DISPUTE RESOLUTIONS

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Message to the Readers

As is well established and often repeated, the Arbitration and Conciliation Act, 1996 is a complete code in itself. It follows that the remedies contemplated by invocation of Article 226 of the Indian Constitution would only have a limited application in this area. However, as we all know, in law there is hardly a rule without an exception. Following cases are some interesting exceptions to the above-mentioned rule:

In ***Sanjana M. Wig vs. Hindustan Petroleum Corporation Limited (2005) 8 SCC 242***, a two judge Bench of the Supreme Court, speaking through Justice Mr. SB Sinha, observed:

> *"12. The principal question which arises for consideration isas to whether a discretionary jurisdiction would be refused tobe exercised solely on the ground of existence of an alternative remedy which is more efficacious...*
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> *13. However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.[...]*
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> *18. It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefore such a case has to be made out. It may also be true, as has been held by this Court in* ***Amritsar Gas Service [(1991) 1 SCC 533]*** *and* ***E.Venkatakrishna [(2000) 7 SCC 764]*** *that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963;*

but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question off act is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent."

In ***HarbanslalSahnia and another vs. Indian Oil Ltd. and others A.I.R. 2003 S.C. 2120,*** the Court held that:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged ***[Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.,AIR1999SC22]*** *. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."*

The Supreme Court, recently in ***Rapid MetroRail Gurgaon Limited vs. Haryana Mass Rapid Transport CorporationLL 2021 SC 194*** observed that ordinarily a High Court in its jurisdiction under Article 226 of the Constitution has to decline to entertain a dispute which is arbitrable, unless there is a fundamental issue of public interest. The bench comprising Justices DY Chandrachud, MR Shah and Sanjiv Khanna observed that, while considering appeals filed by Rapid Metrorail Gurgaon Limited ("**RMGL**") against the order passed by the Punjab and Haryana High Court in writ petitions filed by Haryana Mass Rapid Transport Corporation (challenging termination notices issued by RMGL), though there was an arbitration clause, the High Court had entertained the writ petition. In appeal, the apex Court noted that the High Court was concerned over a fundamental issue of public interest, which was the hardship that would be caused to commuters who use the rapid metro as a vehicle for mass transport in Gurgaon, if there were to be abrupt termination of the contract with the Haryana Mass Rapid Transport Corporation. In this context, the bench observed:

"As such, the High Court's exercise of its writ jurisdiction under Article 226 in the present case was justified since non-interference, which would have inevitably led to the disruption of rapid metro lines for Gurgaon, would have had disastrous consequences for the general public. However, as a measure of abundant caution, we clarify that ordinarily the High Court in its jurisdiction under Article 226 would decline to entertaina dispute which is arbitrable. Moreover, remedies are available under the Arbitration and Conciliation Act, 1996 for seeking interim directions either under Section 9 before the Court vested with jurisdiction or under Section 17 before the Arbitral Tribunal itself."

In ***Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and Ors(2020) 15 SCC 706*** the Court observed:

> *"13. This being the case, there is no doubt whatsoever that if petitions were to be filed Under Articles 226/227 of the Constitution against orders passed in appeals Under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante Clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed Under Article 227 against judgments allowing or dismissing first appeals Under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."*

The Supreme Court in ***Navayuga Engineering Company vs. Bangalore Metro Rail Corporation Limited [CA 1098-1099 OF 2021]*** held that:

> *"Despite this Court repeatedly referring to Section 5 of the Arbitration Act in particular and the Arbitration Act in general and despite this Court having laid down in **Deep Industries Ltd. Vs. ONGC &Anr. (2020) 15 SCC 706** that the High Court under Article 226 and 227 should be extremely circumspect in interfering with orders passed under the Arbitration Act, such interference being only in cases of exceptional rarity or cases which are stated to be patently lacking in inherent jurisdiction, we find that High Courts are interfering with depositorders that have been made. This is not a case of exceptional rarity or of any patent lack of inherent jurisdiction."*

These cases give us some idea of instances where notwithstanding the existence of an arbitration clause courts have intervened in exercise of powers under Article 226 of the Indian Constitution.

