In addition to these, the institutions opted for a private forum for adjudications, to keep things confidential.
- This is because financial disputes of large quantum often lead to public distress, resulting in negative variations in listed stocks.
- So, banks and financial institutions are **increasingly opting for arbitration** instead of litigation.
- Another reason is that it is easier to enforce an arbitral award as opposed to a court judgment which can be appealed multiple times.
- Given this change, many arbitral institutions have created panels of arbitrators specialising in banking and finance.
- The arbitral institutions have themselves altered their rules to accommodate the peculiar needs of financial disputes.

Where does India stand?

- There is a rise of financial disputes in India, including defaults by some of the biggest Indian corporations.
    - These include Anil Ambani's Reliance Group, Vijay Mallya's Kingfisher and Nirav Modi's Firestar Diamonds.
- Considering this, there is a need for providing a specialised institution to deal with financial arbitrations.
- Presently, no such body for financial arbitration exists in India.
- Any such arbitration continues to be adjudicated by retired judges.
    - These are, notably, generalists and do not possess a specialised knowledge of finance and financial markets.
- An alternative would be a body such a P.R.I.M.E. Finance rendering assistance to financial arbitrations.
    - P.R.I.M.E. Finance - Panel of Recognised International Market Experts in Finance

What is the way forward?

- The Institute of Chartered Accountants of India (ICAI) is one such institution that possesses a body of some of the most prominent financial experts in India.
- Perhaps, the government should create a panel in consultation with the ICAI for facilitation of financial arbitrations.
- The Government has been making strides towards establishing India as an

arbitration friendly jurisdiction.

- Given this, such a move would attract arbitrations in India from other countries as well.

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