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Published Article of
AECCI-IAC Empaneled Arbitrator
—
INSIGHTS OF THE WEEK
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RUPEE RESERVES DEPLETING, IRAN STRUGGLES TO IMPORT FROM INDIA

India faces the possibility of losing one of its largest markets for basmati rice exports, Iran, following the depletion of rupee reserves held by the West Asian nation in recent weeks, people familiar with the matter said on Wednesday. The issue has also hit the export of other commodities such as tea and pharmaceuticals to Iran, the people added. Iran has been paying for imports by using rupee reserves built up from oil exports to India, before New Delhi stopped buying Iranian crude in mid-2019 because of US sanctions on Tehran.

While the Iranian side has been working on ways to resume basmati rice imports from India, importers in that country have begun exploring the option of increasing rice procurements from other producers such as Pakistan, Turkey and Thailand, the people said. Iran imported almost a million tonnes of the aromatic rice from India in 2022-23, 20.35% of the total basmati exports of 4.5 million tonnes from the country. Two persons, who spoke on condition of anonymity, said India-Iran trade has fallen sharply since 2019-20 after New Delhi stopped buying Iranian crude in May 2019. Till then, Iran was among the top three suppliers of energy to the country, along with Saudi Arabia and Iraq.

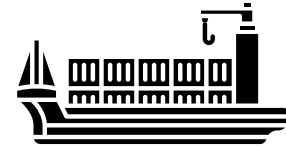
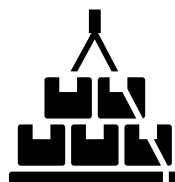
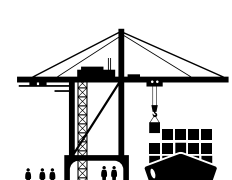
“It seems Iran has exhausted all its rupee reserves, and thereby trade in local currencies of the respective countries is not possible,” one person said.

A second person, an expert on India’s currency management, said: “As far as I know, there may not be any trade in local currencies (rupee-rial trade).”

The Iranian side flagged the issue to the Indian side in several recent meetings and offered to resume oil exports as a way to build up rupee reserves held in India, the people said. The Iranian side also pointed to India’s purchase of Russian crude in the face of Western sanctions and contended New Delhi should adopt a similar approach to resuming procurement of Iranian energy, the people added



Source : Hindustan Times



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Cause of Arbitration to exists on the date of invocation of the Arbitration

The Delhi High Court in the matter of Kidde India Ltd v/s National Thermal Power Corporation, (NTPC) has vide its order dated February, 07 2023, adjudged that Section 37(1) of the Arbitration Act expressly provides that the provisions of the Limitation Act 1908 qua 1963 would apply to the Arbitration as it applies to the proceedings before the Court. The Hon'ble further observed that the arbitration shall be deemed to commence on one party serving notice regarding the same either on the other party or to the person named or designated in the arbitration agreement.

Facts of the Case

M/s. Vijay Machinery Stores, submitted its bid for the work of installation of fire protection systems against prescribed specifications for the Ramagundum, Super Thermal Power Project (NTPC), Stage I (hereafter 'the Project'). On 18.02.1982, NTPC issued a Telex of Award in favour of the M/s. Vijay Machinery Stores. This was followed by the NTPC, (the Respondent in the matter), issuing a detailed Work Order dated 24.03.1982 (the Contract) in favour of M/s. Vijay Machinery Stores. The firm M/s Vijay Machinery Store was succeeded by Vijay Fire Protection Private Ltd. Subsequently, the name of the said company was changed to Vijay Fire Protection Systems Limited and thereafter to Vijay Industries and Projects Limited and Kidde India Ltd. (the Appellant in the matter). The firms or Appellant are hereafter referred to as (the Contractor).

