DISPUTE RESOLUTIONS

The Bi-Monthly Newsletter of the Nani Palkhivala Arbitration Centre

Volume 5 Issue 4 October 2022

Message to the Readers

Fixation of Arbitrator's Fee

Oil and Natural Gas Corporation ("**ONGC**"), in an arbitration proceeding against AFCONS Gunanusa which commenced in 2015, faced a situation where the arbitrators unilaterally increased their fee in 2016.

In May 2018, the arbitrators once again unilaterally revised their fee. ONGC requested that the arbitral tribunal reconsider the revision of fee. When this was refused, ONGC approached the Bombay High Court seeking reconstitution of a new arbitral tribunal under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Bombay High Court dismissed ONGC's petition in 2021. Following this, ONGC approached the Supreme Court.

The then Chief Justice of the Supreme Court, Justice N.V.Ramana constituted a bench consisting of Justice Y.V.Chandrachud, Justice Sanjeev Khanna and Justice Surya Kant to go into the issue as to whether arbitrators could unilaterally fix or revise their fee.

Three other cases where the same question was involved were also posted along with ***ONGC vs. AFCONS.***

The then Attorney General Mr. K.K. Venugopal argued for ONGC and stated that Public Sector Undertakings are under severe scrutiny from the Comptroller and Auditor General of India and cannot justify exorbitant spending on arbitrations unlike private companies who could afford to pay a huge fee to arbitrators.

Dr. Abishek Manu Singh, appearing for AFCONS, pointed out that complex arbitrations ran into multiple sittings and that even if the maximum Fourth Schedule fee of Rs. 30,00,000 was divided by the number of sittings, the per sitting fee would come to only Rs. 30,000, for which amount qualitatively good arbitrators will not be available.

After seven days of arguments, hearings concluded on 11th May and the court reserved judgment.

The Supreme Court by its judgment dated 30th August 2022 held as follows:

a) Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fee. A unilateral determination of fee violated the principles of party autonomy and the doctrine of prohibition of in *rem suam* decisions i.e., the arbitrators cannot be a judge of their own private claims against the parties regarding their renumeration.

b) A party can approach the court to review the fee demanded by the arbitrators if it believed that the fee was unreasonable under Section 39(2) of the Arbitration Act.

c) The arbitral tribunal has the discretion to apportion cost (including arbitrators fee and expenses) between the parties in terms of Sections 31(8) and 31-A of the Arbitration Act and also to demand a deposit (advance on cost). It also held that the arbitral tribunal can only exercise a lien over the delivery of arbitral award if the payment to it remains outstanding under Section 39(1) of the Arbitration Act.

d) The Court has also issued certain directions to govern proceedings related to fixation of arbitrator's fee in ad-hoc arbitration proceedings.

e) The Court held that the term 'sum in dispute' in the Fourth Schedule of the Arbitration Act refers to the 'sum in dispute' in a claim and counter claim separately and not cumulatively. Consequently, arbitrators shall be entitled to charge a separate fee for the claim and counter claim in an ad-hoc arbitration proceeding and the fee ceiling fixed in the Fifth Schedule will apply separately to both.

f) The ceiling of Rs. 30,00,000 in entry (vi) of the Fourth Schedule is applicable to the sum of the base amount and the variable amount over and above it. The highest fee payable shall be Rs. 30,00,000. The ceiling is applicable to each individual arbitrator and not the arbitral tribunal as a whole where the tribunal consists of three or more arbitrators. Of course, a sole arbitrator shall be paid 25% over and above this amount in accordance with the note in Fourth Schedule.

g) Since most High Courts have not framed rules for determining the arbitration fee, taking into consideration the Fourth Schedule of the Arbitration Act, the Fourth Schedule is not mandatory on court appointed arbitrators in the absence of rules framed by the concerned High Court.

h) Moreover, the Fourth Schedule is not applicable to international commercial arbitrations and arbitrations where parties have agreed that the fee is to be determined in accordance with the rules of arbitral institutions.

Oil and Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV -Arbitration Petition Civil No 05/2022.

Hopefully this judgment has cleared the air on much of the ambiguity surrounding the issue of fixation of arbitrators' fee in an arbitral proceeding.

