



DISPUTE RESOLUTIONS

The Bi-Monthly Newsletter of the **NANI PALKHIVALA ARBITRATION CENTRE**

Nani
Palkhivala
Arbitration
Centre

Understanding the Recent Ruling
of The Supreme Court on Unilateral
Appointment of Arbitrators

Announcing the Three-Day Intensive Course
on "The Theory and Practice of Arbitration
Laws" – January 31, February 1 & 2, 2025

15th Annual International Conference
on Arbitration by NPAC

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MESSAGE

to the

READERS

Understanding the Recent Ruling of The Supreme Court on Unilateral Appointment of Arbitrators

In a recent line of judgments, the Hon'ble Supreme Court of India has traced a complex path while adjudicating on the issue of what 'unilateral appointment' of arbitrator really means and to what extent it disqualifies an arbitration from proceeding on the basis of the agreed arbitration clause.

The Arbitration & Conciliation (Amendment) Act of 2015 introduced Section 12(5) for the first time. The provision disqualifies individuals from being appointed as arbitrators, if their relationship with any party falls under the categories specified in the **Seventh Schedule** of the Arbitration & Conciliation Act, 1996. On account of this provision, many applications came to be filed in various courts to contest appointment procedures

that allowed one party to exert dominant control over the selection and appointment of arbitrators. In *Voestalpine Schienen GmbH vs. Delhi Metro Rail Corporation Ltd.*, (2017) 1 SCR (798), the Supreme Court was called on to examine the question 'Whether a panel of Arbitrators constituted by the Delhi Metro Rail Corporation Ltd., consisting only of Government employees or retired employees violated Section 12(5) of the Act'. In this case, though the Delhi High Court highlighted the importance of 'impartial & independent arbitrators', it did not prohibit retired Governments employees from serving as Arbitrators. However, the Hon'ble Supreme Court ruled that both parties should be able to nominate from a diverse panel of Arbitrators.



Shortly thereafter, in *TRF Limited vs. Energo Engineering Projects Ltd*, (2017) 7 SCR (409), the arbitration clause provided for the resolution of disputes by the sole arbitration of the Managing Director of the buyer or his nominee. The question before the Court was ‘Whether the Managing Director was eligible to nominate a Sole Arbitrator under section 12(5) of the Arbitration Act’. The Court relied on the maxim ‘*Qui facit per alium facit per se*’ (i.e., what one does through another, one does by itself, to hold that a person who is ineligible to appoint a person as an arbitrator cannot nominate another person as an arbitrator. Subsequently, in *Perkins Eastman Architects BPC vs. HSCC India Ltd.*, 2019 SCC Online SC 1517 the court examined an arbitration clause where the Chairman and Managing Director of HSCC was empowered to appoint a sole arbitrator. The Supreme Court held that the person interested in the dispute cannot be involved in appointing an arbitrator as it compromises the impartiality of the process.

Since these issues came up repeatedly before the courts for their application with several parties raising arguments for and against them, as also pointing to certain inconsistencies between these judgments, the matter was ultimately referred to the Constitutional bench of the Supreme Court. Thereupon, the Constitutional bench of the Supreme Court in *Central Organisation for Railway Electrification vs. M/s. ECI SPIC SMO MNML (JV)* 2024 INSC 857 decided the issue on 08.11.2024. While deciding this issue, the Supreme Court pointed out 6 aspects of the law relating to arbitration to be the fundamental principles underpinning the Arbitration & Conciliation (Amendment) Act, 2015.

They were:

- A. Party autonomy
- B. Mandatory Provisions
- C. Appointment of Arbitrators
- D. Independence & Impartiality
- E. Equality in proceedings
- F. Public Private Arbitration

In conclusion, the Court dispelled the recurring doubts surrounding the vexed issue concerning the appointment of arbitrators from panels put together unilaterally by public sector undertakings and comprising exclusively of retired government employees. It pointed out that though there is no bar in appointing retired government officials as arbitrators, the Supreme Court has authoritatively ruled against clauses that envisaged

the appointment of majority arbiters on 3-Member Tribunals exclusively by the panel put together by the Central Government (and by extension of logic any other state body) unilaterally. It is also important to remember that as decreed by the Court, this ruling will be applied prospectively from the date of the judgment and will not impact ongoing arbitrations where the tribunal is comprised of members appointed from the panel put together by the Government.