After the work was executed, on 04.08.1986, NTPC took over the above-mentioned systems, albeit on a provisional basis. Thereafter, the Contractor raised bills for extra work claimed to have been done by it; however, the same were denied by NTPC. On 06.03.1989, the Contractor raised its Final Bill, relying on various communications exchanged between the parties. Disputes arose between NTPC and the Contractor. The Contractor thus issued a letter dated 09.12.1989, invoking the arbitration clause under the Contract and proceeded to appoint its nominee arbitrator. In terms of the said letter, the Contractor also called upon NTPC to nominate its arbitrator.

NTPC did not respond to the said letter. The principle question which arose was whether NTPC received the said letter. However, the Contractor claims that NTPC and the Contractor entered into negotiations to settle the claims but the same remained unresolved. Consequently, the Contractor issued another notice dated 10.05.1994, requesting the respondent to nominate its arbitrator. However, the Contractor, in its letter dated 10.05.1994, clarified that it treated the letter dated 09.12.1989 as the first invocation of the arbitration agreement and that it was only reiterating that an arbitral tribunal be constituted for adjudicating its claims. NTPC claims that it did not receive the letter dated 09.12.1989.

NTPC did not take any steps to refer the disputes to arbitration. Consequently, the Contractor approached the Institute of Engineers for the appointment of an arbitrator as NTPC's nominee, and the chairman of the Arbitral Tribunal. On 02.06.1995, the Institute of Engineers appointed an arbitrator as NTPC's nominee, as well as the presiding arbitrator.

The first hearing of the Arbitral Tribunal as constituted was held on 29.07.1995, however, NTPC did not participate. On 02.09.1995, NTPC filed a suit, being CS(OS) 2065A/1996 impugning the appointment of the Contractor's nominee arbitrator. The proceedings before the Arbitral Tribunal were stayed by this Court. Thereafter, by an order dated 07.03.2003, the suit was disposed of after the arbitrator in question resigned.

The Contractor appointed its nominee arbitrator in the year of 2003 to fill the vacancy caused by the resignation of the arbitrator appointed earlier. Thereafter, in the year 2004, the Institute of Engineers re-appointed the presiding arbitrator to fill up the vacancy arising due to the demise of the presiding arbitrator. NTPC's nominee arbitrator resigned, and a new nominee arbitrator was appointed on 28.07.2006.

NTPC also filed another application under Section 33 of the Arbitration Act, 1940 (hereafter 'the Arbitration Act') [which was numbered as CS(OS) 1876/2006], inter alia, praying that the mandate of the Arbitral Tribunal be terminated. NTPC had also filed an application impugning the order dated 02.12.2006 passed by the Arbitral Tribunal, whereby it had imposed costs of Rs. 70,000/- on NTPC. During the course of the said proceedings, NTPC agreed to

enlargement of time for the Arbitral Tribunal to make the award. Initially, the Arbitral Tribunal was restrained from passing the final award. However, by an order dated 18.08.2008, the said suit filed by NTPC was disposed of as not pressed, and the order restraining the Arbitral Tribunal from delivering the award was lifted. However, NTPC retained its right to file objections, if any, to the arbitral award. The Arbitral Tribunal (by majority) delivered the impugned award on 09.12.2008, whereby some claims made by the Contractor were allowed and an aggregate amount of Rs. 1,12,36,762/- was awarded to the Contractor. The Contractor filed an application for making the impugned award the Rule of Court which was numbered as CS(OS) 72/2009. However, in the meanwhile, the Arbitral Tribunal, suo moto, filed the impugned award in this Court and the same was registered as a separate suit being CS(OS) 549/2009.

In view of the above, the Contractor's suit, CS(OS) 72/2009 was disposed of. In CS(OS)549/2009, NTPC objected to the arbitral award on two grounds. First, that the claims raised by the Contractor were barred by limitation; and second, that Kidde India Ltd. was not the successor-in-interest of M/s Vijay Machinery Store. The learned Single Judge did not find any merit in the objection that Kidde India Ltd. was not the successor-in-interest of M/s. Vijay Machinery Store and rejected the said objection. NTPC accepted the said finding as it has not challenged the impugned order nor contested the said finding in the proceedings. Insofar as the objection that the claims raised by the Contractor were barred by limitation is concerned, the learned Single Judge found that they were. The learned Single Judge held that the arbitration clause was invoked on 09.12.1989 and it was incumbent upon the Contractor to approach the appointing authority

(President, Institute of Engineers) within a period of sixty days thereafter. Since it had failed to do so, the claims were barred by limitation.

