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2 **INDIA ADR WEEK 2023 – DAY 6 DELHI**

3
4 **SESSION 1**

5
6 **PLENARY SESSION**
7 **10:00 am to 11:00 am**

8
9 **Speakers**

10 Chief Guest - Hon'ble Mr. Justice Ravindra Bhat, Supreme Court of India

11 Guest of Honour - Hon'ble Mr. Justice S. Muralidhar (Retd.), Former Chief Justice, High
12 Court of Orissa

13
14 **HOST:** A very good morning to one and all present here and welcome to the Arbitration
15 Conference for the third edition of The India Week 2023. I would like to invite Mr. Nish Shetty
16 MCIA, Council co-chair and partner at Clifford Chance, to give the opening remarks.

17
18 **NISH SHETTY:** A very good morning to the distinguished judges, everyone in the room.
19 This is probably the first time that an MCIA event has started about 10, 12 minutes late and I
20 blame two things for that. BCCI and also the fact that I think MCIA was rather generous with
21 the drinks last night. But welcome. Thank you all for making it this morning. What a week it
22 has been. We're in the 6th day of this ADR Week in India and I just want to spend a minute
23 talking about this journey when MCIA was set up seven years ago. I remember having this
24 conversation with Madhukeshwar and Neeti and saying we need to have a conference in India
25 that MCIA puts forward. I said, "it's got to be a full day conference full of thought, leadership
26 issues, et cetera". And both of them said, in relation to arbitration, it doesn't happen in India.
27 No one will leave the courts and come and attend, a full day of events where people talk about
28 arbitration. We did it anyway. Each MCIA Conference has been sold out. Then we said, all
29 right, let's be even more aspirational than that. And that's where the idea of an ADR Week in
30 India, was born. Fast forward to 2023. We've had five full days of events so far across three
31 cities. Each of those days has been sold out three weeks in advance of the day itself. So will you
32 join me in congratulating MCIA and Madhukeshwar and Neeti on what was thought to be
33 impossible to do within the Indian context. But it's not just about arbitration conferences,
34 right. It's about the growth of arbitration within India itself. So, when I think about 2015, 2016,
35 and I think about 2023, I think India has moved in the arbitration context by leaps and bounds.
36 People coming here, exchanging ideas, talking about the arbitration issues is one part of it.
37 The judiciary is actively looking at arbitration friendly pronouncements. The Legislature is



1 looking at how to make the arbitration scene from a legislative perspective, more active. So,
2 all of this bodes tremendously well for India and for the consumers of arbitration. And that's
3 something to be celebrated. In the few minutes that I have to give my opening address I just
4 want to touch on a few other things. First in terms of arbitration and how MCIA has helped.
5 Certainly, what it's done is it set a standard for how arbitrations ought to be done in the Indian
6 context. An international standard has been brought into the country. And to some extent it
7 has also inspired other institutions in the country to take shape as well. And that's to be
8 celebrated. Because that is what one requires for an arbitration ecosystem to develop. Now I
9 practice in Singapore, and that's how the arbitration ecosystem in Singapore developed to
10 some extent as well. You would have seen from the program that all of the new institutions
11 were part of ADR Week. They were here. They presented their respective perspectives and
12 that, too, I think, is what one needs to develop that ecosystem. So, it's not just about MCIA,
13 MCIA has curated this program, but really, it's been inclusive, and I think that's to be
14 celebrated as well. MCIA on its part, I think can be proud of the fact that true to its origins, it
15 is the first I'd say, international arbitration centre in India that has been operating with rules
16 to international standards to the Council of both, top local practitioners and also international
17 practitioners, but also one that is truly independent, independent of merchant Chambers,
18 independent of the Government, independent of other Government bodies. So, I think that
19 independence will also stand it in good state. What it has also embarked on in these seven
20 years is capacity building. For example, on the sidelines of the ADR week, they have recently
21 conducted Tribunal Secretary training. So, the idea is that you bring in the younger generation
22 into the arbitration world. Train them on how to assist Tribunals in in deliberations. And that
23 is now going to spawn I think the next generation of the Arbitration bar within India. Related
24 to that I'm pleased to report that we have Alex, from Jus Mundi in the room. Jus Mundi would
25 be familiar to all of us as legal practitioners. A very large international organization of lawyers
26 and law firms. MCIA is going to be entering into an MoU with Jus Mundi to publish redacted
27 awards through their platform. And also, the Tribunal secretaries that have been trained
28 through that MCIA program will now be projected into the world through the Jus Mundi
29 platform so that arbitrators that require Tribunal secretaries can then have trained Tribunal
30 secretaries assisting them moving forward. But it also gives those young Tribunal secretaries
31 an opportunity to be engaged by arbitrators from around the world. So, I'm really pleased to
32 report that. And we look forward to that being a hugely successful venture. Obviously,
33 redaction of awards is something that's taking shape. Because the arbitral world is recognizing
34 that the development of arbitration law while respecting confidentiality needs to take place
35 because that is how arbitration jurisprudence will develop, particularly given that by and large
36 in international commercial contracts these days, arbitration is the preferred mode of dispute
37 resolution. Finally, I'm going to take this opportunity once again to highlight a few other