What this judgment in essence holds is that any procedure that apparently undermines ‘independence and impartiality’ in the appointment process creates a legitimate apprehension of bias, unfairness, inequality and injustice.

This judgment is likely to give further impetus to the use of institutional arbitration clauses in commercial contracts. The risk however is that such rigour applied to the arbitration process may impel the Government to discontinue having arbitration as a mode of resolution for their contracts. For instance, recently the Oil & Natural Gas Corporation has decided that it will not have Arbitration Clauses in their Contracts at all.

It is also interesting to know that there are two dissenting opinions to the majority view of the *Central Organisation for Railway Electrification vs. M/s. ECI SPIC SMO MNML (JV)* 2024 INSC 857 case which takes a conventional view advocating against importing public law principles to evaluate arbitrator appointment procedures. These dissenting judgments hold that there are effective safeguards built into the Arbitration & Conciliation Act, 1996 and the Contract Act, 1872 to address unfair appointment processes and that the need to employ constitutional provisions appears disproportionate.

In any case this law is with us to stay and it would be helpful to educate ourselves on its nuances and implications.

N.L.Rajah

*Senior Advocate
Madras High Court*

LEGAL UPDATES



Supreme Court elucidates factors indicating intentions of non-signatories to be bound by an Arbitration Agreement

In a significant ruling in the case of *Ajay Madhusudan Patel & Ors. vs. Jyotrindra S. Patel & Ors. 2024 INSC 710*, the Hon'ble Supreme Court elucidated factors indicating a non-signatory's intent to be bound by an arbitration agreement. The Court highlighted mutual intent, relationships between parties, commonality of subject matter, transaction interdependence, and contract performance as key determinants. Addressing an arbitration petition under the Arbitration and Conciliation Act, 1996, the Court emphasized that involvement in negotiations or contract performance must be substantial, not incidental. The Court cautioned against a conservative approach that excludes non-signatories whose conduct aligns with signatories.

The case arose from disputes between three business groups namely (AMP Group, JRS Group, and SRG Group) over shared businesses and co-owned entities,

resolved initially through a Family Arrangement Agreement (FAA). With mediation failing, the JRS Group invoked arbitration clauses, alleging AMP Group's non-compliance. The Apex Court noted that the SRG Group's conduct and its role in the FAA required deeper scrutiny by the Arbitral Tribunal. Acknowledging the composite nature of the transactions, the Court underscored that the SRG Group's participation could reasonably indicate its intent to be bound by the FAA.

The Supreme Court allowed the petition, appointing the Former Chief Justice of Rajasthan High Court as the Sole Arbitrator. This landmark decision affirms the principle that non-signatories, through their actions and relationships, can be deemed parties to arbitration agreements, ensuring equitable resolution of complex, interrelated disputes.



Supreme Court clarifies maintainability of time extension applications under Section 29A of the Arbitration and Conciliation Act, 1996



The Supreme Court in the case of *Rohan Builders (India) Private Limited vs. Berger Paints India Limited* 2024 INSC 686 had

passed an order that applications to extend the time limit for arbitral awards under Section 29A of the Arbitration and Conciliation Act, 1996, are maintainable even after the expiration of the tribunal's mandate. This decision, delivered by a Division Bench emphasized the principle of "sufficient cause" for granting such extensions, cautioning that judicial discretion must deter frivolous or vexatious applications. The judgment clarified that the legislative intent of Section 29A is to avoid impractical outcomes and ensure effective resolution of arbitration disputes.

The case arose from conflicting interpretations by the Calcutta High Court, which held that extensions could only be sought before the expiration of the mandate. The Supreme Court, however, observed that a narrow interpretation of 'terminate' under Section 29A(6) would undermine the purpose of the Act, which aims to prevent unnecessary delays in arbitration. The Court emphasized the need for pragmatic and workable interpretations, reaffirming that procedural hurdles should not frustrate the dispute resolution process.

This order brought out the retrospective applicability of Section 29A and its alignment with the Arbitration and Conciliation (Amendment) Act, 2015. It sets a crucial precedent for arbitration law by affirming that post-expiry extension applications can be entertained, provided there is substantial justification.

