DISPUTE RESOLUTIONS

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Message to the Readers

"*May you live in interesting times*" is a traditional Chinese curse. The period after the 2015 amendments to the Arbitration and Conciliation Act, 1996 has undoubtedly been interesting times. Whether the consequent evolution of the law will turn out better for the Arbitration regime, both international and domestic, will depend on how effectively the law is likely to be implemented.

The last few months have been particularly noteworthy. The applicability of the 2015 amendments to the Arbitration and Conciliation Act, 1996 itself was a bone of contention before various courts. In *The Board of Control for Cricket in India Vs. Kochi Cricket Pvt. Ltd.*, the Supreme Court categorically held that, "*…Section 36 as amended should apply to Section 34 applications filed before commencement of Amended Act*." The result of this is that there is no automatic stay of the Arbitration award even if the award was made before October 2015.

In *Cheran Properties Limited Vs. Kasturi & Sons Ltd. and others* and in *Ameet Lalchand Shah and others Vs. Rishabh Enterprises and other* the Supreme Court elaborated and defined the contours of certain important principles. In the *Cheran properties case*, the enforcement and execution of an arbitration award before the National Company Law Tribunal was discussed and the law was laid down. Likewise, in *Ameet Lalchand case,* the court discussed the jurisprudential basis for holding how a mere allegation of fraud would not preclude a reference to arbitration.

In yet another path breaking judgment, the Supreme Court in *Sundaram Finance Limited Vs. Abdul Samad* dispensed with the necessity of obtaining a transfer decree to enable execution of an arbitration award and held that a party could directly apply to the court which had jurisdiction over the assets.

The one standard accusation against Indian Courts in so far as the arbitration regime is concerned is that they tend to interfere with arbitration awards at the drop of a hat. Two judgments of the Delhi High Court delivered in recent times have done much to allay these fears. In *NHAI Vs. Bsc. Rbm- Pati Joint Ventures*, the Delhi High Court held that the Arbitral Tribunal / Arbitrator was the final arbitrar on factual and legal issues and that, errors "which stop short of perversity" must not be interfered with. Again, in *Delhi Metro Rail Corporation Limited Vs. Delhi Airport Metro Express Private Limited* the Delhi High Court held that the court does not sit as a court of appeal over an arbitral award. These judgments could infuse more confidence about the Arbitration regime in India.

Another interesting development, though not court related is that about 50 leading practitioners in Arbitration law and businessmen assembled in July 2018 at Maxwell Chambers, Singapore for a breakfast seminar on, "Protecting your Investments in India: Developments in Dispute Resolution". By all accounts the discussion sounded a very positive note on the recent developments in arbitration law in India.

We at NPAC hope that this trend would continue and would lead to interesting times in the Arbitral regime that would be a boon and not a bane.

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Legal Updates

❖ **SC sends OYO-Zo Rooms dispute for arbitration**

- OYO and Zostel Hospitality have been locked in litigation ever since OYO in October last year decided to call off a deal to buy Zostel's Zo Rooms. While OYO contested in the Supreme Court that the termsheet for the deal was non-binding, Zostel argued that the arbitration clause in the term-sheet was binding, and sought arbitration.
- Zostel, a portfolio company of US-based Tiger Global Management, had earlier also alleged data theft by OYO during due diligence.
- The Supreme Court has directed OYO and Zostel Hospitality towards arbitration to settle their dispute that followed the terminated acquisition. A three-judge Bench comprising the former Chief Justice of India Dipak Misra, Justice DY Chandrachud and Justice AM Khanwilkar appointed former Chief Justice of India, Justice AM Ahmadi, as the sole arbitrator, whose decision shall be final and binding. The arbitrator has 12 months to reach a conclusion.
  https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/sc-sends-oyo-zo-rooms-dispute-for-arbitration/articleshow/66048279.cms

❖ **Devas seeks to enforce satellite award in the US**

- Three years after winning a US$672 million award in an ICC case against Indian government-owned satellite company Antrix over a terminated telecoms deal, Bangalore-based Devas Multimedia has applied to enforce the award in the US.
  https://globalarbitrationreview.com/article/1174263/devas-seeks-to-enforce-satellite-award-in-the-us