1 things. One transcription. You'll see that the entire event, those of you who have been here
2 through the week would have seen the transcription on the screen. Now, this is again
3 something that MCIA introduced at the very first conference, right from day one. Now I
4 remember at the time people coming and saying, is everybody reading from a script because
5 it all seems to be coming up on screen. Did you have that in advance? And we have to explain
6 to a number of people that have never seen live transcription, that no, this is happening live.
7 But again, from an Indian perspective, let me share another development. When we did that
8 till now, it was through international service providers, Opus and Epiq and the like. Today,
9 what you're seeing on the screen is something done by an Indian service provider. So again,
10 something to be celebrated. And I hope that Teres, that's doing this, and I understand they're
11 also doing it in the Supreme Court context, will have much success. And it just reflects the
12 growth of arbitration within India. So, Congratulations to MCIA for curating, an amazing ADR
13 week. And we look forward to the final deliberations today and without further ado. I'd like to
14 invite the panel to begin its deliberation.

15

16 **CHARVI:** Thank you, Mr. Shetty. I would now like to introduce a Guest of Honor, Mr. Justice.
17 Honourable Mr. Justice S. Muralidhar, the former Chief Justice of the High Court of Orissa.
18 Justice Muralidhar was appointed as the Judge of the Delhi High Court in 2006. He later also
19 served as the Judge of the High Court in Punjab and Haryana. In 2020, Justice Muralidhar
20 was appointed as the Chief Justice of the High Court of Orissa. With this, I would like to invite
21 Justice Muralidhar to please address the crowd.

22

23 **JUSTICE S. MURALIDHAR:** A very warm good morning to everyone, Justice Bhat, all the
24 distinguished participants both off and on the dais. The nice thing about this gathering is also
25 what you people don't see, there's a clock which runs down. So, tells you exactly how many
26 more minutes you have to suffer all of us. And it right now says, 36 minutes and 27 seconds. I
27 am as keen as all of you to listen to Justice Bhat, so I'll cut down what I have to say. I've been
28 now part of some of these ADR Week events and I would agree with Mr. Shetty that this is a
29 welcome move for exposing the Indian Bar, Arbitration Bar to the trends internationally and
30 the good practices that are happening abroad which is what we want to emulate. We keep
31 talking of CIAC, London International Arbitration Centre and all of that. We have our own
32 versions of International Arbitration Centres now in many cities. And they have a set of rules.
33 And just as Mr. Shetty was saying, we are trying to see how we can regulate arbitration work,
34 so that we keep some norms. Simultaneously, there have been some changes statutorily
35 brought about. So, the two recent changes and people in India are of course, aware of it. The
36 two recent changes are the setting of the India International Arbitration Centre, which is now
37 headed by a former judge of the Supreme Court of India, Justice Hemant Gupta. And just two