Supreme Court holds that referral court should refer decision on non-signatories to Arbitral Tribunal

In the case of *Cox & Kings Ltd. v. SAP India Pvt. Ltd. & Anr.*, 2024 INSC 670, the Supreme Court has reaffirmed that referral courts should leave the determination of whether a non-signatory is bound by an arbitration agreement to the arbitral tribunal. The decision rendered in the Three-Bench reiterated the position established in the Constitution Bench ruling of *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* (2023).

The Court clarified that at the referral stage, the role of the court is limited to a prima facie examination of the validity and existence of the arbitration agreement. The complex determination of whether a non-signatory is bound, especially under the "group of companies" doctrine, should be reserved for the arbitral tribunal after a thorough evaluation of evidence and applicable legal principles.

Key Observations

- Jurisdictional Competence of the Tribunal:** The involvement of a non-signatory in arbitration

goes to the root of the tribunal's jurisdictional competence. Hence, the tribunal is best placed to decide such matters.

- Avoiding Conflicting Judgments:** While the respondent expressed concerns about parallel proceedings and the risk of conflicting judgments, the Court held that these issues would be addressed by the tribunal's jurisdictional rulings.
- Legal Complexity:** The Court emphasized that questions involving the application of legal doctrines, such as the 'group of companies' principle, require detailed consideration, which falls within the arbitral tribunal's purview.

The Court appointed Justice Mohit S. Shah, former Chief Justice of the Bombay High Court, as the sole arbitrator for the dispute. This ruling upholds the autonomy of arbitral tribunals in addressing jurisdictional and party-related complexities while reinforcing minimal judicial intervention at the referral stage.

Supreme Court clarifies limits of judicial intervention in arbitration awards with inadequate reasoning



The Supreme Court in the case of *OPG Power Generation (P) Ltd. vs. Enexio Power Cooling Solutions India (P) Ltd.*, 2024 INSC 711 held that arbitral awards with reasons deemed insufficient or inadequate need not be set aside under Sections 34 or 37

of the Arbitration and Conciliation Act, 1996, provided the underlying reasoning is discernible and free from perversity. The Court clarified that its role in such cases is not to supplant the arbitral tribunal's reasoning but to explain it for better clarity. This distinction between awards lacking intelligible or perverse reasoning and those with inadequate reasoning ensures minimal interference in arbitration.

In the case at hand, the arbitral tribunal had found both OPG Power Generation Private Limited and its holding

company, Gita Power, jointly and severally liable to pay Enexio Power Cooling Solutions the unpaid principal amount with interest. The Court upheld this finding, applying the 'Group of Companies Doctrine' to bind Gita Power to the arbitration agreement. On the issue of limitation, the Court concluded that Article 55 of the Limitation Act governed the claim, and the period was validly extended under Section 18 through an acknowledgment of liability.

Additionally, the Supreme Court noted that the tribunal's minor omission in explicitly referring to Section 18 did not invalidate the award, as it was explained adequately by the appellate court. It also emphasized that limitation for counterclaims must be calculated from the date of accrual of the cause of action. The Court restored the arbitral award, dismissing challenges by the appellants, and reinforced the principles of judicial non-intervention in arbitration except in clear cases of illegality or perversity.

Delhi HC ruled that Commercial Court dismissal under Section 34 can be challenged by writ plea under Articles 226 or 227

The Delhi High Court, in the case of *M/s CP Rama Rao Sole Proprietor vs. National Highways Authority of India* 2024 LiveLaw (Del) 1170 affirmed that a dismissal by a commercial court under Section 34 of the Arbitration and Conciliation Act, 1996, can indeed be challenged through a writ petition. This judgment expands judicial recourse by permitting writ jurisdiction under Articles 226 or 227 of the Constitution of India to examine cases where Section 34 dismissals might involve errors such as violations of natural justice or procedural irregularities. Traditionally, challenges to arbitration awards under Section 34 have been limited to either setting aside or upholding an award; however, writ jurisdiction provides an additional layer of judicial scrutiny when direct appeals are insufficient.

This decision reflects a broader trend in Indian courts to balance arbitration autonomy with adequate judicial oversight, especially when procedural fairness is in

question. Legal experts believe this ruling may offer a useful avenue for parties to address grievances in arbitration cases where they perceive that due process was not fully observed.