Contentions of the Parties

The Contractor had raised the bill on 11.06.1985. Apparently, the said bill was not cleared. However, on 04.08.1986, NTPC had provisionally taken over the system. The Contractor had taken no steps to precipitate any of its claims. The Contractor had raised a Final bill on 06.03.1989 claiming a sum of Rs. 74,80,122.87 almost three years after the takeover of the system by NTPC. NTPC did not clear the said bill. Admittedly, the said bill was not cleared and the Contractor issued a letter dated 09.12.1989 seeking to invoke the arbitration agreement and appointing one Mr. M.M. Sharma an Executive Director, NTPC as the Arbitrator. Although NTPC denies receiving the said letter, there is no dispute that the Contractor had issued it. A plain reading of the said letter indicates that disputes had arisen between the parties. In the said letter, the Contractor had asserted that several meetings had been held between the executives of both the parties and NTPC had also, purportedly, assured that the claim would be settled provided the Contractor gave up a portion of its claim. It was stated that based on the said assurance, the Contractor had given up some claims, which were communicated by letters dated 25.07.1989 and 08.09.1989. The Contractor alleged that despite the same, NTPC had "failed and neglected to settle" the referred claim. The Contractor further stated that it had lost hope and felt that there was no alternative but to proceed for arbitration and, accordingly, had also withdrawn the letters dated 25.07.1989 and 08.09.1989, whereby it had agreed to waive a portion of its claim.

NTPC argued that the notice dated

09.12.1989 was not received by NTPC. NTPC claimed that the first notice invoking arbitration was received by NTPC on 10.05.1994 and therefore, the claims made by the Contractor were barred by limitation. NTPC further argued that since the Contractor had invoked the arbitration on 09.12.1989 but had taken no steps for getting the Arbitral Tribunal constituted, its claims were barred by limitation.

Issue before the Hon'ble Court

Principle issue before the Hon'ble Delhi High Court for consideration was "whether the claims raised by the Contractor were barred by limitation" as held by the learned Single Judge and the impugned award, whereby the Arbitral Tribunal concluded to the contrary by allowing some claims of the Contractor, is vitiated by patent illegality.

Reasons and Findings of the Hon'ble Delhi High Court

The Hon'ble Court observed that the question, whether the substantive claims arising from the contract are barred by limitation, is required to be determined with reference to the date of commencement of the arbitral proceedings, that is, the date on which a notice invoking arbitration was served on NTPC. Thus, if it is accepted that the said notice was served on NTPC on 09.12.1989 then the conclusion that the claims made by the Contractor are barred by limitation is erroneous and cannot be sustained. And If the notice invoking arbitration was received by NTPC for the first time on 10.05.1994; the arbitral proceedings would commence from the said date, and therefore the question that claims made by the Contractor were barred by limitation would have to be considered in reference to the said date, i.e. 10.05.1994.

The Apex Court also observed that although the Statement of Defence is filed by NTPC, it did not dispute the

receipt of the letter dated 09.12.1989, issued by the Contractor invoking the arbitration. The question whether NTPC had received the notice dated 09.12.1989, stood settled by the Contractor's admission that NTPC had not received the said letter. In its rejoinder, the Contractor accepted that NTPC had not received the notice dated 09.12.1989. In addition to this, the Arbitral Tribunal also accepted that NTPC had not received the letter dated 09.12.1989 and therefore, the arbitral proceedings had not commenced on the said date. The Apex Court observed that the contents of the letter dated 09.12.1989 clearly indicated that the negotiations, if any, had finally come to a breaking point and the Contractor had, in fact, elected to commence arbitral proceedings. The fact that the arbitral proceedings did not commence on account of non-receipt of the said notice would not defer the accrual of a cause of action. It was further held that the conclusion of the Arbitral Tribunal that a cause of action had not arisen is, ex facie, erroneous and vitiates the decision. The Hon'ble Court expounded that unilaterally issuing communications and seeking settlement of the claims does not extend the period of limitation.