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Director, NPAC

LEGAL UPDATES

❖ **Indian parties can choose a foreign seat for arbitration: Supreme Court**

- In the recent case of ***PASL Wind Solutions Private Limited vs. GE Power Conversion India Private Limited***, a three-judge bench of the Supreme Court comprising of Justice Rohinton Fali Nariman, Justice BR Gavai and JusticeHrishikesh Roy confirmed that *"Nothing stands in the way of party autonomy in designating a seat of arbitration outside India even when both parties happen to be Indian nationals".*
- The judgment analyzed relevant provisions ofthe Arbitration and Conciliation Act, 1996, various precedents and observed that Part I and Part II of the Arbitration Act are mutually exclusive and that *"nothing stands in the way of party autonomy in designating a seat of arbitration outside India even when both parties happen to be Indian nationals…".* The Court also analysed the issue against relevant provisions of the Commercial Courts Act, 2015.
- The Court further held that: "*It can be seen that section 28(1)(a) of the Arbitration Act makes no reference to an arbitration being conducted between two Indian parties in a country other than India, and cannot be held, by some tortuous process of reasoning, to interdict two Indian parties from resolving their disputes at a neutral forum in a country other than India."* and *"The balancing act between freedom of contract and clear and undeniable harm to the public must be resolved in favour of freedom of contract as there is no clear and undeniable harm caused to the public in permitting two Indian nationals to avail of a challenge procedure of a foreign county when, after a foreign award passes muster under that procedure, its enforcement can be resisted in India on the grounds contained in section 48 of the Arbitration Act, which includes the foreign award being contrary to the public policy of India."*
  https://www.livelaw.in/top-stories/indian-parties-can-choose-a-foreign-seat-for-arbitration-supreme-court-172863

❖ **Mutually changed venue becomes 'seat of arbitration': Supreme Court**

- In the case of ***M/s Inox Renewables Ltd v Jayesh Electricals Ltd****., a bench of the Supreme Court comprising* Justices Rohinton Fali Nariman and Hrishikesh Roy held that when parties change the ' venue/place of arbitration' by mutual agreement, the new venue/place will become the 'seat of the arbitration'.
- The Court observed that. "…the parties may mutually arrive at a seat of arbitration and may change the seat of arbitration by mutual agreement which is recorded by the arbitrator in his award to which no challenge is made by either party"
- The bencjanalyzed the judgements in ***BGS SGS Soma JV vs NHPC Ltd.*** and ***Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited***, and observed as follows: *"…the moment the seat is chosen as Ahmedabad, it is akin to an exclusive jurisdiction clause, thereby vesting the courts at Ahmedabad with exclusive jurisdiction to deal with the arbitration…"* and *"…the "venue" being shifted from Jaipur to Ahmedabad is really a shifting of the venue/place of arbitration with reference to Section 20(1), and not with reference to Section 20(3) of the Arbitration and Conciliation Act, 1996, as it has been made clear that Jaipur does not continue to be the seat of arbitration and Ahmedabad is now the seat designated by the parties, and not a venue to hold meetings…*

Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the Courts at Ahmedabad, given the change in the seat of arbitration."
https://www.barandbench.com/news/litigation/courts-at-the-seat-of-arbitration-have-exclusive-jurisdiction-to-regulate-arbitral-proceedings-supreme-cour
https://www.livelaw.in/top-stories/when-parties-change-venue-of-arbitration-changed-venue-becomes-seat-of-arbitration-supreme-court-172731

❖ **After setting aside arbitral award, court can appoint anew arbitrator with parties' assent: Calcutta High Court**

- In the case of ***Jagdish KishinchandValecha vs.Srei Equipment Finance Limited &Anr.***Justice Moushumi Bhattacharya of the Calcutta High Court set aside an arbitral award as she found that the arbitrator had arbitrated other proceedings involving the award-holder and had also been engaged as a counsel as well as consultant for the respondent in the past.