N.L. Rajah
Senior Advocate, Madras High Court
Director, NPAC

LEGAL UPDATES

❖ **Supreme Court: Court cannot modify an arbitral award under Sections 34 and 37 of the Arbitration Act**

- In the case of ***National Highways Authority of India vs. Sri P. Nagaraju @ Cheluvaiah&Anr.***, the court was considering the appeals filed by NHAI assailing the judgment of High Court of Karnataka which upheld awards passed by Deputy Commissioner and Arbitrator, National Highway 275 (land acquisition), and Deputy Commissioner-1 and Arbitrator Bengaluru Urban District.
- Justices Indira Banerjee and AS Bopanna held, *"Firstly, when we are of the opinion that the learned Arbitrator has committed patent illegality in applying two different notifications in determining the market value, keeping in view the scope available under Section 34 of Act, 1996 it would not be open for this Court to substitute our view to that of the learned Arbitrator and modify the award... the only course open is to set aside the award and allow the learned Arbitrator to reconsider the matter on that aspect"*.
- The Court further reiterated, *"the position of law being clear that it would not be open for the court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter to the learned Arbitrator in terms of Section 34(4)"*

  https://www.livelaw.in/top-stories/supreme-court-arbitration-section-34-modify-award-remand-national-highways-authority-of-india-vs-p-nagaraju-cheluvaiah-2022-livelaw-sc-584-203587

❖ **Supreme Court: Counter-claim cannot be rejected merely because the claims thereunder were not notified at the pre-arbitral stage**

- In the case of ***NHAI vs. Transstroy (India) Limited***, the Supreme Court has held that the counter-claim of a party cannot be dismissed merely because the claims were not notified before invoking the arbitration.
- The division bench of Justice M.R. Shah and Justice Sanjiv Khanna held that there is a difference between the word *'claim'* and *'dispute'*. While the former may be a one-sided thing, the latter by its definition has two sides. It observed that once the conciliation failed, the entire gamut including the counter-claim or set off would form the subject matter of arbitration.

  https://www.livelaw.in/news-updates/arbitration-cases-weekly-round-up-arbitration-and-conciliation-act-high-court-award-204011

❖ **Delhi High Court: Arbitral award cannot be set aside solely on the ground of insufficiency of evidence**

- In the case of ***Scholastic India Pvt. Ltd. & Anr. vs. Smt. Kanta Batra***, Delhi High Court bench comprising of Justice Vibhu Bakhru and Justice Amit Mahajan held that, in the instant case, there was nothing to show that bank statements of accounts are not relevant material or have no evidentiary value and that re-evaluation of sufficiency of evidence is clearly outside the ambit of Section 34 of the A&C Act.

- The court stated *"there may be instances where an arbitral award may be faulted as being in conflict with the public policy of India or on the ground of patent illegality, including that it falls foul of the most basic principles underlying the Indian Evidence Act, 1872… However, insufficiency of evidence or material is not a ground for setting aside an arbitral award"*.
- The court referred to Section 1 of the Indian Evidence Act, 1872 which expressly provides that the said Act does not apply to "proceedings before an arbitrator" and to Section 19 (1) of the Arbitration & Conciliation Act, 1996 which expressly provides that the Arbitral Tribunal would not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act,1872.

  https://thelawcommunicants.com/account-statements-and-it-returns/

❖ **Kerala High Court: Law mandates neutrality not only for arbitrators but also in their appointment process**

- In the case of ***Hedge Finance Private Limited vs. Bijish Joseph***, issue was that the petitioner had invoked Arbitration proceedings by singularly appointing a sole arbitrator.
- The Hon'ble High Court of Kerala held that a sole arbitrator can only be appointed either by a High Court under Section 11 of the Arbitration & Conciliation Act, 1996 or by an express agreement in writing between the parties, post a dispute, agreeing to waive the applicability of Section 12 of the said Act.
- Justice C. S. Dias further ruled that an interim award passed by an arbitrator appointed in contravention of the provisions of the said Act is bad in law, and such award is unenforceable.

  https://www.latestlaws.com/arbitration/kerala-hc-reiterates-that-a-sole-arbitrator-can-only-be-appointed-either-by-a-hc-or-by-an-express-agreement-in-writing-between-the-parties-187885

❖ **Delhi High Court: Even if the principal agreement is non-existent, the arbitration clause would still apply**