It is imperative to mention that the Notice of Invocation when issued by the Contractor on 09.12.1989, the Arbitration Act 1940 was prevalent and thus applied. The Hon'ble Court observed that the provisions of the Limitation Act 1963 applied to the arbitral proceedings. The Court further considered that the section 37(3) of the Arbitration Act provides that the arbitration shall be deemed to commence on one party serving notice regarding the same either on the other party or to the person named or designated in the agreement. Section 37 of the Arbitration Act 1940 provides as follows:-

“37. (1) All the provisions of the Indian Limitation Act, 1908 shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

It is noteworthy that section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') also provides that unless the parties have agreed otherwise, the arbitral proceedings in respect of a dispute would commence on a date on which the request that the dispute be referred to arbitration is "received by the respondent". Section 43(2) of the A&C Act provides that for the purposes of the Limitation Act, 1963, the arbitration is deemed to have commenced on the date referred to in Section 21 of the A&C Act, that is, the date on which the request for reference of disputes to arbitration is received by the respondent.

Once a notice of referring the disputes to arbitration is served on the respondent, the period of limitation for making the claims stops running. Therefore, the question whether the

claims are barred by limitation has to be determined with reference to the date on which the arbitral proceedings are deemed to commence either in terms of Section 37(3) of the Arbitration Act, 1940 or Section 21 of the A&C Act. The period of limitation for raising dispute would stop running from that date onwards.

There is no dispute that the Contractor's claims were within time as on 09.12.1989. However, the party invoking arbitration is also required to take further steps for constitution of an arbitral tribunal and reference of disputes to the said tribunal. Any delay in doing so does not render the party's substantive claims barred by limitation; it would deprive the party any recourse to courts to seek appointment of the arbitral tribunal pursuant to the arbitration agreement. Thus, once an arbitration agreement is invoked and the party does not take steps for constitution of the arbitral tribunal within the period of limitation, its right to seek remedy in this regard, in any court, would be foreclosed. The period of limitation within which a party is required to approach the court for seeking constitution of the arbitral tribunal cannot be conflated with the period of limitation for invoking the arbitration agreement and commencing the arbitral proceedings. This period within which the party must avail of legal remedy to ensure constitution of the arbitral tribunal would commence once the party has invoked the arbitration agreement and not prior to that. In *re: Bombay Dyeing & Manufacturing Co. Ltd. v/s State of Bombay & Ors: 1958 SCR 1122*, the Hon'ble Supreme Court held viz; "Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration. But

though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; interest reipublicae sit finislitium. The remedies are barred, though the right is not extinguished." Similarly, in: *Bharat Sanchar Nigam Limited & Anr. v/s Nortel Networks India Private Limited*: (2021) 5 SCC 738, the Supreme Court considered the issue regarding the period of limitation for filing an application for appointing an arbitrator under Section 11 of the A&C Act. The Court held that Article 137 of the Schedule to the Limitation Act, 1963 would be applicable to an application under Section 11 of the A&C Act. The Court also explained that the period of limitation for filing a petition seeking appointment of an arbitrator cannot be confused or conflated with the period of limitation applicable to the substantive claims relating to the underlying commercial contract.

