DISPUTE RESOLUTIONS

The Bi-Monthly Newsletter of the Nani Palkhivala Arbitration Centre

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Message to the Readers

Moving up India's Ease of Doing Business Rank through improvement in Enforcing Contracts

I served as the Chief Financial Officer (CFO) of one of India's largest multinational companies, Tata Consultancy Services (TCS). When you run a large company, and that too globally distributed, dispute management becomes a key priority. We had resorted to Alternate Dispute Resolution (ADR) methodology very successfully in a few cases abroad. Therefore, I felt that an institution such as Nani Palkhivala Arbitration Centre (NPAC) is the need of the hour for providing facilities for arbitration and for propagating 'Institutional Arbitration'.

Before the amendment to the Arbitration and Conciliation Act, 1996, there were many reasons why a company would choose to litigate. The main reason for overlooking arbitration was that the arbitral awards are disputed in Courts and therefore approach to arbitration leads to further delays in dispute resolution. NPAC worked with the then Law Commission Chairman Justice A.P. Shah in his report which paved the way for the amendment to the Act. Time frames for delivering the arbitral award were specified, costs were regulated and importantly, the law made it very difficult to challenge the award in Courts.

However I find that there is very little appreciation of the changed legislative and judicial scenario among the top leadership of companies. Arbitration clauses are added to a contract as part of "cut and paste" work. I have been working with the 'CFO Board', a group of leading CFOs of India, to bring about change in the mindset of companies. This requires extensive training to commercial officers on how they should frame dispute resolution clauses in contracts. I have been engaged in persuading companies to adopt 'Institutional Arbitration' as the preferred choice. While one can attempt to bring about change through one-on-one discussions, we should have what I would call an "eco system" to bring about a vast improvement. The eco system will have law colleges including this aspect in their curriculum, running certification courses in this area and generally providing facilities for continuous update. The eco system will also have Arbitration Centres in all commercial centres of India, which are equipped with systems and technologies to efficiently handle arbitration cases; specialists in various domains as arbitrators; and lawyers focusing only on arbitration.

We are justifiably proud that India has moved up the ranking by 23 ranks in Ease of Doing Business survey to 77. However, our ranking improved only by 1 in 'Enforcing Contracts', where we are currently placed at 163 out of 190 countries surveyed. Large scale adoption of ADR as the approach and in particular moving towards 'Institutional Arbitration' is the answer. Our target is to get within the top 50 countries in the Ease of Doing Business ranking. The legal community has its work cut out for facilitating this through promoting arbitration.

Let us all work towards creating the eco system for efficient dispute resolution. Let us work towards large scale adoption of 'Institutional Arbitration'. We owe it to the Nation.

S. MAHALINGAM
Former CFO, TCS
Director, NPAC

Legal Updates

❖ **Workers at Google, Facebook, eBay and Airbnb can now sue over sexual harassment. Here's what that means for employees**

- As a result of recent policy changes, employees at Google, Facebook, eBay and Airbnb can now take their companies to court to pursue workplace sexual harassment claims, instead of being forced to settle such claims through private arbitration, thanks to policy changes announced in the past week.
- Google was the first company in this recent wave to undo its mandatory arbitration clause for harassment, to appease outraged workers, who had staged a walkout worldwide over the company's handling of sexual misconduct allegations.
  https://www.cnbc.com/2018/11/19/google-facebook-airbnb-employees-can-now-sue-over-sexual-harassment.html

❖ **Application of Order 2 Rule 2 CPC cannot be considered by Court u/s. 11 Arbitration & Conciliation Act: Delhi HC**

- The Delhi High Court recently held that courts cannot consider the question of viability of a claim as under Order 2 Rule 2 of the Code of Civil Procedure, while hearing a petition under Section 11 of the Arbitration and Conciliation Act, 1996.
- Justice Navin Chawla ruled, "*The question whether the claim of the petitioner would be barred by the principles of res judicata or estoppel or by Order 2 Rule 2 of the CPC are not matters to be considered by this Court while exercising its jurisdiction under Section 11 of the Act*".
  https://www.livelaw.in/application-of-order-2-rule-2-cpc-cannot-be-considered-by-court-u-s-11-arbitration-conciliation-act-delhi-hc-read-order/