- In the case of ***National Research Development Corporation and Anr. vs. Mak Controls and Systems Private Limited***, the petitioner filed a petition for the appointment of sole arbitrator to resolve the dispute relating to non-payment of royalty between the parties in accordance with the Programme Aimed at Technological Self Reliance' Scheme (PATSER Agreement) executed between them. The respondent contended that principal agreement (i.e. PASTER Agreement) in itself was non-existent / had expired and therefore the arbitration clause would also not apply.
- The Single bench of ***Justice vs. Kameshwar Rao***, held that the facts of the case and the claims of the parties had to be looked into, considered and decided and that this is only possible before the arbitrator, where the parties shall produce evidence. The Court stated that the issues of limitation/arbitrability were also not conclusive against the petitioners.
- The Court referred to the Supreme Court's decisions in ***Everest Holding Limited vs. Shyam Kumar Shrivastava*** *and* ***Ors., 2008 (16) SCC 774*** and ***Reva Electric Car Company P. Ltd. vs. Green Mobil, MANU/SC/1396/2011*****,** and held that the arbitration clause will survive even where the agreement expired or was barred by limitation.

  https://www.livelaw.in/news-updates/delhi-high-court-arbitration-conciliation-act-arbitral-tribunal-arbitration-clause-principal-agreement-203698

Antrix - Devas Deal: A summary

- **Execution of contract:** In 2005, Antrix and Devas signed an agreement for the lease of space segment capacity on ISRO/Antrix S-band Spacecraft.Pursuant to this contract, Antrix was to build, launch, and operate two satellites and lease spectrum capacity on those satellites to Devas, which Devas proposed to use to provide digital multimedia broadcasting services across India.
- **Annulment of contract:** In February 2011, Antrix publicly announced annulment of the contract amid the 2G controversy and in line with government policy. This gave rise to 3 sets of proceedings: an international commercial arbitration before an ICC tribunal, and two investment arbitrations under the India-Mauritius BIT and the India-Germany BIT.
- **Investment arbitrations:** India quoted provisions from the relevant bilateral investment treaties and argued that the Devas deal was cancelled for reserving the S-band satellite spectrum for the needs of defence and paramilitary for national security purposes and that this was aimed at protecting its 'essential security interest'. However, the two tribunals ordered India to pay $160 million and $13 million, plus accrued interest, respectively to the Mauritius and German investors in 2020.
- **Liquidation of Devas:**
  - In January 2021, Antrix approached the National Company Law Tribunal (NCLT), seeking liquidation of Devas on the grounds that the company was incorporated with 'fraudulent motive'.
  - In May 2021, the NCLT ruled that Devas was formed for an 'unlawful object', and accepted Antrix's allegations of money laundering.
  - This was challenged before the National Company Law Appellate Tribunal (NCLAT), Bengaluru, which, in September 2021, upheld the NCLT's order.
  - In January 2022, the Supreme Court upheld the order for liquidation and rejected Devas' contention that Antrix's winding up petition was aimed at depriving it of the benefit of the earlier favourable arbitration awards.
- **International commercial arbitration:**
  - When Antrix annulled the contract, Devas initiated arbitration before the International Chamber of Commerce (ICC), which found that the termination by Antrix amounted to wrongful repudiation of contract and directed Antrix to pay $562.2 million to Devas, along with interest.
  - In response, Antrix filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, before the Delhi High Court, seeking to set aside the arbitral award dated September 14, 2015, passed by the tribunal**.**
  - Justice Sanjeev Sachdeva of the Delhi High Court allowed the plea and set aside the impugned award on the grounds that it *"suffers from patent illegalities and fraud and is in conflict with the public policy of India"*.The Court stated that the arbitral tribunal had committed patent illegality in the award as findings on some issues were contradicted by the findings on other issues and were also contradicted by the reasoning given to reach the said conclusions and that the arbitral tribunal had incorrectly excluded the evidence pertaining to pre-contractual negotiations.

    https://www.business-standard.com/article/companies/antrix-devas-arbitration-a-timeline-of-the-11-year-long-legal-battle-122083000456_1.html
    https://www.livelaw.in/news-updates/delhi-high-court-arbitral-award-isros-commercial-arm-antrix-devas-multimedia-207790
    Https://theprint.in/judiciary/why-delhi-hc-set-aside-562-mn-international-arbitration-award-isros-antrix-had-to-pay-devas/1108621/

BRIEF NOTE ON WEBINAR HOSTED BY PALKHIVALA FOUNDATION

On the occasion of the 75th Independence Day, Palkhivala Foundation hosted a webinar on the topic "India @ 100: Achieving our Tryst with Destiny", which was delivered by Mr. Arun Maira, Former Member, Planning Commission, Government of India and Author of many books including 'Remaking India: One County, One Destiny'.