In the case of *J.C. Budhraj v. Orissa Mining Corpn. Ltd.*, (2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582 the Hon'ble Apex Court observed that the limitation for a suit is calculated as on the date of filing of the suit. In the case of arbitration, limitation for the claim is to be calculated on the date on which the arbitration is deemed to have commenced. Section 37(3) of the Act provides that for the purpose of Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice dated 4.6.1980, requiring the appointment of an arbitrator. Such a notice having been served on 4.6.1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4.6.1980, it had to be rejected by the arbitrator on the ground that the claims were barred by limitation. The said period has nothing to do with the period of limitation for filing a petition under section 8(2) of

the Act. Insofar as a petition under section 8(2), the cause of action would arise when the other party fails to comply with the notice invoking arbitration. Therefore, the period of limitation for filing a petition under section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. In the case of *Inder Singh Rekhi vs. Delhi Development Authority - (1988) 2 SCC 338* the Hon'ble Apex Court observed that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under section 8 or a reference under section 20 of the Act.

Section 37(1) of the Act provides that all the provisions of the Indian Limitation Act, 1908 (since amended Act came into force in 1963), shall apply to arbitrations as they apply to the proceedings in court. Sub-section (3) thereof states that for the purposes of this section and of the Indian Limitation Act, 1908 an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated cause of arbitration shall be deemed to have commenced when one party serves the notice on the other party requiring the appointment of an arbitrator. In the case of *Panchu Gopal Bose v. Port of Calcutta* [*Panchu Gopal Bose v. Port of Calcutta*, (1993) 4 SCC 338, the Hon'ble Apex Court observed that the

period of limitation for commencing an arbitration runs from the date on which the cause of arbitration accrued, that is to say, from the date when the claimant first acquired

Held

Based on the factual matrix of various cases considered by the Hon'ble Supreme Court it held that the claims raised by the Contractor/Appellant were, ex facie, barred by limitation as on the date of commencement of the arbitral proceedings, that is, on 10.05.1994. The conclusion drawn by the Arbitral Tribunal that the claims made were within limitation were, ex facie, erroneous. The appeal was dismissed.

Conclusion

The provisions of the Limitation Act 1963 are made applicable to the arbitrations. It has become absolutely necessary to provide for the date of commencement of arbitration. Just as a court cannot decree a time barred claim so also an arbitral tribunal cannot allow such a claim. The arbitration shall be deemed to have commenced on the date referred to in section 21 of the A&C Act. According to section 21, arbitral proceedings commence on the date on which the request for referring the dispute to arbitration is received by the other party. The material date is the date of receipt of the request by the respondent. Hence the commencement of arbitral proceedings is not the date of communication/request for referring the dispute to arbitration but the date of commencement of arbitral proceedings is the date on which such communication is received by noticee/addressee who has been described as the respondent in section 21.

INDIA SHOULD CONSIDER FREE TRADE AGREEMENT WITH EGYPT

India should consider negotiating a free trade agreement (FTA) with Egypt as the Mediterranean nation holds huge potential for the domestic industry in various sectors like agri products, steel items and light vehicles, according to exporters. Prime Minister Narendra Modi is in Cairo for a two-day state visit at the invitation of Egyptian President Abdel Fattah El-Sisi. Federation of Indian Export Organisations (FIEO) Director General Ajay Sahai said that India and Egypt have historic trade relations, which are robust and fairly balanced. India's exports increased to USD 4.1 billion in 2022-23 from USD 3.74 billion in 2021-22. However, imports from that country declined to about USD 2 billion against USD 3.5 billion in 2021-22.

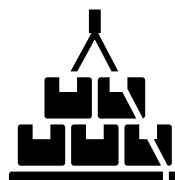
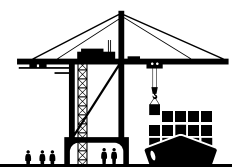
Fertiliser, crude oil, chemicals, raw cotton, and raw hides are major import items from Egypt. The main export items include wheat, rice, cotton yarn, petroleum, meat, flat-rolled products, ferroalloys (related to iron) and light vehicles.