This interpretation aligns with recent judicial efforts to delineate the boundaries of Section 34, ensuring that lower courts do not overstep by rewriting awards but also safeguarding procedural justice through constitutional writs.



Announcing the Three-Day Intensive Course on “The Theory and Practice of Arbitration Laws” – January 31, February 1 & 2, 2025



Building on the resounding success of the five-day intensive course on “*The Theory and Practice of Arbitration Laws*” held from 2nd to 7th May, 2024, which left attendees enriched with profound knowledge and practical insights into arbitration laws, NPAC is excited to announce a condensed three-day edition of this transformative program from 21st to 23rd December, 2024 at the M.S. Swaminathan Research Foundation, Chennai. Pursuant to the overwhelming responses to the five-day course and eagerness for continued learning, this three-day course promises to deliver an equally enriching experience.

The five-day course, held at the Sambasivan Auditorium, M.S. Swaminathan Research Foundation, Chennai, saw an illustrious lineup of tutors and speakers. From eminent advocates and designated senior advocates to retired and sitting judges of the Madras High Court, the expertise brought to the table was unparalleled. Topics ranged from drafting arbitration agreements to understanding the nuances of arbitral awards, with every session meticulously designed to blend theory and practice.

Attendees lauded the course for its comprehensive coverage of the Arbitration and Conciliation Act, 1996, and its practical application in real-world scenarios. The sessions delved into critical topics such as interim orders, the role of judicial intervention, procedural safeguards, and post-award issues. Attendees left with a deeper understanding of arbitration laws, equipped to apply this knowledge in their practice.

Mr. CM Mari Chelliah Prabhu, Advocate at the Madurai Bench of the Madras High Court, noted:

“We are thankful for NPAC for taking more efforts in arranging prominent persons of law/judiciary in the training programme. Really we all enjoyed a lot since now we know in what manner the Act 1996 has to be seen and read. No words to say since NPAC did a wonderful job. I am very thankful to NPAC.”

Ms. Adhilakshmi Logamurthy, Advocate at the Madras High Court, shared similar positive feedback:

“I had introduced a few of my Advocate and Chartered Accountant friends and everyone told positive about the course.”

If you missed the five-day course, this is your chance to experience a great learning opportunity that will sharpen your legal acumen and enhance your arbitration practice. This course promises to be a guiding light for legal professionals seeking to specialize in arbitration.

Hon’ble Mr. (Retd.) Justice P.N. Prakash, who attended the five-day course had in his article “*My Tryst with Arbitration*” published in the Madras Law Journal, June¹ and July² editions, highlighted the transformative impact of the five-day course organized by NPAC. He remarked on how the five-day crash course took him out of his comfort zone of criminal law and exposed him to the nuances of arbitration law, highlighting the caliber and expertise of the resource persons.

Justice Prakash candidly admitted that his initial perception of arbitration law as a relatively straightforward field was completely overturned during the course, where he recognized it as equally intricate and fraught with challenges as criminal jurisprudence. He referred to the judicial complexities and contradictory judgments in arbitration law, describing it as a ‘judicial slaughterhouse’ that left him both enlightened and concerned.

This reflection illustrates the depth and breadth of knowledge imparted during the course and Justice Prakash’s appreciation for the training, which reshaped his understanding of an unfamiliar legal domain. His narrative also serves as a critique of the systemic issues plaguing arbitration in India, while emphasizing the need for rigorous training and ethical practice to revive India’s dispute resolution framework.

Please refer to the brochure for further details about the course. Don’t miss this opportunity to elevate your expertise in arbitration!

1 (2024) 2 MLJ (Crl), Part 5

2 (2024) 3 MLJ, Part 5



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- ◆ Seat and Venue in Arbitration
- ◆ Issues in Sector Specific Arbitrations

January 31, 2025

to

February 1 & 2, 2025

Who Can Attend?

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15th Annual International Conference on Arbitration by NPAC

NPAC hosted its 15th Annual International Conference on “*India and Global Arbitration: Opportunities and Challenges for 2025–2030*”, at Shangri-La’s-Eros Hotel, New Delhi, on October 18-19, 2024. This two-day event featured a captivating and insightful fireside chat on the first day, followed by an engaging conference on the second day, which encompassed a series of thought-provoking sessions and discussions.