❖ **Supreme Court on 'Place' and 'Seat' of Arbitration:**

- The Bench of former Chief Justice of India Dipak Misra and Justices AM Khanwilkar and DY Chandrachud in the case of Union of India v. Hardy Exploration and Production (India) Inc., determined that the 'place' mentioned in an arbitration clause does not assume the status of 'seat of arbitration' unless the condition attached to the former is satisfied.
- It was held that in the present case, there was neither agreement on the place of arbitration, nor was there any determination made to that effect. Therefore, the Bench held, the word 'place' cannot be used as 'seat' - *"To elaborate, a venue can become a seat if something else is added to it as a concomitant. But a place unlike seat, at least as is seen in the contract, can become a seat if one of the conditions precedent is satisfied. It does not ipso facto assume the status of seat. Thus understood, Kuala Lumpur is not the seat or place of arbitration and the interchangeable use will not apply in stricto sensu."*
- The Bench set aside the Delhi High Court judgment and held that, given the facts of the case, the courts in India have jurisdiction to entertain the application made under Section 34.
  https://barandbench.com/what-the-supreme-court-held-on-place-and-seat-of-arbitration-read-judgment/

❖ **Indian government launches International Research Project on the impact of Bilateral Investment Treaties on investment flows from/to the country**

- The Indian government, through the Centre for Trade and Investment Law (CTIL), a think-tank established in 2016 by the Ministry of Commerce and Industry, in collaboration with Dr. Rishab Gupta, Partner, of Shardul Amarchand Mangaldas & Co., has instituted a survey on experiences and attitudes towards BIT protections, and their importance to FDI flows into and out of India.
- The survey can be accessed here - http://survey.sogosurvey.com/r/r1ocQs , and we understand that the link will remain active until the end of October 2018.
- The outcome of the questionnaire is scheduled to be publicly released by the end of 2018.
  https://hsfnotes.com/arbitration/2018/10/05/indian-government-launches-international-research-project-on-the-impact-of-bilateral-investment-treaties-on-investment-flows-from-to-the-country/

❖ **'Association' referred to in Section 2(1)(f)(iii) of the Arbitration and Conciliation Act would include a consortium of companies, one of which is a foreign company: SC**

- Consortium of M/s Larsen and Toubro, an Indian company, together with Scomi Engineering Bhd, a Company incorporated in Malaysia, filed a petition under Section 11 of the Act before the Supreme Court, for appointing an arbitrator.
- Senior Advocate Gopal Jain appearing for the Consortium, contended that since one of the parties to the arbitration agreement was a body corporate incorporated in Malaysia, it would attract Section 2(1)(f)(ii) of the Act. On the other hand, Senior Advocate Shyam Divan, who appeared for MMRDA, contended that they are really an un-incorporated association and would, therefore, fall within Section 2(1)(f)(iii) as being an association or a body of individuals, provided the central management and control is exercised in any country other than India.
- The bench comprising Justice RF Nariman and Justice Navin Sinha said: "Section 2(1)(f)(iii) of the Act refers to two different sets of persons: an "association" as distinct and separate from a "body of Individuals"For example, under Section 2(31) *of the Income Tax Act, 1961, "person" is defined as including, under sub clause (v), an association of persons, or body of individuals, whether incorporated or not. It is in this sense, that an association is referred to in Section 2(1)(f)(iii) which would therefore include a consortium consisting of two or more bodies corporate, at least one of whom is a body corporate incorporated in a country other than India."*
  https://www.livelaw.in/association-referred-to-in-section-21fiii-of-the-arbitration-and-conciliation-act-would-include-a-consortium-of-companies-one-of-which-is-a-foreign-company-sc-read-judgment/

❖ **India sees first win in treaty case**

- In the state's first known victory in an investment treaty arbitration, India has defeated a US$36 million claim by a French investor in a failed joint venture at a port in West Bengal.
  https://globalarbitrationreview.com/article/1174059/india-sees-first-win-in-treaty-case

❖ **Infosys loses arbitration case, required to pay Rajiv Bansal Rs 12.17 crore plus interest**

- Mr. Rajiv Bansal had dragged the company to arbitration after it halted payouts on his severance pay. The Bengaluru-headquartered IT company Infosys had filed a counter claim against Bansal asking for the refund of the previously paid severance of Rs 5.2 crore and other damages.
- Infosys has been asked to pay its former chief financial officer Rajiv Bansal Rs 12.17 crore with interest, after the arbitration tribunal ruled in the favour of the former executive.
- Infosys could not provide enough evidence to substantiate that Bansal deleted data from company laptop, leading to dismissal of its claim of breach of agreement by the arbitrator.
  https://economictimes.indiatimes.com/tech/ites/infosys-loses-in-arbitration-required-to-pay-rajiv-bansal-rs-12-1-crore-plus-interest/articleshow/65853188.cms
  https://economictimes.indiatimes.com/tech/ites/infosys-fails-to-prove-ex-cfo-deleted-data-from-laptop/articleshow/65927314.cms

