



INDIA'S ARBITRATION AWAKENING

A note from Indranee Rajah S.C., Senior Minister of State for Law and Finance

India is welcoming international arbitration.

This was signalled by the Chief Justice of India, The Honourable Dipak Misra on 12 October 2017, in his keynote address at the Hard Talk segment of the Singapore International Arbitration Centre (SIAC)'s India Conference in New Delhi. Chief Justice Misra averred that India is arbitration-friendly, and in response to the question of whether arbitration is facing a summer or winter, declared unequivocally that for India it would be a glorious summer.

This is indeed a welcome message. In the past, there was a perception that India and its courts were less than receptive to arbitration. This has been roundly dispelled by the Chief Justice and also by the Indian Minister of Law and Justice and Electronics and Information Technology Mr Ravi Shankar Prasad, who has likewise indicated in public statements his desire to make India an international arbitration hub.

In line with this, India recently passed its Arbitration and Conciliation (Amendment) Act 2015 to strengthen its arbitration regime.

As India welcomes arbitration, the number of users who require institutional support and legal advice for arbitration will continue to grow.

This is good news for businesses who use arbitration as their means of dispute resolution and presents opportunities for arbitration professionals in both India and Singapore.

A HISTORICAL BACKDROP

India's arbitration awakening and other topics were discussed at the SIAC India Conference, which was held at the stately Imperial, New Delhi. Opened in 1936, its architecture is a mix of Victorian, colonial and Art Deco, and the entire hotel is a museum, every cream wall hung with pictures that form one of the largest collections of art documenting India's colonial and post-colonial history.

Here, amid photos of the Delhi Durbar and under the watchful eye of Queen Victoria and India's rajahs, princes, nawabs and nizams of yesteryear, as well as crayon and charcoal sketches of ordinary Indians going about their everyday lives in times long past, today's arbitration practitioners, judges, in-house counsel, officials and academics from Singapore and India discussed the current hot topics in arbitration.

Addressing the audience in New Delhi, I spoke about the growth potential for arbitration, the synergies between India and Singapore and the opportunities for arbitration practitioners in both countries. The full text of my speeches can be accessed at www.mlaw.gov.sg.

THE FUTURE OF ARBITRATION IN INDIA

India, together with China, is already driving the growth of Asia.

- The World Bank expects India to grow 7.2% this fiscal year, and that it will be the fastest growing economy in the world.
- India's demand for infrastructure and urban solutions will continue to increase. India is already home to 6 of the world's megacities, based on United Nations estimates in 2016.¹ McKinsey projects that demand in this sector will grow by US\$20 trillion between 2016 and 2020, with South Asia and China accounting for a large part of it.
- Indian companies are going global as they grow. They are diversifying and venturing abroad. Singapore is already home to a contingent of over 7,000 companies.

¹ The UN defines megacities as urban areas with populations of at least 10 million.



With colleagues from SIAC, the Ministry of Law, and the Singapore High Commission in New Delhi.



In conversation with SIAC Court President Gary Born, Court member Toby Landau QC, and Board member Rajiv Luthra.



Speaking to Indian legal professionals before the SIAC India Conference.

This will bring about more cross-border business involving Indian parties. More commerce means more contracts, which inevitably means more need for effective dispute resolution, including arbitration.

There is much scope for interaction between Singapore and India in arbitration. For obvious reasons, contracting parties will usually choose a neutral jurisdiction for their dispute resolution. Singapore offers a trusted and neutral third party venue for arbitration, especially between Indian parties and their foreign counter-parties.

The SIAC is a trusted institution with a proven track record for cost-effective and efficient case management, where cases are brought on for hearing as quickly as possible.

Indian users are already familiar with SIAC. They have consistently been among SIAC's top users, and were the top foreign user in the last two years, with 91 new case filings in 2015 and 153 in 2016.

In recognition of this, SIAC recently opened a new representative office in Gujarat International Finance-Tec (GIFT) City, its second office in India after Mumbai. These offices will allow SIAC to better support Indian users.



Exchanging views with Delhi High Court Acting Chief Justice Gita Mittal.



Presenting the recently launched "Singapore Indian Heritage" book to Indian Minister of Law and Justice Ravi Shankar Prasad.

ARBITRATION - SUMMER OR WINTER?

Arbitration has hitherto dominated cross-border dispute resolution, buttressed by the wide enforceability afforded to arbitral awards by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.



One question posed at the SIAC India Conference was whether arbitration will continue to enjoy this preeminent position or whether it is on the brink of a downward trajectory.

In recent times, arbitration, in particular investor-state arbitration, has come in for criticism. Oddly, some of these criticisms revolve around the very reasons that made arbitration popular in the first place, and the features which are its distinctive hallmarks. Such criticisms include:

- Confidentiality leading to a purported lack of transparency of the arbitral process and the tribunal's deliberations;
- The absence of the right of appeal; and
- The absence of a system to ensure consistency or uniformity in the awards.

There have also been allegations of bias and ethical concerns about the quantum of damages granted by arbitrators in investor-state arbitration.

My own view of whether arbitration faces a bright summer or a bleak winter is, as mentioned in my speech, that it depends very much on how the arbitration community responds to the concerns articulated and how it addresses them.