❖ **SPML Infra wins arbitration award against Jharkhand UrjaUtpadan Nigam**

- SPML Infra has won an amount of Rs. 47.5 crore through an arbitration award against Jharkhand UrjaUtpadan Nigam, passed by Sole Arbitrator, Hon'ble Justice D.G.R. Patnaik (Retd. Judge, Jharkhand High Court), and Jharkhand UrjaUtpadan Nigam was asked to pay it immediately.
- Jharkhand UrjaUtpadan Nigam will have to pay interest @18% on the amount if it is not paid immediately as per the award.
- The need for the arbitration arose due to cost over-run during construction, delayed payment, and additional expenses incurred due to delay.
- The proceedings of the arbitration were held for five years starting 2013 and all pleadings and arguments by both the parties were completed in 36 sittings.
  https://www.business-standard.com/article/news-cm/spml-infra-wins-arbitration-award-against-jharkhand-urja-utpadan-nigam-118111900138_1.html

❖ **Reliance Infrastructure bags Rs 16.14 crore arbitration award against NHAI**

- A three-member arbitration tribunal ordered National Highway Authority of India (NHAI) to pay Reliance Infrastructure an amount of Rs 16.14 crore by February 10, 2019. NHAI will have to pay interest of 12% per annum on the amount if it does not pay by the deadline. This order is in addition to a Rs 200 crore arbitration award that the company bagged earlier in August, 2018 for the same NHAI project for cost over-run and loss of revenue.
  https://economictimes.indiatimes.com/articleshow/66607239.cms?utm_source=contentofinteres&utm_medium=text&utm_campaign=cppst

❖ **Bombay HC stays arbitral award ordering BMC to pay Rs 125 Crores in damages to a private firm**

- The Brihanmumbai Municipal Corporation (BMC) had approached the Bombay High Court challenging a July 2017 order by the arbitrator directing the civic body to pay an amount of Rs 125 crores to Clear Channel Mumbai Private Limited for estimated loss of profit in a dispute over a deal for street furniture and signages in South Mumbai.
  https://timesofindia.indiatimes.com/city/mumbai/hc-stays-award-asking-bmc-to-pay-firm-125-crore-as-damages/articleshow/66539015.cms

❖ **Indian utility reports success in ICC and SIAC disputes**

- Indian electric utility Reliance Power has reported successes for two of its subsidiaries in separate ICC and SIAC arbitrations relating to coal mining projects in India and Indonesia.
  https://globalarbitrationreview.com/article/1175889/indian-utility-reports-success-in-icc-and-siac-disputes

❖ **Fortune Mall developer can't sell shops: Arbitrator KJ Rohee**

- Arbitrator KJ Rohee, a retired HC judge, has directed Fortune Mall developer Gigeo Constructions, owner Chhagan Patel, and land owner Subhash Buty from selling, alienating or leasing any space or shop in the mall, also known as Buty Palace and proposed Pulse Care Hospital, till final order of the arbitration case. The arbitrator has also asked the developer to deposit Rs. 40 crore with it.
- Appointed by the Nagpur bench of Bombay High Court (HC), Rohee passed the interim order on October 31. SS Fabricators and Manufacturers, and another party had filed a case with the HC, which had appointed the arbitrator.

  https://timesofindia.indiatimes.com/city/nagpur/fortune-mall-developer-restrained-from-selling-any-shops-deposit-rs40-cr/articleshow/66516872.cms

❖ **Full court fee to be refunded if case referred to mediation by Court ends in Compromise Decree**

- Providing more clarity around the interpretation of Sections 16 and 16A of the Court Fees Act in cases which have been referred to mediation by the court at pre-evidence stage and a compromise decree is incorporated, the Delhi High Court on Friday held that an interpretation of the statute inuring to the litigant's benefit should be preferred and if a plaintiff is able to demonstrate that the case falls within the requirements of Section 16 and a settlement has been arrived at, refund of the full amount of the court-fee ought to be granted.

  https://www.livelaw.in/full-court-fee-to-be-refunded-if-case-referred-to-mediation-by-court-ends-in-compromise-decree-read-order/

❖ **High Court Can Execute Foreign Arbitration Award Despite Change In Pecuniary Jurisdiction : Delhi HC**