Mr. S. Mahalingam, Former Chief Financial Officer of Tata Consultancy Services, Managing Trustee of the Pakhivala Foundation and Director of NPAC introduced the esteemed speaker and welcomed the attendees. Setting the context for the webinar, he highlighted the fact that Mr. Arun Maira is one of those rare people who have held leadership positions in both private and public sectors bringing in a unique perspective on how the two can work together to foster growth in India.

Mr. Arun Maira, during his speech, provided an overview on the growth and development of India, discussed the core concepts and principles of capitalism and democracy in the context of nation-building and highlighted how these ideologies worked in relation to power and control. He said, "*To meet our tryst with destiny, 'we have miles to go before we sleep' in the words of the poet Robert Frost, that Nehru kept on his desk after India's independence*".

Some of the key ideas discussed during the speech have been extracted below:

- Conflict between human values and financial valuations is hampering India's progress towards its tryst with destiny where all Indians must have 'purna swaraj', with freedom from social, political and economic failure.
- New governance institutions must be evolved at many levels to solve our current complex problems and restore balance between the principles of capitalism and democracy.
- National governments and policy makers must listen more to the voices and views of the vulnerable rather that of the large corporations and international experts.
- There is also an urgent need to simultaneously reform democratic institutions.Democracy is a process of ordered liberty. Institutions are to enable implementation of the will of the people, with checks and balances amongst the institutions.
- Democracy's essence is the rights of diverse people to live as equals. The designs of democratic institutions have so far concentrated on its vertical structure for upward representation and downward governance. Reforms should design lateral processes. Most importantly, healthy democracies need ongoing processes of democratic deliberation amongst citizens, founded on the discipline of listening to people not like us.
- Two core ideas for institutional reforms:
  - → The world must urgently evolve better institutions of both capitalism and democracy founded on a new enlightenment. The democratic principle of equal human rights must be vigorously applied at all levels of economic institutions and policy making to correct the imbalance between capitalist and democratic rights.
  - → Democratic constitutions must ultimately be the will of 'we the people'. Democratic government is not just government of the people, it is government by the people too.

The Webinar was well-attended by various advocates, policy makers, students, and other stakeholders and was followed by a Q&A Session.

ADMISSIBILITY OR JURISDICTION

By Pavani Reddy

A dispute resolution clause in most contracts usually contain litigation or arbitration and, in some cases, expert determination as the principal form of binding dispute resolution. However, multi-tiered dispute resolution clauses requiring parties to undertake discussions before commencing arbitration have become increasingly popular. Very often these clauses provide negotiation as a first step, followed by formal mediation and then arbitration or litigation for final resolution.

It is open to parties to agree to engage in mediation, or other forms of alternate dispute resolution ("**ADR**"), at any stage of a dispute, even if arbitral proceedings have commenced. For litigation matters, various national court systems require parties to consider ADR and some arbitral institutions also encourage parties to do so. However, where mediation or other specific dispute resolution procedure has been prescribed as a pre-condition to arbitration and if a party commences arbitration without fulfilling the pre-condition, whether thisaffects the jurisdiction of the tribunal has been the subject of some recent judgments before the English Courts. It is worth noting that non-binding dispute resolution clauses are not enforceable in all jurisdictions.

Under Section 67 of the English Arbitration Act 1996, arbitral awards can be challenged on the basis that the tribunal lacked 'substantive jurisdiction' when the award was made. Challenges to an award based on admissibility will not fall within the scope of Section 67.

Until recently, the English authorities were somewhat unclear on whether non-compliance with the provisions of a multi-tiered dispute resolution clause could lead to a jurisdiction challenge.