- The Court held that, *"...The basic premise is that the parties who have come to the Court cannot be without a remedy when they have agreed that the matter should go before a different Arbitrator. The 1996 Act does not curtail the power of a Court to mould the relief in fit cases provided the relief is not repugnant to the law as existing on that date."* and that *"The Arbitration and Conciliation Act, 1996, ensures party autonomy at all levels right through the dispute resolution process and even to the procedure for challenge to the award. The freedom of the parties to decide on the next course of action must therefore be preserved in the facts of the present case."*
https://www.livelaw.in/news-updates/court-can-appoint-new-arbitrator-on-parties-assent-calcutta-high-court-172707

❖ **Threshold tests for an anti-arbitration injunction more exacting than those applicable for anti-suit injunction: Madras High Court**

- The Madras opined as above in the case of ***ADM International Sarl vs. Sunraja Oil Industries Private Limited and ors.*** and expressed agreement with the findings of the Delhi High Court in ***McDonalds India Pvt. Ltd. v. Vikram Bakshi***.
https://www.barandbench.com/news/litigation/threshold-tests-anti-arbitration-injunction-madras-high-court

❖ **Proceedings under Section 34 of Arbitration Act also covered by moratorium under Section 14 IBC: Supreme Court**

- In the case of ***P Mohanraj&Ors. vs. M/s Shah Brothers Ispat Ltd***., abench comprising of Justices RF Nariman, Navin Sinha and KM Joseph observed that an application under Section 34 of the Arbitration Actto set aside an award is covered by moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.
https://www.livelaw.in/top-stories/moratorium-under-section-14-ibc-covers-section-138-ni-act-proceedings-against-corporate-debtor-supreme-court-170508

❖ **Arbitral Tribunal ought to decide Section 16 objection as soon as possible as a preliminary ground: Delhi High Court in *Surender Kumar Singhal vs. Arun Kumar Bhalotia***
https://www.barandbench.com/news/litigation/arbitral-tribunal-decide-section-16-objection-soon-possible-preliminary-ground-delhi-high-court

IN CONVERSATION WITH MR. SHARATH CHANDRAN, ADVOCATE

1) Could you tell us about yourself, your entry into the legal world, and your current practice?

→ I practice law primarily at the Madras High Court with occasional sojourns to the High Court of Kerala and the Supreme Court. I completed my law from ILS Law College, Pune, and then went on to complete my Masters from the University of Oxford. I then joined the chambers of Mr. V. Raghavachari, Advocate. I have been practicing for a decade on the civil, criminal and constitutional sides.

2) Could you tell us about why the Commercial Courts Act, 2015 is a milestone legislation for India and its commercial law practice?

→ The Commercial Courts Act is intended to bring about a change in the litigation culture across the country. Its origins can be traced to 2003 when the Law Commission, *suo motu*, took up the issue to examine the creation of separate commercial courts for expeditious disposal of commercial causes. The Law Commission found that litigants preferred suing in foreign jurisdictions owing to the prolonged time period (in some cases in excess of 10 years) needed to conclude a litigation in India. This resulted in a situation where foreign Courts started entertaining challenges against Indian litigants even where the cause of action had accrued wholly on Indian soil.

→ India is one of the countries annually assessed in the "Doing Business Report" a World Bank flagship publication that examines business regulations across 12 indicia culminating in an Ease of Business score. One of the 12 indicia is the ease of enforcing contracts, measured in terms of the time and cost involved in the resolution of commercial disputes. In 2014, the Report said that it took 1420 days to effectively enforce contracts in India. This proved to be a vital turning point. The enactment of the Commercial Courts Act, 2015 ("**Act**") was favourably noticed in the 2017 report and by 2020, India's ranking had improved to 63 from 130 in 2017 largely on account of the improved measures for effective and timely resolution of commercial disputes.