1 days ago, on 12th October, the Central Government notified Section 10 of the Amendment Act
2 of 2019 which sets up what is called the Arbitration Council of India. Now this Arbitration
3 Council is some kind of an accrediting body, which will accredit not only arbitrators, but
4 arbitral institutions as well. So, what is interesting is while they've notified Section 10, which
5 brings about the Arbitration Council of India of course, they'll go through the process of
6 appointing the Council itself. There is one provision which has not been notified, which is
7 Section 14 of that Amendment Act, which introduces the 8th Schedule, which actually sets out
8 the norms for accreditation. Now 8th Schedule needs the government to consult with the
9 Arbitration Council of India and perhaps that's why they've not notified it. But it will be
10 interesting to see how this plays out if we actually start accrediting arbitrators,
11 notwithstanding that they may have been former judges. Because the presumption is not every
12 judge makes a good arbitrator, not every lawyer becomes a good arbitrator. And we need to
13 widen the range of persons who can act as arbitrators, particularly given that many of the
14 disputes cover very niche areas which require specialization, specialized knowledge of the
15 disputes arising in that area. So, I think this would be a welcome move, but you'll have to see
16 how this plays out. The point I'm making is, I think there is a greater awareness of the need
17 for norms, norms to be set in. Greater need for accountability when we fix time limits, when
18 we say the quality of the award well, asking for some accountability. In fact, part of the
19 provisions it's now written into the provision. So, if I just read out Section 43(I). General
20 norms for grading of arbitral institutions. And I'm sure all the including MCI, would be
21 interested in this. "The Council shall make grading of arbitral institutions on the basis of
22 criteria relating to infrastructure, quality and calibre of arbitrators, performance and
23 compliance of time limits for disposal of domestic or international commercial arbitrations.
24 So, I think there is an emphasis on accountability and this statute also asks for maintaining a
25 repository of arbitral awards. So that would also bring in some kind of a control of the quality
26 of arbitration that happens in these institutions. These are welcome changes and if it can help
27 us upgrade ourselves and go to the next level, then this change is, of course most welcome.
28 And I am looking forward because I have just retired two months ago, and I've just begun
29 doing some arbitrations. So, I'd be interested to see what impact these changes bring about in
30 the quality of arbitration. So, thank you for listening to me. I am equally keen, like all of you
31 are to listen to Justice Bhat. Thank you.

32

33 **HOST:** Thank you, Justice Muralidhar. I would now like to introduce our chief guest,
34 honourable Mr. Justice Ravindra Bhat, Judge at the Supreme Court of India. Justice Bhat was
35 appointed as an additional judge in the Delhi High Court in 2004. He later became a
36 permanent judge at the Delhi High Court in 2006. In 2019, Justice Bhat, took oath as the Chief
37 Justice of the Rajasthan High court and in 2019 itself, Justice Bhat became a sitting judge at



1 the Supreme Court of India. With this, I would like to now invite honourable Justice Mr. Bhat
2 to please address the crowd.

3

4 **JUSTICE RAVINDRA BHAT:** Good morning. Good morning to all of you, distinguished
5 panellists. I would say distinguished members of the audience, many of them friends, Justice
6 Muralidhar, a very old friend. It's very gratifying to be here speaking about arbitration, and
7 arbitral institutions. I am an unlikely entrant perhaps Justice Muralidhar, too. We had very
8 little arbitration experience as practitioners and I remember distinctly, in one case we opposed
9 each other as well. But coming back to the main theme, what is particularly gratifying for me
10 is the almost end of the journey as it were to see something being brought to fruition. Why I
11 say this is because in 2009, when we had a very dynamic Chief Justice, Justice A.P. Shah, he
12 set up a committee, a committee to recommend the formation of a Centre an arbitral centre.
13 And we did come out with it. We, I, Justice Sen and Justice Sikri were part of that committee.
14 And we came up with the blueprint for the rules, et cetera. And then we did set it up and I
15 think Neeti was part of that too for some time. So that was a learning experience for us, because
16 the setting up of it, the running. I was initially a member of the committee, which actually
17 oversaw its administration. Later, I chaired it for three years and that experience helped me
18 also make my comments known to Justice Shah, when he was in the Law Commission on both
19 the Commercial courts bill, as well as the amendments to the Arbitration Act. Well as they say,
20 one or two things were eye openers, and which are very relevant topics today. One was
21 particularly a visit to Melbourne where we went on the present Chief Justice of India was also
22 an invitee. So, there was a Law and Technology event, conference so in that we were exposed.
23 And I was particularly fascinated by the, we had our own version of digital codes functioning
24 and probably the two of us were pioneers in the Delhi High Court. So those systems were there.
25 But what really intrigued me was a common filing system that they had for the Federal courts.
26 And what is more, in the context of arbitration they had developed one or two extremely good
27 procedures. One judge told me that he would in this construction litigation where you have
28 masses and masses of documents. He would obligate the parties to what he called as
29 deduplicate. You have multiple copies of the same documents thrown at the court or the
30 arbitrator that itself occupies maybe 1000 pages or 1000s of pages. So, I said, it's your job to
31 deduplicate. And he said if the record is something like a half a million pages, then he would
32 mandatorily ask for a technical man. AI tools were just in the offing. They were in their infancy,
33 but then they were used. So, particular softwares were developed and he would reduce that the
34 mass to about manageable limits to 50,000 et cetera. So, this was an eye opener for me. Within
35 a few months we all became part of the official Arbitration Reforms Committee. And I
36 remember distinctly Tejas actively very actively associated with it. And it's very gratifying
37 today to be told that the Arbitration Counsel is being set up. And also, many of our