In ***Emirates Trading Agency Llc vs. Prime Mineral Exports Private Ltd [2014] EWHC 2104 (Comm)***, Teare J took the approach that any failure to apply a 'friendly discussion' provision would deprive the arbitration tribunal of jurisdiction, rendering the award of such tribunal invalid and ineffective. In this case, the contract contained a multi-tiered clause and required the parties to seek to resolve the dispute by 'friendly discussions' over a specified period, failing which either party could refer the dispute to arbitration. Teare J held that friendly discussions were a condition precedent to the right to refer the claim to arbitration. In his view, where parties agree on a dispute resolution clause which purports to prevent them from arbitrating the dispute without first seeking to resolve the dispute by friendly discussions, the court should seek to give effect to the parties' bargain. In another case (***Tang vs. Grant Thornton International Limited [2013])***, it was assumed that the failure to comply with contractual ADR conditions precedent to arbitration were matters relevant to the jurisdiction of an arbitral tribunal.

However, in a recent decision-***NWA vs. NVF [2021] EWHC 2666 (Comm)***,[1] the English Commercial Court(Calver J) declined to adopt the previous approach and instead ruledthat the failure of a party to comply with a contractual term requiring that mediation is commenced before arbitration is not a matter which affects the jurisdiction of an arbitral tribunal unless the parties have expressly stated that they intend the jurisdiction to be affected, and that such a failure would only be relevant to the admissibility of the dispute.

---

[1] https://www.bailii.org/ew/cases/EWHC/Comm/2021/2666.html

Facts

The underlying dispute arose out of an agreement (the "**Agreement**") to reorganise the business dealings of the parties in connection with patents and pending patent applications. The Agreement contained a dispute resolution clause requiring the parties to seek to settle disputes arising under the contract by mediation with the London Court of International Arbitration (LCIA).

Clause 10.2 of the Agreement provided as follows:

> *"10.2 Disputes*
>
> *(a) In the event of a dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, termination, interpretation or effect, the relevant parties to the dispute shall first seek settlement of that dispute by mediation in accordance with the London Court of International Arbitration ("LCIA") Mediation Procedure, which Procedure is deemed to be incorporated by reference into this clause insofar as they do not conflict with its express provisions. Any mediation shall take place in London.*
>
> *(b) If the dispute is not settled by mediation within 30 days of the commencement of the mediation or such further period as the relevant parties to the dispute shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules from time to time in force ("the Rules"), which Rules are deemed to be incorporated by reference into this Agreement insofar as they do not conflict with its express provisions...."*

When the dispute arose, the defendants filed a request for arbitration with LCIA. At the same time,they asked that the arbitration be stayed for mediation in accordance with clause 10.2(a). The defendants wrote to the claimants and made several later attempts to persuade them to engage in mediation.Despite multiple invitations to mediate, the claimants refused to engageand mediation never took place.

The arbitral tribunal eventually issued a partial award for the defendants, holdingthat the parties' failure to mediate in advance of the arbitration did not affect the tribunal's jurisdiction to deal with the dispute. The claimants then challenged the award under Section 67 of the English Arbitration Act 1996 on the basis that the arbitrator did not have jurisdiction since the parties did not mediate before the arbitration commenced.As a result, the primary obligation to arbitrate had not yet accrued and the consent to arbitrate was therefore defective.

The key issue before the Commercial Court was whether the claimant's non-compliance with the requirement to mediate went to: (i) the admissibility of the claim; or (ii) the tribunal's substantive jurisdiction to determine the claim.

The claimants submitted that theirnon-compliance with the requirement to mediate affected the tribunal's substantive jurisdiction and if there was no such jurisdiction, there would also have been no jurisdiction to stay the arbitration proceedings. Hence,the claim should simply have been rejected as outside the jurisdiction of the arbitrators.

The Commercial Court rejected the claimants' argument. Calver J stated:

> *"...the objective intention of the parties was clearly to obtain a swift and final determination of their dispute, if it could not be settled by LCIA Mediation, by way of an expedited LCIA arbitration. In those circumstances, clause 10.2 should be construed in the light of that intention. A construction which allows one or other party to frustrate that intention should be avoided. This favours an 'admissibility' construction rather than a 'jurisdiction' construction so far as the requirement to submit to mediation is concerned".*

The judgment confirms that, under English law, non-compliance with a pre-arbitral obligation to mediate is a matter of the admissibility of a claim, which is for the arbitral tribunal to resolve, rather than a matter of jurisdiction.