❖ **NHPC moves SC against Delhi High Court order on arbitral award**

- The National Hydroelectric Power Corporation (NHPC) has moved the Supreme Court against the order of a larger bench of the Delhi High Court which had dismissed its appeal against the single judge bench order asking it to either pay the arbitral amount to Hindustan Construction CompanyLimited or deposit Rs 40 crore, 75 per cent of the money, with the registry of the high court.
- "The court had overlooked the guidelines formulated by NITI Aayog in its various circulars for release of amount to the contractors during pendency of challenge to arbitration awards," the PSU said.
  https://economictimes.indiatimes.com/industry/energy/power/nhpc-moves-sc-against-delhi-high-court-order-on-arbitral-award/articleshow/65930824.cms

❖ **Government mulls ordinance to fast track settlement of commercial disputes**

- Seeking to improve India's ranking on ease of doing business index, the government is mulling an ordinance which provides for time-bound settlement of commercial disputes and make arbitrators accountable, a senior government functionary has said.
- The bill seeks to help India become a hub for domestic and global arbitration for settling commercial disputes. It provides for a time-bound settlement of disputes as well as accountability of the arbitrator.
  https://economictimes.indiatimes.com/news/economy/policy/government-mulls-ordinance-to-fast-track-settlement-of-commercial-disputes/articleshow/65922659.cms

❖ **A Court deciding 'Section 34' petition has no jurisdiction to remand the matter to arbitrator for fresh decision, reiterates SC**

- The bench comprising Justice Rohinton Fali Nariman and Justice Navin Sinha set aside a Calcutta High Court and observed: "*This Court in a series of judgments culminating in Kinnari Mullick and Another vs. Ghanshyam Das Damani, (2018) 11 SCC 328 held that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the Arbitrator for a fresh decision. It is, therefore, clear that the learned Single Judge's judgment is contrary to this judgment as a result of which both the judgments of the Single Judge as well as the Division Bench have to be set aside.*"
  https://www.livelaw.in/a-court-deciding-section-34-petition-has-no-jurisdiction-to-remand-the-matter-to-arbitrator-for-fresh-decision-reiterates-sc-read-order/

❖ **Order under S. 14(2) of the Arbitration & Conciliation Act can be challenged under Article 227: Allahabad High Court**

- Section 14 (2) confers jurisdiction on the Court to decide on the termination of the mandate of an arbitrator if the controversy remains concerning any of the grounds referred to in Section 14(1)(a).
- The Allahabad High Court ruled that an order passed under Section 14(2) of the Arbitration and Conciliation Act, 1996 can be challenged under Article 227 of the Constitution of India, and that Section 115 of the Code of Civil Procedure cannot be viewed as a bar against the court's extraordinary supervisory jurisdiction.
  https://www.livelaw.in/order-u-s-142-arbitration-conciliation-act-can-be-challenged-under-article-227-allahabad-high-court-read-order/

❖ **No oral evidence needed for request to set aside, rules Indian Supreme Court**

- The Indian Supreme Court has held that an application to set aside an award under the country's 1996 Arbitration Act award "will not ordinarily require anything beyond the record that is before the arbitrator", with no requirement for parties to lead evidence.
  https://globalarbitrationreview.com/article/1173307/no-oral-evidence-needed-for-request-to-set-aside-rules-indian-supreme-court

❖ **Delhi High Court orders release of Rs. 9 crore to Daiichi as first payment in Rs 3,500-crore arbitration award**

- The Delhi High Court directed the release of Rs 9 crore to Daiichi Sankyo, giving the Japanese drugmaker the first payment in the Rs 3,500-crore arbitration award it won against brothers Malvinder and Shivinder Singh in the Ranbaxy sale case.
- However, Daiichi has to commit it will return the money if an appeal by the brothers against the award is upheld.
  https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/malvinder-singh-disobeyed-orders-not-to-deal-with-unencumbered-assets-delhi-hc/articleshow/65687346.cms

❖ **HC refers question to a larger bench**

- Justice SJ Kathawalla was hearing an arbitration application filed by Gautam Landscapes against respondents Shailesh Shah and Gautam Estate under Section 9 of the Arbitration and Conciliation Act seeking protective reliefs pending the final disposal of the arbitration proceedings and the enforcement and implementation of the arbitration award.
- A significant question of law in connection with this case has been referred to be considered by a larger bench. The question is: *Can the court grant ad-interim relief when an arbitration agreement is unstamped or insufficiently stamped?*
  https://www.livelaw.in/if-arbitration-agreement-is-insufficiently-stamped-can-court-grant-ad-interim-relief-kathawalla-j-of-bombay-hc-refers-question-to-a-larger-bench/