Fireside Chat: October 18, 2024

The conference commenced with an engaging Fireside Chat hosted by NPAC in association with the Fountain Court Chambers, focusing on the theme: “*Arbitral Tribunals: An International Comparison of Composition, Expectations, and Approach*” The session was moderated by Mr. Alex Taylor, Senior Clerk at Fountain Court Chambers, and featured an esteemed panel of speakers: Hon’ble Ms. Justice Prathiba Maninder Singh of the Delhi High Court, Ms. Leigh-Ann Mulcahy KC from Fountain Court Chambers, London, Mr. Siraj Omar SC, Managing Director at Drew & Napier, Singapore, and Mr. Mohit Saraf, Founder & Managing Partner at Saraf and Partners, New Delhi.

The discussion provided a comparative analysis of arbitral tribunals across various jurisdictions. The panel explored the composition of arbitral panels, emphasizing the importance of diversity in expertise and its influence on decision-making. They discussed the expectations placed on arbitrators, particularly the balance between respecting party autonomy and ensuring procedural efficiency. Regional practices in India, the UK, and Singapore were examined, showcasing the unique challenges and innovations in each jurisdiction.

The panelists also shared insights from landmark cases, illustrating how cultural, legal, and institutional frameworks shape arbitration outcomes. They highlighted best practices aimed at streamlining processes, fostering transparency, and building trust in arbitral institutions.

This Fireside Chat set the tone for the conference, emphasizing the importance of global perspectives in shaping India’s arbitration landscape and fostering dialogue among international and domestic arbitration experts and most importantly the fireside chat concluded with a question to ponder on whether creation of data repository on arbitral proceedings help increase the arbitration rate in India.



The fireside chat speakers: (From left) Mr. Mohit Saraf, Mr. Alex Taylor, Hon’ble Ms. Justice Prathiba Maninder Singh, Ms. Leigh Ann Mulcahy, Mr. Siraj Omar SC.

The evening concluded with a networking dinner, offering participants an opportunity to deepen professional connections.

Annual International Conference: October 19, 2024

The 15th Annual Conference began with a welcome address by Mr. S. Mahalingam, Former CFO of TCS Limited and Governing Council Member of NPAC, who warmly greeted the attendees, including the Chief Guest, Hon'ble Mr. Justice P.S. Narasimha, Judge of the Supreme Court of India. Mr. Mahalingam traced NPAC's journey over the past 19 years, highlighting its efforts to institutionalize arbitration in India and its commitment to fostering arbitration discourse through annual conferences. He paid tribute to Nani Palkhivala's legacy, not only as a legal stalwart but also as a visionary who shaped institutions like TCS. The importance of India's arbitration practices gaining global recognition was emphasized.

Mr. Arvind P. Datar, Senior Advocate at the Supreme Court and NPAC Director, delivered the conference concept note, offering an incisive analysis of India's arbitration ecosystem. He outlined its evolution from the 1940 Act to the 1996 Act and subsequent reforms, highlighting challenges in the arbitral process, post-award challenges (Sections 34 and 37), and award execution. Noting disparities in court handling across states, he urged viewing these as opportunities for improvement. He concluded with a hopeful vision of India becoming a global arbitration hub by 2030 through institutionalization, collaboration, and best practices.

Hon'ble Mr. Justice P.S. Narasimha delivered the keynote address, offering a profound analysis of arbitration as an efficient dispute resolution tool. He traced its evolution in India, emphasizing accessibility, efficiency, and autonomy, while identifying systemic issues like reliance on ad hoc arbitrations and lack of institutional practices. Highlighting key legislative reforms in 2015, 2019, and 2021, he stressed the need for a robust arbitration council to address accreditation, timelines, and institutional gaps. Justice Narasimha envisioned a thriving arbitration system by 2030, driven by autonomy, efficiency, and best practices through legislative and judicial synergy.

Ms. Payal Chawla, Founder of JusContractus and NPAC Director, concluded with a vote of thanks, appreciating Justice Narasimha, Delhi High Court judges, and all contributors to the conference. She reaffirmed NPAC's dedication to advancing arbitration scholarship and collaboration.