- In ***Precious Sapphires Ltd*** **vs** ***Amira Pure Foods Pvt Ltd,*** the Court was dealing with an interesting interplay between the amendments made to Arbitration and Conciliation Act and Delhi High Court Act, both in 2015. The execution petition was filed in High Court when it had the pecuniary jurisdiction to deal with the matter. After 2015 amendment to Delhi High Court Act, the pecuniary value of the matter came within the limits of Subordinate Court. However, the 2015 amendment to Arbitration Act specifically stated that execution of foreign award should be carried out in the High Court. This amendment was made in the light of opinion expressed in 246th Report of Law Commission of India that it is desirable for the High Courts to deal with execution of foreign awards to ensure speedy and efficient execution.

  https://www.livelaw.in/high-court-can-execute-foreign-arbitration-award-despite-change-in-pecuniary - jurisdiction-delhi-hc-read-judgment/

❖ **Application Before Court Seeking Interim Measure Of Protection Maintainable Even After Passing Of Arbitration Award But Before It Is Enforced: Kerala HC**

- The Kerala High Court has held that application under Section 9(1)(ii) of the Arbitration and Conciliation Act, 1996 seeking an interim measure of protection is maintainable even after passing of the award by the arbitral tribunal but before it is enforced.
  https://www.livelaw.in/application-before-court-seeking-interim-measure-of-protection-maintainable-even-after-passing-of-arbitration-award-but-before-it-is-enforced-kerala-hc-read-judgment/

NEED FOR EXPERT ARBITRATORS IN INDUSTRY SPECIFIC ARBITRATIONS

With the advent of arbitration as one of the most favoured forms of dispute resolution there is a corresponding increase in demand for arbitratores with industry specific expertise. Such experts are required to fill the roles not only as arbitrators, but fill in many more demands in the arbitration regime. The attempt through this article, is to examine their multiple roles in the fast developing arbitration regime.

Experts as Arbitrators

Appointment of Arbitrator(s) to the arbitral tribunal is the most decisive and key step in arbitration proceedings. **It is commonly said that an arbitration proceeding is only as good as the arbitrator/s.** Though there is no specific requirement for a person to be appointed as an arbitrator**,** the following are the basic requirements to be kept in mind at the time of appointment of an arbitrator.

Qualifications of an Arbitrator: A person designated to be appointed as an arbitrator must possess the following qualifications (a) Technical and legal Qualifications; (b) Disinterested party to litigation i.e. No conflict of interest; (c) Confidence of Parties; and (d) Impartiality. An arbitrator who has been found to be fit and suitable, should keep the following principles in mind while conducting an arbitration:

(i) Equal treatment of parties - must be impartial
(ii) Concerned with the dispute only.
(iii) Duty to follow provisions of the Act
(iv) Duty to appreciate finer nuances of the concept of Public Policy
(v) Respect obligations towards honouring time limitation
(vi) Respect obligations towards honouring rules relating to remunerations
(vii) Must pass reasoned Awards
(viii) Observe principles of natural justice
(ix) Honour principles relating to duty to withdraw or recuse
(x) Should not act beyond his jurisdiction
(xi) Should not be guilty of fraud or misconduct;
(xii) Must act judicially and follow rules of justice, equity and good conscience
(xiii) Should decide the dispute according to law and terms of the contract
(xiv) Duty to render accounts if applicable
(xv) Duty towards observing usages according to trade
(xvi) Duty towards settlement
(xvii) Must act as Ex Aequo Et Bono or as amiable compositeur when requested

So long as an expert arbitrator appointed owing to his domain expertise is able to appreciate and apply the above stated issues relating to an arbitration he or she is bound to be as effective as an arbitrator with a legal or judicial background.

History of using Experts as Arbitrators

If we look back into history, it would be interesting to note that trade and commerce were regulated very effectively through the guild of merchants. The temples, as Sanjeev Sanyal points out in his book, “The ocean of churn: How the Indian Ocean shaped human history,” lent money to villages / town councils for infrastructure investment and to merchant and artisan guild for business. Interest rates usually ranged from 12.5% to 15% per annum. An eleventh century inscription clearly shows that there was an active credit market. Therefore, during the Chola rule, Indian Ocean trade was done through a sophisticated network of multinational guilds financed by large temple banks.