❖ **Third parties to arbitration proceeding entitled to appeal if they are affected by arbitrator's decision: Bombay HC**

- Justice RD Dhanuka heard a batch of 13 petitions filed under section 37 of the Arbitration & Conciliation Act, wherein the petitioners prayed for leave to appeal against the order passed by a sole arbitrator dated December 27, 2016, and an order by the high court dated November 17, 2017, in an arbitration proceeding between Excel Metal Processors Pvt Ltd (Respondent No.1) and Shakti International Pvt Ltd (Respondent No. 2).
- In a landmark judgment, the Bombay High Court has held that a third party to an arbitration proceeding has the right to maintain an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, if they are affected by an order passed by an arbitrator under Section 17 of the said Act.
  https://www.livelaw.in/third-parties-to-arbitration-proceeding-entitled-to-appeal-if-they-are-affected-by-arbitrators-decision-bombay-hc-read-judgment/

❖ **No appointment of arbitrator if there is violation of conditionality clause in Arbitration Agreement: SC**

- While setting aside a Madras High Court judgment appointing an arbitrator ignoring the conditionality clause in an arbitration agreement, the Supreme Court bench comprising of former Chief Justice of India Dipak Misra, Justice AM Khanwilkar and Justice DY Chandrachud have observed that, even after the 2015 amendment insertion of sub-section 6A in Section 11 of the Arbitration and Conciliation Act, the arbitration clause has to be interpreted strictly considering the conditionality clause.
- The apex court took note of a judgment rendered by a three-judge bench in *Oriental Insurance Company Limited vs. Narbheram Power and Steel Private Limited* that held that if a clause stipulates that under certain circumstances there can be no arbitration, and they are demonstrably clear, then the controversy pertaining to the appointment of arbitrator has to be put to rest.
  https://www.livelaw.in/no-appointment-of-arbitrator-if-there-is-violation-of-conditionality-clause-in-arbitration-agreement-sc-read-judgment/

❖ **Kowepo warns of arbitration if fuel supply pact dishonoured**

- Korea's state power utility has begun arbitration proceedings against India for not honouring fuel supply commitment to its gas-based power plant in Maharashtra. Korea Western Power Company (Kowepo a subsidiary of Korea Electric Power Corp) owns 40% in Pioneer Gas Power Limited (PGPL) that operates a 388 Mw project in Raigad district.
- Kowepo is protected under India-Korea bilateral investment treaty (BIT) and Comprehensive Economic Partnership Agreement (CEPA) and it has sought resolution of issues surrounding its project in six months or $400-million compensation for loss and damages.
- If the issues remain unresolved after six months, Kowepo will commence international arbitration proceedings under India-Korea BIT and CEPA, a government official said quoting the notice.
  https://economictimes.indiatimes.com/industry/energy/oil-gas/kowepo-warns-of-arbitration-if-fuel-supply-pact-dishonoured/articleshow/66309804.cms

PARTY APPOINTED ARBITRATORS

One of the main concerns of the users of arbitration, as to its efficiency as a means of dispute resolution, involves the role of party appointed arbitrators in the operation of arbitration tribunals.

The system of party appointed arbitrators traces its historical background to almost 100 years back. It commenced somewhere in the early 1900s in the United States of America where typical labour contracts provided for arbitration as the only form of dispute resolution. Even today, collective bargaining agreements in the USA provide for arbitrations in which the management appoints an arbitrator; the union appoints another arbitrator; and the two jointly select the third arbitrator. This is probably the beginning of the much criticized party appointed arbitrator system, which continues till date. As commercial arbitrations became popular and wide spread, the approach to arbitrator selection resulted in party appointed arbitrators who were expected to advocate for the party that appointed them. In other words, the major criticism was and is that the union appointed arbitrator was and is sympathetic to the workers' claim and that the management appointed arbitrator was and is expected to favour the company.

It was around 9 years back that the debate regarding party appointed arbitrators was reignited when Prof. Jan Paulson, during his lecture in the Miami School of Law, stated that party appointed arbitrators are likely to act as an arbitrator advocate on behalf of the party who appoints them and perceived this as a moral hazard for international dispute resolution. Prof. Paulson recommended that any arbitrator should be chosen jointly by a neutral body.