Comment

The judgment clarifies that challenges to atribunal's jurisdiction cannot be made to the Court on the basis that pre-arbitration procedure has not been complied with, since this is a matter for the tribunal to determine. On a separate note, this judgment is a reminder that compliance with contractuallyagreed procedural steps is important, as non-compliance may result in satellite litigation, causing unnecessary delays and costs for both parties.

Pavani Reddy *is an international disputes lawyer. Pavani has a wide range of experience in all key aspects of international arbitration and litigation across a broad range of industries including energy, construction, banking, oil and gas, commodities, directors and shareholders disputes and financial sanctions. Pavani has handled several reported high value and cross border disputes for clients from India, Singapore, Middle East and CIS countries before the English Supreme Court, Court of Appeal and High Court and EU Court of Justice. She has also handled cases under various sets of arbitration rules including ICC, LCIA, DIFC, GAFTA and AAA and has a depth of experience in making applications, arising from arbitrations, to the English Commercial Court and the Court of Appeal.*

A SNAPSHOT ON NPAC'S INITIATIVES TO PROMOTE INSTITUTIONAL ARBITRATION

We at Nani Palkhivala Arbitration Centre (NPAC) constantly endeavour to educate stakeholders in the arbitration regime on the benefits of institutional arbitration as a viable mode of dispute resolution. We also strive to make effective contributions towards shaping the growth of the law of arbitration and building a competent and efficient arbitral regime in India. Towards this, NPAC undertakes various initiatives, including:

❖ **International Arbitration Conferences**:

- NPAC has conducted 13 International Arbitration conferences across India, including at New Delhi, Mumbai, Chennai, Bengaluru and Coimbatore with participation of more than 1000 international and national delegates.
- The agenda for the Conferences includes presentation of papers by eminent practitioners of arbitration law from across the globe, partners/associates of various domestic and international law firms as well as discussions on current affairs and trends in arbitration law in relation to the theme of the conference.
- This Conference is open to professionals in arbitration, advocates, members of NPAC, CEOs, in-house counsels, law firms, accountants, financial intermediaries, academicians and law students.
- The Conference affords the opportunity for interacting and networking with industrialists and experts in the field of arbitration from both India and abroad.
- The 13th Annual International Conference was recently held on the theme 'The Evolving Arbitration Framework in India - Challenges and Opportunities', on 9th April, 2022 at Delhi. The Conference was conducted in a hybrid mode (i.e., physical and virtual) and received widespread acclaim.

❖ **Satya Hegde Essay Competition:** NPAC conducts an annual essay competition on arbitration for law students. The topics for each edition are devised to be in line with latest key developments in arbitration. There have been seven editions of the Satya Hegde Essay Competition till date.

❖ **Training Programmes and Conferences**: NPAC regularly conducts various programmes and seminars to further its objective of promoting awareness regarding the advantages of arbitration and educating stakeholders on the benefits of institutional arbitration in its endeavour to establish India as a global arbitration hub.

- OakBridge Publishing, Delhi in association with NPAC organized a one-day conference on 'Repositioning India for Arbitration: Envisioning an Empowered Nation' on 8th September, 2018. The Conference was attended by general counsels and legal heads of leading organizations and law professionals.
- A workshop on Damages in Construction Arbitration was organized by NPAC on 6th June, 2019 at India International Centre, New Delhi. Justice Dipak Misra, Former Chief Justice of India, delivered the opening remarks and talked about the Indian perspective on damages in construction contracts. The workshop aimed to draw upon the multiple perspectives and key issues pertaining to damages in International Arbitration. It was well attended including by young lawyers, professionals and arbitration experts who actively participated in the discussions.

- NPAC conducted a one day seminar on 'Dispute Resolution Mechanism: Arbitration, Conciliation & Mediation' for law executives of public sector enterprises on 21st August, 2019 which covered various topics of practical interest including substantive issues arising in construction disputes process of arbitration and recording of evidence, nuances of various alternative dispute resolution methods and interplay between law of arbitration and commercial Courts Act / proceedings under the Insolvency and Bankruptcy Code.
- As a part of the Indian Government's endeavour to create awareness about ADR and promote exploration of ADR for settling disputes, NPAC has regularly been organizing and conducting training programmes for various Government organizations and officials (including for officers with the rank of Joint Secretaries and above; members of the Department of Personnel and Training). This programme has been carefully designed to include key elements of administrative law, law of contracts, contract management, various aspects of arbitration, mediation and conciliation. The sessions are typically conducted by eminent judges and advocates / arbitration practitioners of repute in a manner that is immediately relevant for bureaucrats. These programmes have been very well received by the faculty and participants alike and were mostly rated 'effective' and 'very effective', which was ascertained through NPAC's feedback forms circulated post the sessions. Some examples are included below:

  → Nani Palkhivala Arbitration Centre (NPAC) conducted a 2-day program at the Lal Bahadur Shastri National Academy of Administration in Mussoorie on 6th June and 7th June, 2019 in which Joint Secretaries and Indian Government officers of higher ranks participated.

  → NPAC hosted a 5-day training programmes on the 'Theory and Practice of Dispute Resolution' for senior bureaucrats between 26th August and 30th August, 2019.

  → NPAC organized a one-day workshop for law executives of Public Sector Enterprises on 'Institutional Arbitration in Government and PSU Contracts' in Delhi on 25th September, 2019. The participants were from various public sector undertakings including GAIL, BHEL, NHAI, Power Grid Corporation, Engineers India, Rural Electrification (REC), MECON, Heavy Engineering (HEC), RITES etc. The topics focused on important areas of practical utility to the participants and broadly covered the areas of understanding the nuances of various ADR methods, issues commonly adjudicated through arbitration proceedings, interplay between arbitration law and Commercial Courts Act, proceedings under Insolvency and Bankruptcy Code and Special Tribunals & Courts, extent of interim reliefs granted by courts / arbitration tribunal.

  → In November 2019, NPAC contributed for 2 of the sessions on 'Contract writing' and 'arbitration' in the training program conducted by The Mahatma Gandhi State Institute of Public Administration Chandigarh (MGSIPA) in collaboration with the Lal Bahadur Shastri National Academy of Administration Mussoorie (LBSNAA) and the Department of Personnel and Training, Government of India (DoPT) for the Induction Training Programme for officers inducted from the provincial civil services into the IAS.

  → NPAC conducted a one-day workshop on 'Strengthening Arbitration Regime' in association with the Tamil Nadu State Judicial Academy on 17th November, 2019.

→ In association with the Mahatma Gandhi State Institute of Public Administration Chandigarh (MGSIPA) and the Lal Bahadur Shastri National Academy of Administration Mussoorie (LBSNAA), NPAC conducted online 'Training Programmes on Arbitration & Contract Management' for senior bureaucrats of the Government of India on 30th October, 2020, 3rd November, 2020 and 6th November, 2020.

→ On the 2nd September and 3rd September, 2021, NPAC conducted a Training Programme on Arbitration at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in association with the Centre for Public Systems Management, for senior officers of the Government of India including joint secretaries and directors from various ministries

→ Nani Palkhivala Arbitration Centre conducted a residential training programme for Government of India, Department of Training and Personnel in February & March 2022 on the 'Theory and Practice of Dispute Resolution' from 28th February 2022 to 4th March 2022 at its Centre in Chennai. The five-day programme was conducted for senior officers of the Government of India including bureaucrats from various departments of different states.

❖ **Courses**: NPAC understands that well trained arbitrators are an integral part of a good arbitration ecosystem. It had collaborated with the Chartered Institute of Arbitrators, India, for 12 years, to train people from various walks of life to become well trained arbitrators.

❖ **Newsletter**: This bi-monthly e-newsletter of NPAC titled 'Dispute Resolutions' is aimed at: (a) imparting knowledge about arbitration, particularly institutional arbitration; (b) opening a dialogue on key issues, challenged and developments in connection with arbitration; (c) keeping its readers informed about various initiatives and events hosted by NPAC, feedback received and the growth of NPAC; (d) providing a platform for various stakeholders (including lawyers, judges, arbitration practitioners, domestic and international writers, students, industry members, government bodies, etc) to share their views, experience, and opinions in connection with various aspects of arbitration.

NANI PALKHIVALA ARBITRATION CENTRE
New No.22 Karpagambal Nagar, Mylapore, Chennai 600 004, India
+91 44 24987145/ +91 44 24987745/ +91 44 24986697
E: nparbitration@gmail.com/npac2005@gmail.com /npacdelhi@gmail.com