1 recommendations have now become law. But what really matters to me beyond the law,
2 beyond the structures that have been conceived and have been brought about is to the extent
3 to which arbitration culture has been inculcated. And I see that it's quite a robust one, that this
4 robust culture of arbitration has to translate into whatever you visualize as full-time
5 arbitration lawyers. I know that there are some. But I want an entire arbitration bar. I think
6 then we would come. We would have really arrived home where entire sets of lawyers are only
7 arbitrators or arbitration. Those who practice in arbitration law and don't look at litigation as
8 the main source, rather this, the litigation as a secondary source. So, I see that some people
9 have specialized, but I would really think that we have arrived when we reach that, and they
10 occupy positions of influence. Because today we are still at the stage of institution building and
11 coming up with standards and norms. The Arbitration Promotion Council will also be expected
12 to do that. That's precisely the reason we conceived of it. How well it succeeds depends on us
13 and the kind of norms we can evolve. The best practices for arbitrators' institutions and the
14 push we give, for me it's also very important that mediation is directly linked to this. Because
15 the mediation movement also should go beyond judges and lawyers. And if it has to take roots,
16 even in arbitration, as a first option I would say if it's there in institutions it should be made
17 mandatory that you go through mediation for a limited time period and then launch into
18 arbitration. So many of these ideas are there. But I think really the ultimate taste of the cake,
19 if I may say so, is how many of what is going out from here is going to be retained, references.
20 And that I think is a larger culture, we will have to address it. It will take perhaps a longer time.
21 The awards, which ultimately are delivered here, if they have to reach Indian courts, the
22 arbitration culture and the courts is something we have to develop. And I would take that as a
23 challenge for all of us because we have developed expertise. So, to say in some cities, Mumbai,
24 Delhi, perhaps, Chennai. But the rest of the country, we have to see that this culture goes
25 forward. As in mediation, there has to be a very conscious push to see that these institutions
26 are developed and popularized. And it is not only the commercial arbitration of the high-end
27 kinds that we see being promoted, but that this culture should translate down to different
28 places, tier two cities, et cetera. And what actually set me thinking is, there are large masses
29 of people who get drawn into arbitration because of the kind of contracts they enter into but
30 are unable to sustain the proceedings because they are not able to pay. So typically, higher
31 purchase contracts, insurance policies, smaller insurance policies, and not the Halliburton
32 type. So, these people need to have some kind of neutral venue and therefore, I would feel that
33 another side project which institutions can take up is Pro Bono arbitration, p-Pro Bono
34 arbitrators, because we do need them. And it's possible that both parties have very modest
35 means and yet are traders. But the idea is why should they be driven to the court and this
36 option be only available to those who can afford. So, I would request all of you to take this
37 thought and work upon it. I see that your conference today has a lot of content on AI, Digital