3) How did you chance upon finding this subject to be the choice of a commentary? What was your inspiration?

→ In the course of my practice, I noticed that there was hardly any material to afford any form of legitimate guidance for practitioners and judges. Every other day you would find the perennially troublesome issue of whether a particular case fell within the net of the definition of a commercial dispute or not. In the past 5 years, the Act has generated quite a bit of litigation in this area especially from Delhi. For me, an additional advantage was that I had done the U.K Civil Procedure course during my masters, and I was, therefore, familiar with the terms and other procedural innovations in the U.K Civil Procedure Rules, 1998. On examining the Act, I found that several provisions were mirror images of the provisions in the U.K. I therefore decided to put my experience to write a commentary that may be of some assistance to judges, lawyers, litigants and academics.

4) I understand that this book was completed during the lockdown of 2020. How was the experience of writing this book? Arduous surely, especially keeping in mind that there isn't much of judicial precedent too.

→ Yes, the book was written entirely during the lockdown. Combing through the case law, one had to bear in mind that decisions on procedural aspects, strictosensu, do not constitute precedents. At the very highest, they may afford some guidance on the mode and manner in which discretion may be exercised while deciding the procedural aspects of a case. However, with some time to spare, I had the benefit of looking through the Law Commission Reports, the Reports of the Select Committee and case laws in the UK to facilitate a comparative analysis and to strengthen the analysis of various provisions in the Act. This material gave me a stronger foothold while writing the book. I must say, it was a refreshing and thoroughly enjoyable experience.

5) The Commercial Courts Act, 2015 envisages a code on procedural aspects as well. Could you please tell us more about that?

→ What the Act has done is that it amends the Code of Civil Procedure, 1908 in its application to cases before the Commercial Courts and Commercial Divisions (vide Section 16). The Act imposes additional obligations on parties to plead facts with clarity and truthfulness, and has introduced a time bound process for completing discovery and inspection of documents. It is no longer open to a defendant to casually file written statement as and when he chooses to do so. The amended Order VIII makes it clear that the defendant will lose his right to file a written statement if he fails to file the same within 120 days from the date of service of summons. This was necessitated on account of the fact that many cases were being fought on interlocutory applications for years on end, and the completion of pleadings, in most cases, would only be done thereafter.

→ The Act has also introduced a case management hearing, which is intended to enable the Court to settle all the procedural aspects of the case like framing issues, fixing the dates for filing the affidavits of witnesses, dates of recording evidence etc. Order XV-A Rule 6 gives wide powers to the Court to ensure that the parties do not resort to dilatory tactics to derail the recording of evidence. Similarly, Order XIX Rule 4 has been introduced to empower the Court to control the quantity and quality of evidence. The object of these procedural innovations/tweaks is to enable commercial causes to be completed in a time bound manner.

6) What are your thoughts on the idea of an ideal Commercial Court in the Indian setting, from the district levels to the national stage?

→ I don't think it is possible to pin point a model as an “ideal Commercial Court”. We must remember that the Law Commission itself had envisaged these procedural innovations as a mode of improving litigation culture in India. The procedural innovations in the Act were intended to be incorporated into the CPC for other types of litigation in a phased manner. Section 20 imposes a duty on the State Government, in consultation with the High Courts, to establish infrastructural facilities for training judges in the Commercial Courts and Commercial Divisions. This is an extremely important provision, as without adequate training and expertise, it would not be possible to harness the benefits that flow from the procedural innovations under the Act.

→ If the provisions of the Act are implemented with a no-nonsense approach, it would help stem the devious trend of commercial disputes ending up in police stations for resolution.

7) A prime feature of the Commercial Courts Act is the pre-suit stage mediation. How do you assess this?