At this juncture it is imperative to note the process followed since 2013 in India, which may be called the screener selection process of party appointed arbitrators. This is a unique selection process of appointing arbitrators that stems from the rules of the International Institute for Conflict Resolution & Prevention ("**CPR**") and addresses most of the concerns mentioned above. Rule 5.4 (d) of the CPR Rules for Administered Arbitration of International Disputes provides for a panel of three arbitrators where two of the arbitrators are to be selected by the parties without knowing which party nominated each of them.

CPR discusses with the parties regarding the qualifications and experience that the parties are looking for in their arbitrators. CPR then searches from its panel of distinguished arbitrators and the parties are provided with a list of eligible candidates who are required to confirm their availability to serve as arbitrators, their fees and also disclosure of any circumstances that may give doubts about their independence and /or impartiality. Both parties are required to select their top three candidates in order of preference from the list of its party appointed arbitrators. The Institute thereafter appoints the arbitrators based on the order of preference indicated by the parties.

The CPR Arbitration rules provide that both the parties and the CPR are prohibited from disclosing any information regarding and / or indicating which party selected which arbitrator. In other words, CPR the institute acts a 'SCREEN' enabling the parties to appoint arbitrators without the arbitrators knowing which party appointed which arbitrator. So the objectives of impartiality and independence are ensured thus eliminating the risk of bias by the arbitrator in favour of the appointing party while at the same time preserving the parties' right to appoint their arbitrator.

The United States Capital Market Security Exchange Commission (SEC) which regulates the U.S. security market and Securities and Exchange Board of India (SEBI) which regulates the Indian securities market have a somewhat similar system. CPR, SEC and SEBI's panel called 'Panel of Distinguished Neutrals' have around 600 neutrals worldwide, SEC has as many as 6000 arbitrators spread over 50 states of the USA and couple of other international locations. SEBI has around 350 arbitrators spread over around 18 locations all over India, on its panel.

In case of SEC it is the SEC that sends the names of 10 to 12 arbitrators to choose from its panel of arbitrators. The neutral list selection system will generate a list of 10 arbitrators each from the public arbitrator roster, non-public arbitrator roster and from the chair person roaster and the list will be sent to both parties simultaneously. The parties will then receive background information and history of past 10 years for each listed arbitrator.

In India, SEBI has a separate panel of arbitrators in each of 18 locations. It is the address of the investors where the arbitration proceedings are held. The disputing parties are to send the names of arbitrators to the exchange in order of preference. If any names are found common, such an arbitrator is appointed. If no common names are found, both the lists are scrapped and the exchange's designated authority selects the arbitrator from the residual names.

Contrary to the traditional format of having odd number of arbitrators, London Metal Exchange (LME) which is a Commodity Exchange where non-ferrous metals (other than gold, silver and platinum metals) like copper, zinc, lead, etc. are traded, initially involves the appointment of two arbitrators. In case of a failure to arrive at an agreement on the award, then an umpire is brought in. Under the English Act 1996 (UK) in such a scenario where the empire replaces the party appointed arbitrators, they (the earlier party appointed arbitrators) argue the case on behalf of the parties before the umpire, who is required to make a final decision.

At this point, I would also like to mention the rise of the 'professional arbitrator' whose livelihood predominantly depends on the receipt of appointments to serve as an arbitrator, whose services are remunerated on the basis on demand. Such arbitrators earn substantial fees. Therefore there is a financial incentive behind one's appointment as arbitrator.

This is observed in *Cofely vs. Bingham (2016) EWHC 240 (Comm); 2016 2 ALL E.R (Comm) 129*, a decision of the UK High Court. A trend of repeat appointments by a party, coupled with evidence of partisan behaviour during the hearings led the judge to conclude that apparent bias on the part of the arbitrator had been established.

Chandrakant Kamdar is Hon. Secretary and Fellow of the Chartered Institute of Arbitrators, a Certified Fraud Examiner and a Anti-Money Laundering Specialist. He is also the Director of Training, CIArb India. Having handled 900+ Arbitration Matters as Sole Arbitrator and Presiding or Co-Arbitrator in Panel Matters in the areas of Financial & Commercial matters, Stock Exchanges, Commodity Exchanges, Depository, Insurance, Property etc, he sits on the panel of Arbitrators for various Institutions including the Multi Commodity Exchange of India Limited (MCX), National Stock Exchange of India Limited (NSE), Chartered Institute of Arbitrators (CIArb), Singapore International Arbitration Centre (SIAC) and Dubai International Arbitration Centre (DIAC).