The conference underscored the need for institutionalizing arbitration, cohesive legislative-judicial efforts, and a shared vision of a robust arbitration ecosystem by 2030. It served as a vital platform for addressing challenges, sharing insights, and shaping the future of arbitration in India.



In frame: Hon'ble Mr. Justice PS Narasimha, Judge, Supreme Court



Valedictory Session: (From left) Ms. Payal Chawla, Mr. Arvind P Datar, Hon'ble Mr. Justice PS Narasimha, and Mr. S. Mahalingam

The first session, chaired by Ms. Binsy Susan, Partner at Shardul Amarchand & Mangaldas, featured a panel of experts: Mr. Viraen Vaswani (Three Crowns LLP, Singapore), Mr. Alastair Henderson (Herbert Smith Freehills, Singapore), Ms. Rashna Mistry (Tata Projects), and Ms. Sandhya Yadav (ONGC). Ms. Binsy Susan emphasized the complexities of construction disputes due to technical claims and extensive documentation, calling for streamlined arbitration processes.

Mr. Viren Vaswani highlighted challenges for quantum experts, such as incomplete documentation and inconsistent methodologies, advocating early expert involvement, robust data management, and techniques like joint expert reports and “hot tubbing.” Mr. Alastair Henderson stressed proactive case management by arbitrators, including clear timetables, limited document production, bifurcation, and mediation windows to reduce costs and preserve relationships. Ms. Rashna Mistry focused on ambiguous contract terms and EOT claims, emphasizing clear specifications, thorough documentation, and lessons from key rulings like *Iran International vs. DMRC*. Ms. Sandhya Yadav discussed the impact of government circulars on public contracts, highlighting ONGC’s success in resolving disputes via in-house mediation and advocating for an India International Mediation Center.

The panel also explored technology’s role in reducing costs and enhancing efficiency, while addressing challenges like virtual hearing credibility and data confidentiality. The session offered actionable insights to overcome challenges, promote mediation, and integrate global best practices to strengthen India’s arbitration ecosystem.



Session I – Construction law theme: (From left) Ms. Binsy Susan, Ms. Rashna Mistry, Mr. Alastair Henderson, Ms. Sandhya Yadav, Mr. Viraen Vaswani

The second session, chaired by Hon'ble Mr. Justice Amit Bansal of the Delhi High Court, featured Mr. Daksh Ahluwalia (AIKYAM Law Offices), Mr. Steven Lim (39 Essex Court Chambers, London), Ms. Ankit Khushu (Kachwaha & Partners), and Ms. Sudeshna Guha Roy (Saraf and Partners) focused on natural justice, arbitration jurisprudence, procedural innovations, and evolving practices in institutional arbitration.

Mr. Steven Lim examined the clash between anti-suit injunctions and the New York Convention, critiquing the Singapore Court's stance on NCLT proceedings in India. He argued that multilateral recognition under the Convention prohibits unilateral enforceability decisions, allowing arbitration to proceed despite non-arbitrable oppression actions.

Ms. Ankit Khushu discussed natural justice principles in arbitration, grounded in procedural fairness and impartiality. She highlighted their implicit presence in laws like Article 18 of the UNCITRAL Model Law and cautioned against their misuse for merit-based challenges under Section 34. She cited cases, including one where a tribunal's reliance on copied awards breached natural justice, undermining trust in arbitration.

Ms. Sudeshna Guha Roy reviewed recent international arbitration rule updates, including LCIA's 'early determination' provisions and the growing use of technology for virtual hearings and digital awards. She emphasized increased transparency, such as the ICC's publication of awards, and emerging issues like third-party funding disclosure and anti-corruption measures, enhancing arbitration's credibility.

The session concluded with audience interaction, where the panel stressed the need for balancing procedural fairness with efficiency while adapting arbitration frameworks to modern complexities.



Session II – International session: (From left) Mr. Daksh Ahluwalia, Mr. Steven Lim, Hon'ble Mr. Justice Amit Bansal, Ms. Sudeshna Guha Roy, Ms. Ankit Kushu.