→ Mandatory pre-suit mediation was introduced by the 2018 Amendment vide Section 12-A. The legislators drew inspiration from Italy where it was found that mandatory pre-suit mediation had successfully offloaded 43.6% of the litigation from an overworked and overburdened Italian judiciary. The Italian bar and bench were initially resistant to adopt mediation. However, as its benefits became apparent to all stake holders, mediation has now been embraced as a measure to clear unnecessary litigation in a quick and cost effective manner

→ Section 12-A makes pre-suit mediation mandatory where no urgent interim relief is 'contemplated' by the plaintiff. Courts have held that the expression contemplated cannot be equated to 'entitlement' with the result that the Commercial Court cannot refuse to number a plaint citing non-exhausting of pre-litigation mediation, as the entitlement to any relief could be examined only post the numbering of the suit. The State and District Authorities under the Legal Services Authorities have been notified as the authorities under Section 12-A vide the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.

→ Mediation has worked in Italy, and Section 12-A serves a novel purposes as it empowers the Court to enable the parties to work towards a quick and amicable resolution freeing the dockets of the Commercial Courts/divisions from unnecessary litigation. One of the key elements of the new Act is to use the scarce judicial resources in an optimal manner. Mediation is a crucial method by which this objective can be successfully achieved.

8) Another aspect relates to case management hearings. Could you please throw light upon this provision and how it seeks to cut delays?

→ The case management procedure introduced vide Order XV-A was originally introduced into English Civil Procedure by the U.K Civil Procedure Rules 1998. The Law Commission recommended the introduction of the case management procedure for commercial disputes in India. The idea of case management is to encourage the Courts to actively monitor the progress of the case by **(a)** delivering effective case management directions such as controlling the quality and quantity of evidence, so as to enable the case to move swiftly;and **(b)** enforcing directions already given and applying a no-nonsense approach thereafter. The idea of case management is to ensure that the judge remains on top of the case at all times. It was found that that where the parties were left to chart the course of litigation, the time and resources of the Court were being wasted in pointless applications. Case management enables the Court to chart out the course of litigation by fixing time lines for every stage. Order XV-A Rule 6(2) enables them to pass conditional orders to see that the directions given are adhered to in letter and in spirit. The whole idea is to ensure that the litigation is completed effectively in a time bound manner.

9) Your comments on how the current regime in India can be reformed both from statutory and judicial angles?

→ I think the biggest drawback is that the procedural innovations/ reforms do not touch the execution chapter at all. Those practicing on the civil side would vouch for the fact that getting a decree is only a pyrrhic victory. The real battle is the stage of execution. The present Order XXI has not been touched by the Act. Even though the commercial litigant is able to get a decree expeditiously, he is driven to the same old Order XXI to realise the fruits of such a decree. Order XXI requires a thorough re-look and this is an area where Parliament and the Law Commission must bestow serious attention.

→ The structure of appeals contemplated under the Act is wholly unsatisfactory. I have dealt with the incongruities arising out a wholesale import of Order XLIII of the Code into Section 13 in Chapter 6.12 of the book. This is an area that requires a serious re-look.

10) Could you please tell us about the references to global developments in law and practice that you utilised for your commentary?

→ I have extensively drawn from the U.K Civil Procedure Rules in the Summary Judgment and Case Management Chapters. This is because these provisions are largely a wholesale import of the corresponding provisions in the U.K. We have the benefit of about 20 years of case law in the UK Civil Procedure Rules in these two areas which can give our judges some guidance on optimally utilizing these provisions to facilitate the larger goal of a fair and expeditious disposal of the suit. I have also drawn from the White Book (which contains the source of law relating to the practice and procedure of the High Court of England and Wales) to supplement the commentary on these areas.

→ The chapter on 'Costs' is another important area where the Act largely draws upon the provisions of the U.K Civil Procedure Rules. The Courts can now deviate from the general costs follow the event rule, and award 'issue based' costs orders in view of the proviso to Section 35(2) of the CPC (as amended). So you could have a situation where the plaintiff succeeds, on the whole, but still would not be entitled to costs if he has lost on some or most of the issues framed in the case. A more responsive costs regime has been put in place to empower Courts to impose deterrent costs to ward off frivolous and adventurous litigants.