ICC ANNOUNCES 7th EDITION OF ICC INSTITUTE PRIZE

The ICC Institute of World Business Law Prize aims to contribute towards the understanding and progress of international commercial law around the world and to encourage those engaged in focused research on legal issues affecting international business. The ICC Institute's Prize is designed to recognize excellent legal writing in the field of international commercial law, including arbitration.

On behalf of the ICC Institute of World Business Law, ICC India has informed that the 7th edition of the ICC Institute Prize will take place in 2019. The Prize awards 10,000 EUR to an excellent thesis in the field of international commercial law.

It is open to anyone 40 years of age or under as of the deadline date (5 April 2019) who submits a doctoral dissertation or long essay (minimum of 150 pages) drafted in French or English on the subject of international commercial law, including arbitration. For more information on the entry conditions and rules, please visit the ICC Institute Prize webpage.

CONFERENCE ON REPOSITIONING INDIA FOR ARBITRATION: ENVISIONING AN EMPOWERED NATION

OakBridge Publishing Delhi in association with the Nani Palkhivala Arbitration Centre (NPAC) organized a one-day Conference on **'Repositioning India for Arbitration: Envisioning an Empowered Nation'** on 8th September 2018, at Hotel Le Meridien, New. The Conference was attended by General Counsels and Legal Heads of leading organizations and law professionals.

The Conference commenced with a special opening address from **Mr. Arvind P Datar**, Senior Advocate, Supreme Court of India and Director NPAC, introducing the theme of the conference to the delegates.

This was followed by the Keynote address from **Hon'ble Mr. Justice Manmohan**, Judge, Delhi High Court, on the topic ***'India as the preferred Seat and Venue for International Arbitration: Key Issues, Challenges and Way Forward'***. Justice Manmohan expressed the need for a change in the mindset of the State agencies and the legal community and also the need for India's growth as an International Arbitration Centre to be viewed as a matter of national interest. Justice Manmohan discussed six steps that could assist India in becoming a preferred venue including: having a robust Arbitration Bar, creating credible arbitration institutions, offering tax exemptions, and right to be represented by lawyer of choice (foreign lawyers). Thereafter, the Conference Book - a compendium of articles contributed by Arbitration experts, was released at the hands of Hon'ble Justice Manmohan and Mr. Arvind P Datar, during the Conference.

The technical sessions consisted of three Panel Discussions and 3 Keynotes. The first panel analysed the ***'Role of Arbitration as an enabler for Business and Economic Development: Learnings and Recommendations for Policy Intervention and Legislative Amendments'***. Several aspects relating to the contribution of Arbitration to the growth of business, further changes required in the legislation, and the role of Bilateral/Multilateral Investment Treaties were discussed. The panel members were, **Dr. Mool Chand Sharma**, Full Time Member, Law Commission of India; **Ms. Meenakshi Arora**, Senior Advocate; **Ms. Payal Chawla**, Director, NPAC and Founder, Jus Contractus Advocates & Attorneys; **Mr. Anirudh Krishnan**, Empanelled Arbitrator of NPAC and Partner, A K Law Chambers; **Mr. Satvik Varma**, Litigation Counsel, India & New York; and **Mr. Angad Sandhu**, Partner, PSL Advocates & Solicitors.

The second technical session commenced with a keynote address by **Mr. Tejas Karia**, Partner & Head of Arbitration, Shardul Amarchand Mangaldas on the topic ***'Industry Specific Arbitration and the Need for Expert Arbitrators'***. Mr. Karia highlighted the advantage of having industry specific arbitration practitioners and specialist arbitrators in effective conduct of proceedings and savings in time and cost.

The panel discussion in this session delved deeper into the ***'Evolving Role of Arbitration in Infrastructure & Energy Projects: Present Tense to Future Perfect'***. The Panel comprising of **Mr. Shourav Lahiri**, Partner, Reed Smith LLP; **Mr. Rajdeep Choudhury**, Partner, H S A Advocates; **Mr. Ananya Kumar**, Partner, J Sagar Associates; **Dr. Sanjeev Gemawat**, Executive Director & Group CS, Dalmia Bharat Group; and **Mr. Tejas Karia**, Partner & Head of Arbitration, Shardul Amarchand Mangaldas, discussed the specific key issues faced by the Infrastructure & Energy Sector within the current regime of Arbitration in India, the learnings from foreign jurisdictions and the corrective measures that India can undertake to retain arbitrations within the country. These suggestions related to reducing extended hearings, utilizing written submissions, time-bound oral hearings, and Specialist Arbitrators adjudicating the matter.