1 Evidence, et cetera. I don't think we would have been speaking as much as we are today, but
2 for the pandemic. That's one of the things we have to thank it for. Because it gave us a
3 completely new world of possibilities and we have cashed in on it. And there's a very conscious
4 push that you know online arbitration. I think it's now taken for granted that at least many
5 procedural hearings, perhaps depositions take place on online. And as Mr. Shetty said, even
6 as we speak, what we say is recorded and it is available. I was also a witness to it because the
7 first time we did that in the Five judge bench hearing in the Supreme Court. So, all this is very...
8 all this is rapid, I must say, but at the same time, very welcome. And the sooner those of us
9 who doubt, who are in places of doubt adopt it, the better for us, the better for the system. And
10 the last thought which I wish to share with you is I think it's a great thing this idea of training
11 because you mentioned about training the secretaries. Well, this training is something which
12 I would again earnestly request all the institutions to come together not only train young
13 lawyers, but train judges. And engage actively with the Judicial academies. We have a number
14 of at least 15 or 20 judicial academies. And that's a very good catchment, because that's where
15 you can collaborate with the institution, the judicial education institution, and the judges who
16 can be the catchment. They have to be taught. You may devise short courses and then you may
17 engage with them. Many of them are as young as the secretaries whom you have trained. But
18 again, they are spread out. So, I think this culture is possible when you train judges you train
19 lawyers. And even the training sessions that you had, the course if you have visual recordings,
20 et cetera. You could consider the manner in which you can share it, because then you can have
21 a much wider audience. Likewise, you could even think of online courses, short courses,
22 accreditation courses for many topics for lawyers as well as even arbitrators. And you could
23 have capsules. So, these institutions should be in that sense thought leaders also. And you
24 should have separate academies or some kind of cells or collaborate and join together and
25 create. So, the same emphasis, I would say, is your spread of awareness to educational
26 institutions and universities. If you can join together and create chairs in universities and
27 eventually the dream is to realize something like what perhaps Neeti went to Queen Mary or
28 Stockholm, or something like that or mids, where we have world level institutions. So, we
29 should think of that. That should be the ideal. That should be our dream and our vision. So,
30 once we think of it and plan for it, it will happen. But may not be in the immediate future. It
31 may take some time. But it is necessary to happen if you want to ensure that arbitration has
32 meaning in India and relevance in India, and our references don't move out as often as they
33 do now. So, I think I have spoken enough. I came with a prepared text, but I decided to
34 completely abandon it. And I hope whatever I spoke made sense. Thank you very much.

35

36 **NISH SHETTY:** Why don't I kick it off with the first question? I'll give you some... all some
37 time to think about yours. Actually, I was very interested to hear Judge, your comment around



1 training for the judiciary. Again, I'm coming in here, obviously as an ethnic Indian, but not
2 someone who practices in India. I practice in Singapore. So, forgive my ignorance if I don't
3 know how that's to be done. But it's something that I think we've discussed at the MCIA level
4 many times, including yesterday as to how one would go about presenting that option to the
5 judicial academies to say that this is something that we would be able to facilitate both with
6 practitioners on the ground in India and also international practitioners to have that
7 discussion with judges and exchange ideas. If you have any thoughts on that, please do share?

8

9 **JUSTICE RAVINDRA BHAT:** Both I and Justice Muralidhar have actively associated with
10 Judicial academies. He is more active now because he has always been active, but I think his
11 new inning has made him more active, given him more time. So, for the past 10-12 years, we
12 have engaged with the academies and perhaps the problem is that we have seen these two
13 places in completely different compartments, or silos. It need not be so. Because as let's say
14 audience on many occasions in the National Judicial Academy, we were exposed to a range of
15 ideas presented by different kind of experts and different kinds of people who came. People
16 who headed movements, people who had ideas, who had taught here, people who had spoken,
17 written economists, et cetera. So, these are good places where one can associate with and if
18 you are in a position to design a program and put it together, you can actually go to these
19 academies. Start with the National Judicial Academy that would be a good place to start. I
20 don't know what Justice Muralidhar feels. It could be a two or three-day program. And it could
21 be curated in such a manner that experienced judges are there as resource persons, plus some
22 experienced arbitrators and even lawyers. So, you'll have a completely 3D perspective, so to
23 say. And then if you collaborate and these are ideas are well taken the NJA tailor's programs.
24 They settle a schedule or a calendar for the year. So, in that the state academies are signed on.
25 So, the state academies could also then agree to have programs, periodic programs, and
26 sometimes even refresher programs. So that's the established way in this. This is how it is
27 done.

28

29 **NISH SHETTY:** Thank you, judge. Justice Murlidhar, did you have anything to add? If you
30 have something to add.