The third session, chaired by Hon'ble Ms. Justice Rekha Palli of the Delhi High Court, focused on arbitrator impartiality, transparency, and disclosure obligations. Panelists included Mr. Charles Bear KC (Fountain Court Chambers, London), Mr. Samar Singh Kachwaha (Advocate, Supreme Court of India), Ms. Divya Harchandani (Associate - Foreign Law, Wong Partnership LLP), and Dr. Akhil Prasad (Group General Counsel, Boeing India), who shared insights from various jurisdictions and industry perspectives.

Hon'ble Ms. Justice Rekha Palli emphasized the importance of impartiality in arbitration, noting the 2015 amendments to the Indian Arbitration Act, 1996, particularly Section 12, which mandates disclosure of potential conflicts. Mr. Charles Bear KC discussed the English Arbitration Act and the Halliburton case, highlighting the need for arbitrators to disclose conflicts and balance expertise with impartiality. Mr. Samar Singh Kachwaha analyzed the impact of India's amendments and the TRF Ltd. case, cautioning against rigidity in disclosure rules, especially in niche sectors. Ms. Divya Harchandani explained Singapore's "reasonable suspicion test" for bias, emphasizing the importance of disclosure and impartiality. Dr. Akhil Prasad stressed the role of in-house counsel in ensuring fairness during arbitration clause drafting and the importance of vigilance to avoid bias.

The panelists agreed on the importance of transparency, consistent disclosure, and impartiality in arbitration. They acknowledged the complexities of balancing these principles with the practical realities of arbitration, including the need

for experienced arbitrators and the evolving legal frameworks. The session highlighted the critical role of general counsel in ensuring fair arbitration processes and maintaining trust in arbitration as a dispute resolution mechanism.



Session III – Issues of Transparency, Disclosure Obligations and Bias of Arbitrators: (From left) Dr. Akhil Prasad, Mr. Charles Bear, Hon’ble Ms. Justice Rekha Palli, Ms. Divya Harchandani, Mr. Samar Singh Kachwaha

The fourth session, chaired by Mr. Sanjeev Kapoor, Partner at Khaitan & Co., addressed key issues in arbitration, including judicial intervention, procedural finality, and India’s evolving arbitration policies. The panel featured Ms. Amrita Narayan, (Partner, HAS Advocates), Mr. Hemant Kumar (Group Legal Adviser, Larsen & Toubro Ltd.), Ms. Diya Kapur (Advocate, Chambers of Diya Kapur), and Mr. V Niranjana (Barrister, One Essex Court Chambers, London).

Ms. Amrita Narayan discussed the balance between party autonomy and minimal judicial interference, emphasizing India’s growing arbitration-friendly jurisprudence. Mr. Hemant Kumar focused on the challenges of drafting clear arbitration clauses and the need for institutional arbitration in India. Ms. Diya Kapur critiqued the broad application of public policy in enforcing foreign awards, advocating for a more restrained approach to enhance India’s credibility under the New York Convention. Mr. Niranjana highlighted the complexities of cross-jurisdictional arbitration, stressing the importance of clear governance and the challenges of anti-arbitration injunctions.

The session concluded with a lively Q&A segment, where Mr. Sanjeev Kapoor encouraged the audience to engage with the panelists on pressing issues such as the impact of technology on arbitration and the future role of third-party funding in the Indian context. The speakers collectively emphasized the need for greater harmonization of arbitration laws, institutional support for dispute resolution, and continued judicial commitment to fostering an arbitration-friendly environment. The evolving challenges and opportunities in arbitration, with valuable insights from practitioners and thought leaders across diverse domains was a key take away.



Session IV – Current Controversial issues in Arbitration: (From left) Ms. Diya Kapur, Ms. Amrita Narayan, Mr. Sanjeev Kapoor, Mr. Hemant Kumar (Mr.V.Niranjana joined the discussion through video conference)

The session on ‘Emerging Trends in Arbitration,’ chaired by Ms. Manini Brar (Independent Practitioner at Arbridge Chambers), featured the panelists Mr. Anirudh Bakhru (Advocate at the Delhi High Court), Mr. Siddharth Jain (Partner, Jain & Saigal Law Offices), Ms. Charanya Lakshmikumaran (Executive Partner, Lakshmikumaran & Sridharan Attorneys), and Mr. Ankur Mahindro (Partner at Kred-Jure).