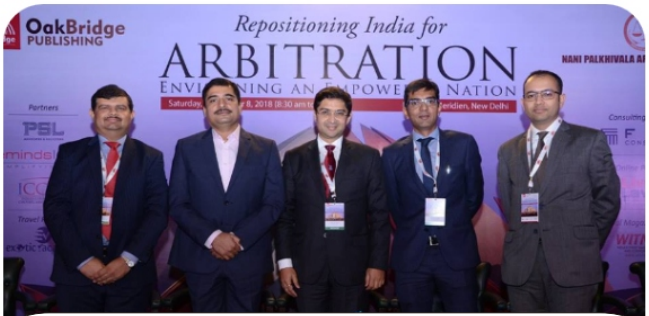
The post-lunch technical session opened with the keynote address by **Mr. Nakul Dewan**, Independent Advocate, Delhi, Singapore & London; discussing the pertinent issue of ***'Embracing the Realities of Arbitration Economics: Costs Vs Benefits'***. Mr Dewan emphasized on arbitration becoming a pre-eminent method of dispute resolution and compared its benefits vis-à-vis litigation for a commercial party. In this background, the economics of arbitration and its costs were juxtaposed against those of Commercial Courts, the only forum that offers similar benefits, to establish that the costs do not vary significantly, while the benefits offered by arbitration in the Indian context outweigh these costs.

The last panel for the day, addressed the topic of ***'Computation of Damages: Catching up with the Global Trends'***. The panel comprised of **Mr. Manish Lamba**, Senior VP Legal, DLF Cyber City Developers Ltd; **Mr. Moazzam Khan**, Head-Global Litigation of Nishith Desai Associates; **Ms. Geetu Singh**, Partner, PwC; **Mr. Montek Mayal**, Managing Director, FTI Consulting; and **Mr. Sanjeev K Kapoor**, Partner, Khaitan & Co.

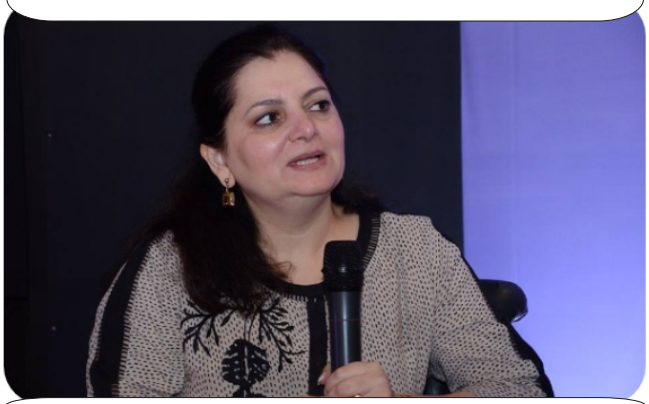
The panel extensively discussed the nuances relating to changing trends in India, including increase in complexity of disputes and computation of damages, the role of quantum experts in the process and a general counsel's perspective on their decision of engaging quantum experts.

The last keynote address was delivered by **Mr. Ganesh Chandru**, Executive Partner, Lakshmikumaran & Sridharan on the topic ***'Building India's Competitive Advantage: Creating a Robust and Supportive Ecosystem for International Arbitration in India'***. Mr. Chandru shared several action-points that will help establish an arbitration conducive environment in India, including a pro-Arbitration judiciary, strengthening Institutional Arbitration, training and accreditation of arbitrators, recognition of emergency arbitrator, Arbitration as a separate module in law schools and emphasis on practical training.

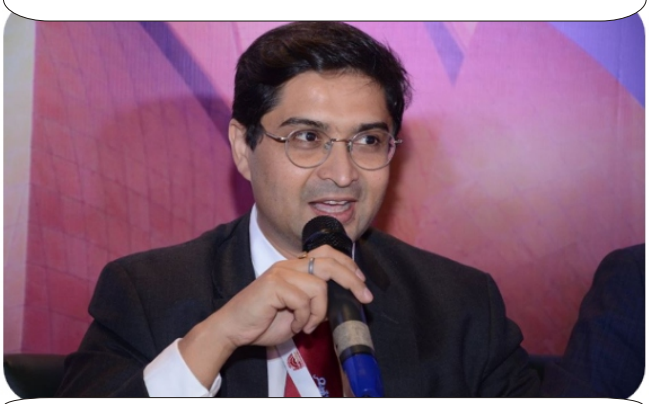
Left to Right **Mr. Vikesh Dhyani**, Co-Founder of Oak Bridge Publishing, **Mr. Arvind P. Datar**, Senior Advocate, Supreme Court of India and Director NPAC, **Mr. Justice Manmohan**, Judge, Delhi High Court; and **Mr. Shreesh Chandra,** Co-Founder of Oak Bridge Publishing.