Integral to this system, there was a thriving tradition of dispute resolution by merchants among themselves. When two merchants found themselves in dispute, about the quality of goods or about the terms of their agreement, they went to a colleague, often a doyen of their trade, and agreed to abide by his decision. Commerce was conducted rather more openly, perhaps, than it is now. A merchant's word was his bond.

In many trades, there was no need for enforcement of awards at law. A man who failed to comply with an arbitral award faced commercial ruin when his peers were no longer prepared to give him credit or to deal in his goods. Therefore the concept of using experts as arbitrators is not new to our system. This was not merely an Indian phenomenon but appears to have existed worldwide.

In ***Rahcassi Shipping Co SA -v- Blue Star Line Ltd,***[1] the dispute was about the construction of terms in the contract and the arbitrators appointed as an umpire a well-known practising barrister. The judge (Roskill J.) said "Businessmen like using general phrases of the kind, because they leave open the possibility of arbitrators and umpires being chosen from a wide field of persons with commercial experience, so long as they are not practising lawyers." He found the appointment of the umpire to have been made without authority.

In many modern commercial disputes there are important issues, particularly technical and scientific, but also specialist issues in medicine and accounting or finance, which are likely to be outside the experience of an ordinary legal tribunal, unless it has been created specially with such problems in mind. This requires the tribunal to have assistance to understand the issues and to appreciate the context in which they arise. The alternative is to create a tribunal specially for the purpose and to include one or more persons whose experience and formation is relevant to the subject matter and context of the dispute. If neither one nor the other of those services is available, then the parties are denied justice, in the sense that they are deprived of an appropriate and competent trial for their differences.

The role of experts (as evidence in the resolution of high profile and complex disputes in accounting, financial quantum specification, forensic matters, infrastructure and construction, and medicine, etc.) has evolved significantly in recent times. Technical experts, including accountants, engineers, architects, scientists, doctors, etc., are increasingly being considered indispensable by arbitral tribunals in matters requiring expertise and technical know-how which once again proves that specialist arbitrators with technical expertise are need of the hour in the changing arbitration scenario.

The Expert in an Arbitral Tribunal

A natural extension of having a tribunal-appointed expert is to have an expert as a member of the tribunal. Having an expert as a tribunal member overcomes one of the potential limitations of tribunal-appointed experts: a tribunal that relies too heavily on its appointed expert may be said to have delegated its fundamental decision-making responsibility, which could impact the enforceability of any award rendered. If the expert is a member of the tribunal, no such issue arises.

Where the technical issues, or the custom and practice of an industry, or perhaps the usual interpretation of a particular contract or specification are at the heart of the dispute, or form a major part of it, then it may well be appropriate to adopt an expert or a businessman as sole arbitrator or as a member of the tribunal. There is a long and respectable tradition of arbitrators of the kind as seen by us in the above paras.

It may be helpful to consider the differences one might expect from having non-lawyers as sole arbitrators or as members of a tribunal. Two criticisms are often suggested. One is that, without extensive experience of formal procedure, a non-lawyer may find himself in difficulty when faced with advocates whose approach is not cooperative, or who raise difficult procedural issues. There are two answers to that, one theoretical, the other practical. Firstly, a large part of procedural natural justice is, intuitive. Next, in most modern jurisdictions, the extent of mandatory positive procedural law applicable to arbitration, and particularly to international arbitration, is not great. It is certainly far from coincident or coterminous with the procedural law or practice of the national Courts.

Involvement of Experts in Arbitration Proceedings other than as Arbitrtors

The traditional role for experts, in which they draft an expert report for a party and then testify at a hearing, has been joined by a number of different methods to improve the quality and efficiency of decision-making. Set out below are some of the key ways in which experts are involved in arbitration today, along with their associated challenges.