Mr. Anirudh Bakhru discussed amendments to the arbitration framework, including the definition of “seat” and “venue,” technological tools for tribunals, and measures to streamline interim measures and enforcement. Mr. Mahindro focused on unilateral arbitrator appointments, highlighting recent case law and the importance of addressing concerns early in agreement drafting. Mr. Jain presented the rise of the “list procedure” in arbitrator appointments, emphasizing transparency, efficiency, and the role of AI in the process. Ms. Lakshmikumaran discussed AI’s role in procedural tasks and cautioned against over-reliance on it for decision-making, stressing the need for human oversight.

The panel concluded with an engaging Q&A session, where audience members and panelists discussed the future role of technology in arbitration and the need for balancing its advantages with ethical considerations. Ms. Manini Brar closed the session on a light-hearted note, emphasizing the continued relevance of human expertise despite technological advancements, and thanked the audience and panelists for their participation.



Final Session – Emerging Trends in Arbitration (Young Turks): (From left) Mr. Siddharth Jain, Mr. Anirudh Bakhru, Ms. Manini Brar, Ms. Charanya Lakshmikumaran, Mr. Ankur Mahindro

The valedictory session of the conference featured a thought-provoking address by Hon’ble Mr. Justice R. Mahadevan of the Supreme Court, accompanied by remarks from Mr. N.L. Rajah, Senior Advocate and Director of the Nani Palkhivala Arbitration Centre (NPAC), and Mr. Shreyas Jayasimha, Founder of Aarna Law LLP and Director of NPAC. Justice Mahadevan began his address by appreciating the enriched discussions held over the past two days, which explored critical themes in international arbitration, including curative jurisdiction, artificial intelligence, natural justice challenges, and appeals in international arbitration. He lauded the NPAC for its invaluable contributions to fostering arbitration in India, emphasizing its recognition as a premier institution by the Madras High Court.

Justice Mahadevan highlighted India’s progressive approach to arbitration, citing landmark developments like the Supreme Court’s 2023 decision addressing the interplay of the Indian Stamp Act and arbitration agreements. This judgment reinforced the separability of arbitration agreements, aligning Indian jurisprudence with global standards established in jurisdictions like the UK, the US, and Singapore. He stressed that India’s alignment with international conventions, such as the New York Convention and the UNCITRAL Model Law, is pivotal for its emergence as a global arbitration hub. Justice Mahadevan also emphasized the importance of a robust legal framework to facilitate foreign direct investment and promote India’s growing role as an exporter of both human and economic capital. He also presented certificates and cash prizes to the winners of the Satya Hegde Essay Competition, 2024.



Hon'ble Mr. Justice R Mahadevan presenting the certificate and cash prize to Ms. Anushka Narvekar, the 2nd prize winner of the Satya Hegde Essay Competition.



Hon'ble Mr. Justice R Mahadevan presenting the certificate and cash prize to Ms. Adyasha Shyam, the 3rd prize winner of the Satya Hegde Essay Competition.

Mr. N.L. Rajah provided an eloquent introduction to Justice Mahadevan, outlining his illustrious career marked by fair and judicious decisions. He reflected on the significant milestones achieved by NPAC and its dedication to the ideals of Nani Palkhivala and Fali Nariman, whose legacies of promoting arbitration continue to inspire the Centre's mission. Rajah acknowledged the contributions of legal luminaries and experts from India and abroad who enriched the conference with their perspectives.

Mr. Shreyas Jayasimha concluded the session with a heartfelt vote of thanks, expressing gratitude to the esteemed speakers, sponsors, and organizers. He emphasized the critical role of intellectual discourse in shaping arbitration law and fostering harmony in the global arbitration community. Highlighting the importance of authenticity and inclusivity, he urged participants to draw on India's rich legal traditions while embracing international best practices.

DISPUTE RESOLUTIONS



In frame: Hon'ble Mr. Justice R Mahadevan, Judge, Supreme Court



Valedictory Session: (From left) Mr. R. Murari, Mr. Arvind P Datar, Hon'ble Mr. Justice R Mahadevan, Mr. N.L. Rajah, (Retd.) Justice Rajendran, Ms. Payal Chawla and Mr. Shreyas Jayasimha

The valedictory session encapsulated the conference's spirit of intellectual engagement and its commitment to advancing arbitration law, leaving attendees inspired to contribute to India's aspirations of becoming a leading venue for international arbitration.



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