11) In the long line of statutes governing commercial law in India, this Act aims to consolidate and streamline procedure and practice. How do you think that this will develop into a completely new area of practice? Particularly, when there is already an Original Side of the Bar in Chartered High Courts, how will these two dimensions interact?

→ The High Courts of Bombay and Calcutta still have a commercial causes Chapter in their original rules. The Madras High Court had one till it was deleted in 1994 pursuant to the committee headed by Justice M. Srinivasan. The major cause for the failure of these provisions was that the power of the judge to expedite the suit was limited to the existing drill of the very same provisions in the CPC. This meant that a commercial cause suffered the same fate as the cases in the general list.

→ The objective of the Act is to effect a reform in civil procedure within the existing legal framework. The Law Commission, in its 253rd Report, was clear that the Act should be seen as a stepping stone to reforming the civil justice system in India. Far from carving out a separate space for itself, the objective of the Act is to invigorate the existing regime by weeding out procedural delays, and optimising the disposal of the case at a reasonable cost to the litigant. The long term goal is to extend the benefits of the procedural reforms across the Board.

12) On a concluding note, please tell us your wishlist for a better commercial law regime for India? More in terms of policy and business practices, than the law itself?

→ There is no doubt that continuous training of judges and practitioners is a must for the success of this regime. The Act aims at triggering a change in the culture of civil litigation in the country. Like most things, the stakeholders are, at first, resistant to change. However, once the benefits start to show, the change will become the new norm. To achieve this, training and equipping judicial officers and lawyers with the procedural tools under the Act is a must without which the Act will simply be old wine in a new bottle. It is desirable that a separate filing system with dedicated staff are allotted to the Commercial Court/Commercial Division so as to prevent over burdening the existing infrastructure.

FUTURE OF COMMERCIAL LITIGATION IN INDIA AND WHAT WE CAN LEARN FROM UK'S EXPERIENCE: A VIRTUAL FIRESIDE CHAT

Below is a brief note on a virtual panel discussion hosted by Nani Palkhivala Arbitration Centre on 27th February, 2021.

Nani Palkhivala Arbitration Centre hosted and held a virtual panel discussion on the topic 'Future of commercial litigation in India and what we can learn from UK's Experience' on 27th February, 2021.This event featured an eminent panel consisting of Hon'ble Mr. Justice Sanjay Kishan Kaul, Lord Peter Goldsmith QC, Mr. Arvind Datar and Mr. Gaurav Pachnanda.

Mr. Gaurav Pachnanda introduced the panel members and set the context for the discussion by requesting Mr. Arvind Datar to speak on the features of Commercial Courts Act, 2015 (India) and on how it is making an attempt to improve the ordinary civil court system in India. Mr. Arvind Datar opined that the change was mostly for the better with significant improvements on time lines and costs. However, he highlighted that the lack of adequate judges was a matter of concern. He emphasizedon the need for improving judicial infrastructure, and requested Lord Peter Goldmsith to elaborate on commercial courts in the UK and their system for appointment of judges.

Lord Goldsmith prefaced his remarks by talking about the relative size of United Kingdom (UK) and India and their possible influence on the legal systems of the respective countries. Tracing back to 1895, he spoke of the different court divisions and the legal subjects dealt therein, and of how the key realization that judges needed to understand commercial context and commercial practices led to the evolution of commercial courts in the UK. Speaking of the connection between the commercial courts and the world of business, he also highlighted that the quality of the judges with such specialised knowledge is the reason for the success of the commercial court system in the UK

Hon'ble Mr. Justice Sanjay Kishan Kaul referred to the World Bank's index on 'Ease of Doing Business', and stated that a ranking in the index was hugely dependant on how efficacious a country's judicial system was, which in turn depended on judges' understanding of subject matters. He spoke of a positive correlation between judicial capacity in commercial law and the business environment and relying upon the 253rd Law Commission Report, he stressed the need for trained and experienced professionals being appointed as commercial court judges as a matter of institutional preference. Dwelling on the contradictions in the legal systems, he also spoke of the challenges in getting such specialised practitioners into mainstream judicial appointments and the need for developing a judicial model for attracting commercial law practitioners into accepting judgeship.