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[1] [1967] 3 All ER 301, QBD

A) Advising behind the scenes: Exploring and developing a claim or defence to a claim often requires substantial technical or specialist expertise, beyond that which can be provided by counsel. For this reason, experts are often engaged to assist in this process. Such experts are sometimes referred to colloquially as "shadow" or "dirty" experts because they are essentially an extension of the party itself, as opposed to a "clean" expert whose responsibility is to present impartial expert evidence to the tribunal. This somewhat pejorative term, however, belies the invaluable role such experts play at the outset of a case. Behind-the-scenes experts ensure that technical details are not obfuscated or misrepresented in claims and defences, and may prevent an unsupported or immature claim from being submitted in the first place.

b) Party-appointed experts: A party-appointed expert is responsible for providing expert evidence to the tribunal, usually in the form of an expert report prior to a hearing, and follow this by providing testimony at a hearing. This traditional common-law approach, by which each of the parties' experts works in isolation to produce an expert report, risks one of the most significant difficulties in using expert witnesses: experts can take fundamentally incompatible approaches to answering the same question, or worse, disagree on the question itself. To bridge the gaps between reports provided by different experts, English courts and some international tribunals ask experts to work together.

c) Hot- tubbing: Even the technique of witness conferencing or "hot-tubbing" as it is more evocatively known will not necessarily resolve these fundamental differences. Hot-tubbing involves tribunals questioning multiple experts on their evidence simultaneously. In theory, hot-tubbing allows tribunals to identify precisely where experts diverge in approach, assumptions, and conclusions. This should, in turn, allow tribunals to attempt to reconcile or at least understand these differences with the help of the experts themselves. Hot-tubbing, however, depends on tribunals having enough comfort with the underlying issues to probe the experts critically something which is far from guaranteed.

d) Expert determination and split clauses: While expert determination is often spoken about in the context of arbitration, it is not actually arbitration at all, but an entirely different form of dispute resolution. Expert determination is a purely contractual form of dispute resolution. It involves an expert, rather than an arbitrator, deciding a dispute, and the result is not an arbitration award enforceable on the basis of national and international standards, but more in the form of an agreed compromise. Expert determination is commonly used where the subject matter of a dispute is or is thought to be technical rather than legal, such as determining the closing accounts in the context of a share purchase agreement.

A split clause is a clause that refers some disputes arising out of a particular agreement to one method of dispute resolution, such as arbitration or court litigation, and other types of disputes to another method of dispute resolution, such as expert determination. Split clauses are often seen as a more efficient method of dispute resolution than referring all disputes to arbitration or litigation.

e) The quasi-arbitral expert: It is perfectly possible for disputing parties to agree to refer their differences for the determination of an expert, and for them to agree to be bound by the decision of that expert. The ICC Centre for Expertise facilitates such a service, as do many technical and other institutions. Notably, some modern contract conditions include a provision for expertise, with a mechanism for appointing an expert in case of default, very like those used in arbitration. It should be noted that such an expertise, although binding, normally will be enforced as a contract, without the benefits of direct enforcement which many jurisdictions have available for arbitral awards. It is more common for the report of such an expertise to be a finding of fact, with or without recommendations for future action, than it is for it to be a direction as to payment, although the latter option is used, for example, in cases where disruption and delay are alleged.

f) The expert as aide to the tribunal: By appointing an expert itself, a tribunal can ensure that it is receiving a truly non-partisan view of the evidence. It does, however, require the tribunal to have analysed the case and the issues at hand at a sufficient level of detail to be able to determine the profile of the required expert. Where experts are also appointed by the parties, a tribunal-appointed expert is able to guide the tribunal in reconciling any differences between approaches, allowing the tribunal to take a firmer hand and ensuring that the technical elements of a final determination are of a high standard.

g) The assessor: An assessor in the Arbitral Tribunal, sits with the tribunal, hears what the parties and their witnesses have to say and reads the papers, so as to take part in the deliberations of the tribunal to give the benefit of his advice. Just as it would be wrong for an arbitrator to use his or her private knowledge as if it were evidence, without giving the parties an opportunity to see that knowledge and to deal with it, there are problems of transparency also with the Assessor.

Some Case Laws on the Role of Experts in Arbitration

The leading English case on the role of the expert witness is, no doubt, still ***Whitehouse vs Jordan [1981] 1 ALL ER 267***, in which it was said that expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation.

The Hon'ble Supreme Court of India in ***Malay Kumar Ganguly vs Dr. Sukumar Mukherjee (2006) 6 SCC 269***, held that the court is not bound by the opinion of the expert witnesses since the opinions of experts are advisory in nature.