If the community rises to the challenge and can visibly demonstrate that arbitration remains a fair and reliable process, that arbitral awards are legally and morally defensible and arbitrators and counsel all have a high degree of integrity, then there will be good days ahead. If not, users will switch to other forms of dispute resolution and/or the international community will move to constrain how international arbitration is conducted.

Cognisant of these trends, Singapore has made changes to keep up with the evolving dispute resolution landscape.

Arbitration and litigation each has its unique and distinctive features. Each caters to different needs and objectives. For example, for parties who prefer confidentiality, arbitration would be the natural choice. For parties who prefer public transparency, court litigation is the better option. Users' choice. And mediation is complementary to both arbitration and litigation, offering, as it does, a way for the parties to solve the dispute amicably rather than risking an adjudication that results in an arbitral award or a court judgment.

WHAT SINGAPORE OFFERS

Hence, as I explained to the audience in New Delhi, Singapore has developed a full suite of services in international dispute resolution that parties can select from, depending on need and preference.



With guests at the SIAC India Conference.



Speaking to YSIAC Committee Member Kabir Singh.

Arbitration

SIAC offers parties the strengths of arbitration, in addition to the particular institutional innovations which SIAC has introduced. Parties who arbitrate with SIAC can enjoy:



- Confidentiality of proceedings;
- Finality of arbitral awards, with widespread enforceability through the New York Convention;
- Flexibility in the choice of arbitrator(s) from SIAC's panel of arbitrators from various jurisdictions and the possibility of selecting off-panel arbitrators;
- The ability to apply for urgent interim relief prior to the constitution of a Tribunal, through emergency arbitrator rules – SIAC was the first in Asia to introduce these rules;
- The ability to fast-track the arbitral process for certain cases through SIAC's Expedited Procedure; and
- The possibility of resolving disputes using SIAC's newly launched Investment Arbitration Rules, which seek to improve on existing frameworks.

Singapore is also host to other top international institutions, such as the Permanent Court of Arbitration (PCA) and the International Chamber of Commerce's International Court of Arbitration (ICC-ICA), which will be setting up new offices at Maxwell Chambers.

Litigation

The Singapore International Commercial Court (SICC) was set up in 2015 to provide a neutral and high-quality forum for international commercial litigation, and is aimed at disputes which have no connection with Singapore and are not governed by Singapore Law, where jurisdiction is founded on the parties' mutual consent to have the matter heard by the SICC.



Parties who bring disputes before the SICC enjoy the advantages of a court-based dispute resolution mechanism, in addition to SICC's innovative features, including:

- Transparency and predictability of a court-based judicial process;
- Joinder of third parties, which may be important in multi-party transnational disputes;
- The right of appeal, unless parties agree otherwise;
- Enforceability of court judgments through the Hague Convention on Choice of Court Agreements and other reciprocal agreements;
- A panel of eminent international jurists, with independent appointment of adjudicators for each case; and
- Flexible court procedures.

Mediation

In addition, the Singapore International Mediation Centre (SIMC) offers parties a non-adversarial mode of resolving disputes. Its Arb-Med-Arb Protocol, jointly administered with SIAC, builds on the advantages of mediation while providing it with cross-border enforceability through the New York Convention.



SINGAPORE AND INDIA – STRONG LINKS AND A SHARED HERITAGE



A



B



C

A: A Tiled Façade, Multan, Pakistan, 1315AH/1897-1898 C, acquired with part funding from Dr Shahzad Nasim.

B: Painted and carved wooden ceiling, Chettinad, Tamil Nadu, South India, early 20th century.

C: Kasumalai (Necklace with coins), Made in Madras for use in Singapore, Early 20th century. Gift from the Estate of Santhanam Victor Louis and the Family of Gnanapragasam Pillai.

Images from the collection of the Indian Heritage Centre.

Singapore is well-positioned to partner India as it awakens to arbitration.

Apart from strong political and economic links, Singapore and India also have a shared common law heritage deriving from the colonial period in our histories. Some of our legislation has the same roots, most notably our respective Penal Codes.

Our cultural links extend as far back as the time of the Cholas. Singapore has a multi-racial society, with a vibrant Indian community, and it is an easy place for Indian visitors to navigate, even those on their first visit. Cuisine is of course no problem – and Indian visitors will quickly discover uniquely Singaporean Indian dishes like fish head curry! Given the close proximity of both countries, clients and lawyers can travel both ways in just 4-5 hours for meetings and arbitration hearings. The potential is immense.



I would strongly encourage Singapore arbitration practitioners to establish contact with Indian arbitration practitioners. Events like SIAC's India Conference are good platforms for our lawyers to network and to acquire a deeper understanding of the Indian arbitration landscape. A calendar of SIAC events can be accessed at www.siac.org.sg/events/event-calendar.

CONCLUSION

India's growth and openness to arbitration present opportunities for Singapore and Indian arbitration professionals to work with each other for mutual benefit. If you invest time and effort in this endeavour, it could herald a long golden summer of arbitration for Singapore and India.

– Indranee Rajah S.C.,
Senior Minister of State for Law and Finance
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