31

32 **JUSTICE S. MURALIDHAR:** Okay. Yeah, one is just sharing with Mr. Desai. See the habits
33 of the regular practice, whether it's lawyers or judges, we bring it into arbitration, whether it's
34 whereas all of us here are trying to reverse that. We want the best practices of international
35 arbitration to inform the way we will function. So, we have to get rid of, it's like an unlearning
36 and relearning. I'm deliberately using that phrase because that relearning requires a
37 willingness. What we found in the judicial Academies is where one in the judicial hierarchy,



1 one level of judges are amenable to this relearning. Judges at different levels find it difficult to
2 come for these kinds of courses. So, I would agree with Justice Bhat that this needs to be a
3 specialized, specially designed course. I would advise to have international resource persons,
4 people who've been part of CIAC, London International Arbitration Centre to discuss what is
5 the method of award writing. I've had some judges, former judges who have become
6 arbitrators tell me that it's very challenging. Because if you've been an appellate judge in a
7 High Court to actually begin to start writing as a trial judge, and which is what an arbitrator is
8 required to do, like framing of issues, discussing evidence, addressing each argument so it
9 requires a different mindset and different approach absolutely. And then second, is about
10 organizing yourself. See the way we have organized ourselves for work as a judge in Indian
11 Court, organized ourselves as lawyer in the Indian Bar is at one level, but arbitration requires
12 organizing yourself at a different level. If you have to stick to timelines and you should know
13 how to use your resources. Like this transcription, for instance, or paper lessness using law
14 researchers. I know judges who have law researchers, but don't know how to use the law
15 researchers. So, there is an overall training or relearning that requires to be done. And this
16 would be ideal if you design what we call a niche course where you have as Justice Bhat was
17 saying, resource persons will be practitioners of arbitration law whether it's lawyers or judges,
18 and if they can be from abroad, it is even more convenient to know what are the best practices.
19

20 **NISH SHETTY:** Thank you, judge.

21

22 **JUSTICE RAVINDRA BHAT:** Of course. I just want to add one more thing. That just to
23 address what Justice Muralidhar said, that there is a certain section which is always amenable
24 willing with open minds. But there's another section which you can't ignore and many of them
25 could have long tenures and they could have a very entrenched and very rigid ideas. So, I think
26 whilst there is a lot of merit in getting international resource persons, I'm not discounting it. I
27 think it's also necessary to have some peer people who are willing to say the realities, to say
28 the truth. For instance, typically in one of these kinds of sessions I was asked to speak on
29 international arbitration and the relevance of arbitration in those early days. And fortunately,
30 or unfortunately we had white industries experience and then we had also the whole dispute
31 in Balco. So, I thought, this is the best time to give a shock treatment. And I said, look, we are
32 going to suffer an award or something like that for so many billion dollars and there are other
33 claims pending if we don't mend our ways and if we don't ensure that these matters are heard
34 and done within a certain time frame, reasonable time frame. We are responsible for whatever
35 happens in the economy. Don't forget that. And we have to... and somebody who's willing to
36 speak these realities and home truths needs to be there as well. So, where I have no difficulty



1 agreeing with Justice Muralidhar about getting the best international experts. It is also
2 necessary for some people to do plain speak.

3

4 **NISH SHETTY:** Thank you, judges. I'm just going to summarize this in particular, because I
5 want to present a challenge to MCIA and Madhukeshwar and Neeti. And I think both the
6 judges have effectively said that see if you can curate a program of the right individuals, both
7 locally and perhaps internationally, as well. So that's the challenge to the both of you to think
8 about. Okay, Tejas, you had a question.

9

10 **TEJAS KARIA:** I just wanted to share my experience with National Judicial Academy. I have
11 been going there regularly and I find that there is also resistance somewhere in learning and
12 it's called workshop and resource persons and roundtable. But what I was thinking, is that
13 what Justice Muralidhar said about having a training program for former judges. Because the
14 focus for National Judicial Academy is more on the sitting judges who are going to decide the
15 34s and appeals against those matters. So, it's more about how judicial intervention in
16 arbitration should be limited. But where we see the difference is when we have heavy reliance
17 on former, that is on the arbitrator, and we see different arbitral styles when we have different
18 Tribunals. Can we have a uniform standard of the arbitration in India, which we follow in
19 abroad? So, is there anything which we can do where we can invite all the arbitrators and
20 senior arbitrators at that age to sit together and celebrate on that?