In ***Ramesh Chandra Aggrawala vs Regency Hospitals (2009) 9 SCC 709***, Hon'ble Supreme Court of India Court has dealt with the difference between an expert and a witness of fact. "*20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.*"

Director of Investigation and Research vs Southam Inc., [1997] 1 S.C.R. 748 AT 780: "*Experts, in our society are called that precisely because they can arrive at well-formed and rational conclusions. If that is so, they should be able to explain, to a fair minded but less well informed observer the reasons for their conclusions. If they cannot, they are not very expert. If something is worth knowing and relying upon, it is worth telling. Expertise commands deference only when the expert is coherent. Expertise loses the right to deference when it is not defensible. That said, it seems obvious that [Appellate Courts] manifestly must give great weight to cogent views thus articulated [emphasis added].*"

In India, in addition to the right of the opposite party to cross examine an expert witness appointed by the party, the arbitrator also has the powers to ask questions and get clarification. The most important use of an expert witness is the opportunity for the arbitrator to ask questions and understand the business process, business practices and the technical details. Even though everyone knows that the party appointed expert witnesses are paid by parties and hence most of them try to support the case of the party paying their fees.

As held by Hon'ble Supreme Court in ***Prem Sagar vs State (Indian Kanoon - http://indiankanoon.org/doc/69498930/)***, "*...merely because an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he has committed perjury so as to help somebody. And, mere rejection of the expert evidence by itself may not also warrant initiation of proceedings under Section 340 of CrPC.*" Hence the biggest challenge faced by arbitrators is to find out the truth from the expert report of the expert, the cross examination of the parties and formulate their own view to ensure justice.

Improving the use of Experts in International Arbitration

There are certain steps that can be taken to make better use of experts in international arbitration:

a) lawyers and arbitrators should develop their familiarity and comfort dealing with the issues on which experts are often asked to contribute, particularly quantum, which is significant to the vast majority of cases; and

b) Experts themselves must ensure that if asked to co-operate, they are flexible enough to facilitate a discussion with the tribunal and with the other experts.

Conclusion

On account of the increasing popularity of arbitration in this area of the economy, in recent times a few arbitral institutions have sprung up specializing exclusively in resolving energy disputes. The International Centre for Energy Arbitration (ICEA) is in the process of preparing the rules of arbitration, which as far as possible will reflect the needs of the energy industry. Another of the institutions aimed at resolving disputes in the energy sector was formed at the end of 2014 in Australia, the Perth Centre for Energy and Resources Arbitration (PCERA). All these centers also offer the additional facility of enlisting arbitrators who are experts in that field.

Likewise, in recent times there has been a significant increase in the use of arbitration by banks and other financial institutions. This may be a result of the increased complexity of disputes as a result of the excessive complication of financial products and activities of financial organizations such as the International Swaps and Derivatives Association (ISDA), which promote arbitration as a method of dispute resolution in the financial sector.

Yet another initiative highlighting the trend of specialization of arbitration was the founding in August 2014 of the Shanghai Aviation International Court of Arbitration (SHIACA), which is the world's first arbitration institution specializing in disputes arising in the field of civil aviation. One of the primary tasks SHIACA is to promote arbitration as a method of resolving disputes between airlines, airports, gas companies and catering companies.

In the infrastructure sector, even India has recognised the need for building expertise relating to arbitrations in the infrastructure sector and the Infrastructural Construction Industry Arbitration Council (CIAC)- New Delhi has come to be established.

Therefore it is clear that specialisation is, of course, inevitable as certain areas of economic activity or relations are subject to specific laws and regulations and/or develop particular customs and conventions. Another sign of specialisation in arbitration is the drawing up of specialist arbitration rules adapted to the specific needs of the industry in question. Examples include the JCT Construction Industry Model Arbitration Rules (CIMAR) and the LMAA Terms (both of which are used in ad hoc arbitrations).