Supplementing this discussion, Mr. Gaurav Pachnanda suggested exploring innovative ideas where experienced lawyers could contribute practically through providing training for legal professionals by taking sabbaticals in the midst of their regular practice. He also touched upon comparative practices in the UK, Singapore and India and brought about the idea of appointing temporary or ad hoc judges from the practising experts in the commercial courts, which would allow such experienced busy practitioners the freedom to return to their practice after their positive contribution to the bench.

Lord Goldsmith then delved into the personality of judges and highlighted the importance of judicial temperament in choosing judges for appointment and its impact on the quality of justice. He also spoke on how the quality of professional life differs between practising lawyers and career judges and the effect it casts on the mind of legal professionals. Mr. Datar emphasised the link between a large number of judges and the ability to allocate the commercial court portfolios in High Courts and stressed how uniform procedures could go a long way in reforming the system. He also referred to the impact of resetting the pecuniary jurisdiction for the commercial courts and the primary importance of data analysis relating to commercial courts.

Lord Goldsmith also dealt with the issues and practices in the UK concerning the recording of evidence, case management hearings, transcription of evidences and depositions, front loading of cases relating to preliminary work, for commercial court matters to avoid last minute developments.

Following this, Mr. Gaurav Pachnanda opined that there appears to have been a conscious attempt in India to follow the manner in which commercial trials are conducted in England. He took the example of using case management conferences in a commercial dispute for fixing all time lines, including day to day calendar for recording of evidence, front loading, affidavits, disclosure of documents etc. He stressed on how a proper use of this tool by a judge would be of immense value as it would help to set the stage for a composite trial. Mr. Pachnanda added that greater recognition for filing pre-hearing and post-hearing submissions under the Commercial Courts Act and disclosure and discovery of all relevant documents prior to commencement of a trial, which was a provision very similar to that in England, could be extremely potent tools in improving the quality of commercial trials in India.

Justice Kaul touched upon the subject of arbitrations in the commercial law context and stated that he believed that both systems should grow in parallel. Speaking further on alternative dispute resolution tools in the commercial disputes setting, he spoke of how contentious matters could be sorted through mediation, especially in family linked corporate disputes and emphasized that judges should be trained in mediation, commercial disputes and arbitration so they could take informed decisions on determining the appropriate forum for a certain dispute. Adding to the discussion,

Mr. Datar underlined the value that post litigation mediations (after issues were framed by the court) could add to resolution of commercial disputes which was also encouraged by the other panel members. Lord Goldsmith also highlighted the stakeholder psyche of coping with the prospects of mediation and how global experiences have shaped the UK Model. He stated that one feature of mediation that set it apart from litigation, especially in the context of family business disputes, was the ability to decide issues outside the scope of those issues which were subject to litigation, because often the real problem may be more deep-seated

Subsequently, Justice Kaul spoke about subject and valuation concerns on commercial law and said that only a few tribunals have worked well, due to a lack of specialized people with expertise even within commercial law. He also observed that disputes are sometimes place centric(like maritime disputes) and traced the linked regional growth of litigation especially through the benches of the respective High Courts.

This was followed by a discussion by the panel members on how changes in legal framework or procedural law with respect to commercial courts would need to be supplemented by a cultural shift in the mind set of stakeholders involved in dispute resolution. They discussed how the judicial approach to time lines must be very strict, especially in commercial matters and how training to lawyers and judges must include not only education but also 'discipline of time.

Concluding the fireside chat, all the speakers delivered their comments summarizing the critical changes that could be implemented for a successful working of commercial courts in India.