"The prime minister's visit is significant as Egypt is the gateway to Africa and Europe. A cementing of economic relations and possibly a feasibility study for FTA can be undertaken as Egypt has such FTAs with countries in West Asia and Africa," Sahai Besides cooperation in agriculture, biotechnology, pharma, and renewable energy, India should explore tie-ups in logistics with Egypt, he added.

"We should look at taking trade to USD 15 billion in the next three years from the current over USD 6 billion," he said. Engineering exporter and Director of Geco Trading Corporation Khalid Khan said that Egypt is a major trading partner of India in Africa.

Ludhiana-based engineering exporter and Hand Tools Association President SC Ralhan suggested that Egypt should consider starting trade with India in domestic currency.

Source : Sections



HEADLINES

- India's exports increased to USD 4.1 billion in 2022-23 from USD 3.74 billion in 2021-22. However, imports from that country declined to about USD 2 billion against USD 3.5 billion in 2021-22.
- Increasing economic ties between India and the US would help boost the country's exports to America, according to exporters.



- The Iranian side also pointed to India's purchase of Russian crude in the face of Western sanctions and contended New Delhi should adopt a similar approach to resuming procurement of Iranian energy, the people added.
- India Business News: Buoyed by the services sector, India's exports rose 14% to a record \$770 billion during the last financial year
- Iran imported almost a million tonnes of the aromatic rice from India in 2022-23, 20.35% of the total basmati exports of 4.5 million tonnes from the country.

INCREASING ECONOMIC TIES BETWEEN INDIA, US TO HELP BOOST EXPORTS

Increasing economic ties between India and the US would help boost the country's exports to America, according to exporters. The economic ties have received a push from Prime Minister Narendra Modi's recent visit to the US, Apparel Export Promotion Council (AEPC) Chairman Naren Goenka said in a statement. "India's share in US's ready-made garment import from the world has increased to 5.7 per cent in 2022, which will further improve in future," he said.

The apparel export to the US from India in 2022 has also increased to USD 6 billion, registering a growth of 33.7 per cent as compared to 2021, Goenka said.

The Federation of Indian Export Organisations (FIEO) too said that the US and India have agreed to enhance the bilateral trade to USD 500 billion by 2030.

"Settlement of the six trade disputes bilaterally will create a congenial environment to foster our trade relations. Withdrawal of additional duty on steel & aluminium will

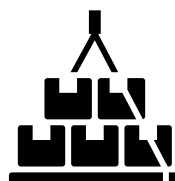
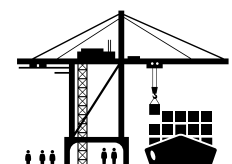


push their exports in to US market ," it said. The economic ties have received a push from Prime Minister Narendra Modi's recent visit to the US, Apparel Export Promotion Council (AEPC) Chairman Naren Goenka said in a statement.

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The Federation of Indian Export Organisations (FIEO) too said that the US and India have agreed to enhance the bilateral trade to USD 500 billion by 2030. India and the United States of America held the 5th Ministerial level meeting of the bilateral Commercial Dialogue in New Delhi on 10 March 2023. India's Minister of Commerce and Industry, Shri Piyush Goyal, and U.S. Secretary of Commerce, Gina Raimondo, co-chaired and re-launched the Commercial Dialogue in accordance with the U.S.-India Joint Leaders' Statement of September 2021, with a renewed focus on future and emerging areas of bilateral commercial partnership. The Commercial Dialogue is part of ongoing efforts to strengthen the U.S.-India Comprehensive Global Strategic Partnership, develop inclusive and fair trade and investment policies, and leverage the interests of the private sector in pursuing new market opportunities that advance prosperity in both countries.