Left to right - **Mr. Tejas Karia**, Partner & Head of Arbitration, Shardul Amarchand Mangaldas; **Dr. Sanjeev Gemawat**, Executive Director & Group CS, Dalmia Bharat Group; **Mr. Shourav Lahiri**, Partner, Reed Smith LLP; **Mr. Ananya Kumar**, Partner, J Sagar Associates; **Mr. Rajdeep Choudhury,** Partner, H S A Advocates.

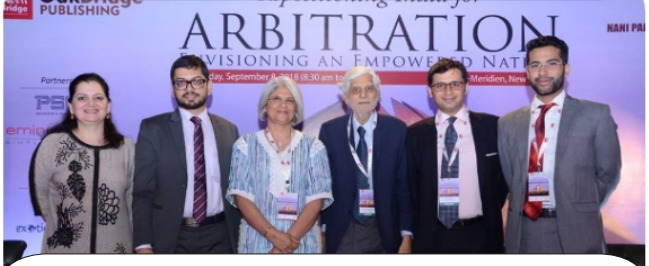


Ms. Payal Chawla, Director, NPAC and Founder, Jus Contractus Advocates & Attorneys, addressing the gathering.



Mr. Shourav Lahiri, Partner, Reed Smith LLP addressing the gathering.

Mr. Arvind P Datar, Senior Advocate, Supreme Court of India and Director NPAC, delivering the Opening Address at the Conference.



Left to right - **Ms. Payal Chawla**, Director, NPAC and Founder, Jus Contractus Advocates & Attorneys; **Mr. Anirudh Krishnan**, Empanelled Arbitrator of NPAC and Partner, A K Law Chambers; **Ms. Meenakshi Arora,** Senior Advocate; **Dr. Mool Chand Sharma**, Full Time Member, Law Commission of India; **Mr. Satvik Varma**, Litigation Counsel, India & New York; and **Mr. Angad Sandhu**, Partner, PSL Advocates & Solicitors.

NPAC'S 11TH ANNUAL CONFERENCE ON ARBITRATION

NPAC strives to educate stakeholders on the benefits of institutional arbitration as a viable mode of dispute resolution and endeavours to shape the growth of the law of arbitration and to provide opportunities for interaction amongst professionals and academicians in the field of arbitration. In this regard, NPAC conducts an annual International Conference on Arbitration. The Conference usually witnesses a confluence of Heads of Legal Departments from public and private corporate houses in India and abroad, Partners/Associates from domestic and foreign law firms, academicians, industrialists and students of law and is a distinctive occasion to network and build lasting relationships.

The Governing Council, the Board of Directors and the entire team of Nani Palkhivala Arbitration Centre (NPAC) have the pleasure of announcing the 11th edition of the Annual Conference of the NPAC on the theme "**Arbitration Regime In India: Evolving Opportunities and Daunting Challenges**", scheduled to be held on the **16th of February, 2018** (Saturday) at **Shangri La's- Eros Hotel, 19, Ashoka Road, Connaught Place, New Delhi-**

NPAC CIArb Courses

Nani Palkhivala Arbitration Centre & Chartered Institute of Arbitrators (UK) India branch jointly announce the following upcoming courses:

(1)'Associate Level Arbitration Course' scheduled to be conducted on the **8th & 9th of December 2018** (Saturday & Sunday) from 9.30 am to 5.30 pm (2 day course), CIArb Introductory Certificate course for Associate grade (ACIArb).

Who Can Attend?
Chartered Accountants, Company Secretaries, Arbitrators, Lawyers, In-house Counsels, Brokers, Academicians, Financial Intermediaries and other Professionals.

How the Course will be Delivered:
Over 2 days at NPAC, Chennai by CIArb-approved tutors.

Candidates will have to appear for an online assessment exam after the course.

(2)'Member Level Module II Arbitration Course' is scheduled to be conducted from November 1st 2018 onwards and the tutorials will be held between **7th , 8th & 9th of December 2018** (Friday, Saturday & Sunday) from 9.00 am to 5.30 pm.

How the Course will be Delivered:
The course is delivered with a combination of private study and tutorials. Written Exam will be conducted on **December 9, 2018.**

(3) Fellow Level Module III Course on **International Arbitration Practice and Procedure** is scheduled to be conducted on **6th & 7th December 2018 (Tutorial & Exam) and 8th & 9th December 2018 (Workshop)** (Thursday, Friday, Saturday & Sunday) from 9.00 am to 6.00 pm.

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