There are, of course, powerful arguments in favour of specialist arbitration centres, which bring together and foster the development of specialist expertise, and some of which have been operating very successfully for decades. Equally, many specialist arbitrations are conducted on an ad hoc basis, such as in the maritime and commodity trading industries

In short, whilst specialisation within arbitration is inevitable and, indeed, desirable, there does not appear to be any compelling reason why it cannot be accommodated within the general framework of existing 'generalist' arbitration centres and rules. It might be that some form of specialist arbitrator rosters, rules and/or guidance could be introduced by such institutions, but their practical utility might still be quite limited. Parties would more likely rely on their own knowledge, or that of their specialist counsel, in nominating/appointing arbitrators, whilst for the institutions themselves it might be more efficient to cooperate with specialist arbitrators' associations rather than maintain their own rosters.

The author is Mr. N.L. Rajah, Senior Advocate, Madras High Court and Director, Nani Palkhivala Arbitration Centre

NANI PALKHIVALA ARBITRATION CENTRE XI ANNUAL INTERNATIONAL CONFERENCE

The need for institutional arbitration is recognized now more than ever and Nani Palkhivala Arbitration Centre (NPAC) has constantly endeavored to make effective contributions towards building a competent Arbitral Regime in India. NPAC is also in the forefront of the dialogue on benefits of institutional arbitration by hosting conferences, events and through publications. Further, NPAC organizes training programs in collaboration with the Chartered Institute of Arbitrators, London, in order to develop a body of competent Arbitrators in the society.

NPAC takes great pride in inviting you to be a part of its Annual International Conference to be held on Saturday, February 16th, 2018. The highlight of the Conference is the opportunity it affords for interacting with panelists who are experts in the field of Arbitration, from both India and abroad, and provides a good forum for networking.

The 11th edition of NPAC's flagship annual International Conference on arbitration law and practice seeks to continue its rich tradition and the agenda is packed with intriguing topics for discussion. As always, the speakers are distinguished experts in the field of arbitration who will impart their knowledge, experience and share their opinions in relation to the theme of the conference: *'Arbitration Regime in India Evolving Opportunities and Daunting Challenges'.*

The Conference is scheduled to be inaugurated by **Lord Peter Henry Goldsmith, QC, Barrister**, who will also be delivering the Keynote Address. The four panel discussions will delve into topics of great relevance to the current scenario, including 'Rise of bilateral investment treaties in arbitration globally and role of national courts'; Applicability of the concepts of renvoi and /or double renvoi for deciding law governing the arbitration agreement; 'The multiple role of experts in arbitration proceedings'; 'Feasibility of two tier arbitrations'; 'Arbitrability of patent license disputes, key developments in international law as well as in India' and discussions about certain landmark judgments delivered in the year 2018.

The Conference is designed to promote stimulating discussions on the law and practice of arbitration, inspired by first hand experiences, extensive networking opportunities and interactive sessions. We believe that you will recognize and appreciate the value of this Conference as something unique in building bridges across continents and getting updated on the current trends in the field of arbitration.

Date: 16th February, 2019 (Saturday)
Time: 9:30 am to 5:30 pm
Venue: Shangri La's Eros Hotel, 19, Ashoka Road, Connaught Place, New Delhi 110 001, India

Registration Details:

The Conference is open to arbitration professionals, advocates, CEOs, in-house counsels, accountants, financial intermediaries, academicians and law students

Delegates Residing in India	Rs. 6,500.00 (including GST)
NPAC Members	Rs. 5,200.00 (including GST)
Students	Rs. 2,000.00 (including GST)
International Delegates	USD 300
Annual Members of NPAC	USD 200
International Students	USD 100
Law firms and Corporate Delegates get one free registration upon registration of 5 members.	

Cancellation Policy: We consider the receipt of your registration form as your commitment to attend the Conference. The registration fee is non-refundable. However, a registration may be transferred to another person from the same company or organization at no extra charge, provided that the notice of such change is sent to NPAC at least 48 hours prior commencement of the Conference.

Guidelines for Student Applicants: Last date for completion of the registration process for student applications is 5th February, 2019. The number of seats for students is limited to fifty, which is available on a first come first serve basis. The confirmation of registration is only upon receipt of acknowledgement from NPAC. Kindly note that no spot registrations shall be entertained for student applicants.

Sponsorship Details:

There are various sponsorship opportunities available for the Conference. We look forward to your presence, support and sponsorship.

For further details on registration and sponsorship, kindly reach out to Dr. J. Durgalakshmi, Registrar, NPAC at nparbitration@gmail.com

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