Source : The Financial Express





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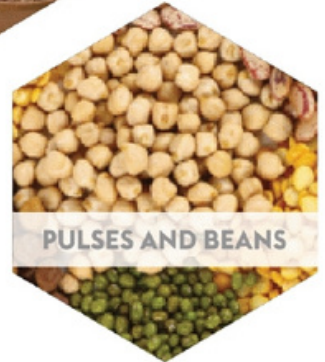
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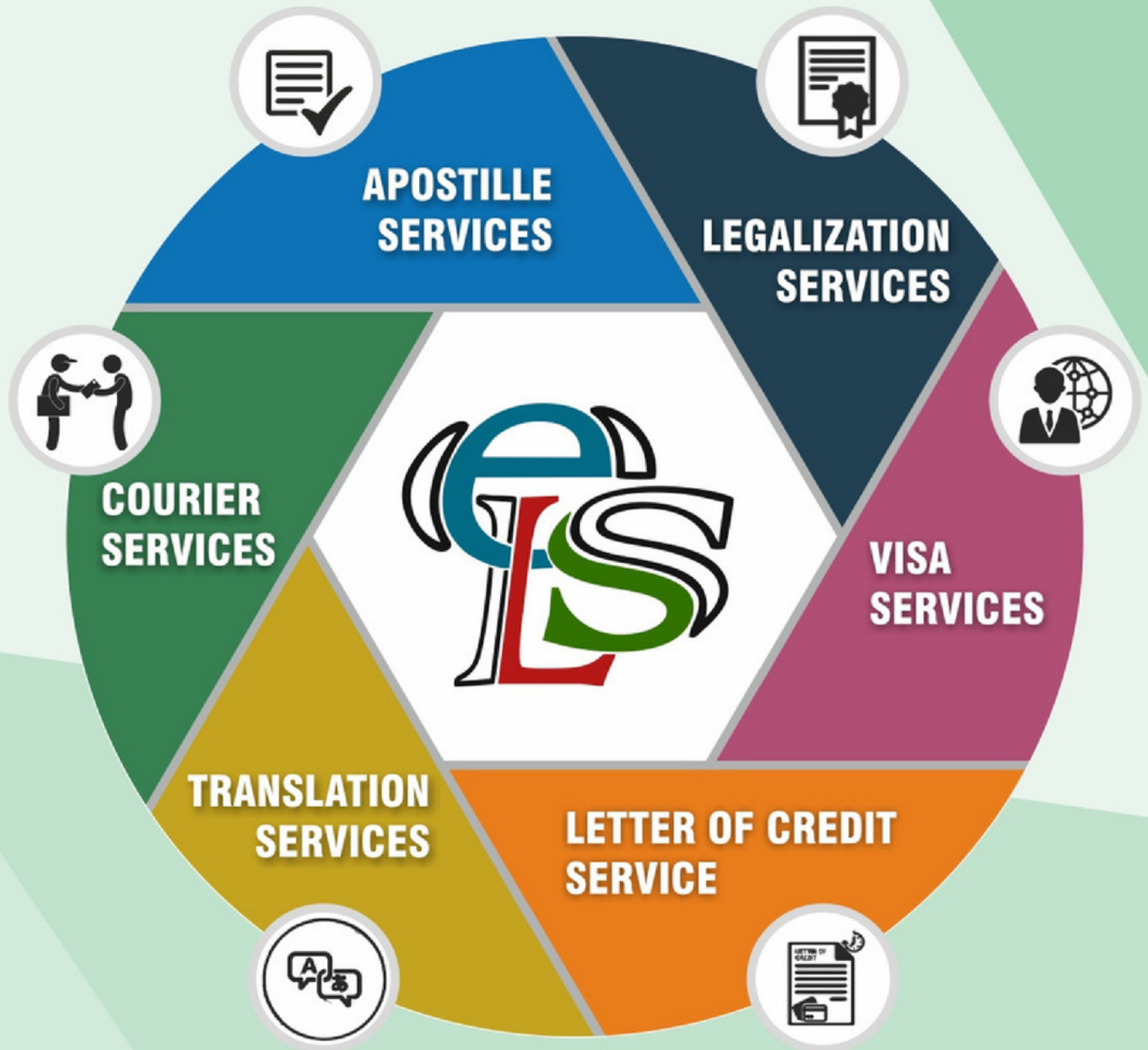


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