21

22 **JUSTICE RAVINDRA BHAT:** Mr. Karia, I think it's a very lofty idea. The only thing is what
23 Justice Muralidhar said, is the actual reality. That those who have actually conducted trials,
24 let's say, I don't know what was his tenure on the original side. I had about two and a half
25 years, of which one and a half years I was senior judge. And he, too, had a fairly long run. So,
26 we have conducted trials I don't know how many of them. And we have written final
27 judgments, and it takes a particular talent even to get down to doing that. Because both were
28 purely appellate judges, mostly Supreme Court judges. But coming down to that, you had to
29 do a lot of learning yourself so that receptivity of the mind is very essential. So, from what I
30 hear in the arbitration circuit is there are those who have had this experience. And there are
31 those who are willing to do this and learn it. But there are those others again, who have not
32 done it, who are not willing to do it, and it's going to be difficult at age of 65.

33

34 **JUSTICE S. MURALIDHAR:** And I should add to this Tejas, case management. Actually,
35 we need training of former judges on case management, serious training. And some of them
36 need well we can't call it court management because the arbitrators are so busy. I know
37 arbitrators who have cause lists. which is an Indian phenomenon.



1

2 **VYAPAK DESAI:** So, let me answer this at least in a minute. I think the point on arbitration
3 bar came up. And I think one thing, at least the practitioners here, a lot of them are sitting here
4 Naresh, Vikas, Tejas, myself. We have actually set up something called Indian Arbitration
5 Forum, which is nothing but an arbitration bar in its sense. And the first thing sir, we
6 developed and published along with the Commercial Bar of England and Welsh and MCIA,
7 and many other institutions, CICC is case management for conduct of Arbitration because law
8 gives you law, rules give you rules. But both of them says arbitrator can conduct it in his own
9 manner or her manner. So, we actually have published rules, including procedural order for
10 case management. And now we are even coming up with a draft award. So, in some sense,
11 some element of work has been done by Indian Arbitration Forum as an arbitration bar and
12 then create that ecosystem around it. But maybe they can come up with more courses and
13 maybe consistency across tier two cities as Judge was also mentioning. So, I'm just trying to
14 give that one minute.

15

16 **JUSTICE S. MURALIDHAR:** One constant thing that we hear from lawyers is the judge
17 doesn't lose the habit of CPC Evidence Act and is insisting on certain norms being followed
18 and also not knowing how to control a witness. So, all these things are because it's actually
19 relearning for the former judge, who's now going to be an arbitrator.

20

21 **AUDIENCE 2:** Yeah, but only one comment there. See, I think time has come because now
22 we're talking of accreditation of arbitrators and if we can create an ecosystem wherein, we have
23 kind of a continuous legal education. It's training of the retired judges. We encountered a very
24 strange phenomenon. John is sitting here, who is going to start the Royal Institute of Chartered
25 Surveyors program for ADR in India, in construction space and we conducted certain trainings
26 because at that point in time, Schedule 8 was still enforced. And when we joined hands with
27 them and set up those programs, we realized that there was complete dislike amongst the
28 retired judges to go through 16 module programs on Construction Law. So, we had to strip it
29 down for non-judges to 16 where you write an award, you write an exam RICS evaluates it and
30 after that we had to have the capability of the judges. Because the reality today is that you take
31 out most of these retired judges from the system you will have a vacuum today. That's the
32 reality. And therefore, we started having those four modules only. Don't write an exam but
33 attend those modules specially specializing on [UNCLEAR] engineers and contract managers
34 coming in and giving those sessions. But then we still had only four or six. So that is something
35 which is so critical. And if you look at the National Judicial Academy, this whole arbitration
36 thing is now a part of the commercial course training. It has to be taken out as Justice Bhat



1 said as a specialized program. So, this more of a capacity building exercise within those
2 specialized areas of decision making which I think is so critical for imparting that mindset.

3

4 **NISH SHETTY:** It sounds like we have a clear consensus in the room. And that consensus is
5 that training is necessary both for the members of the Judiciary that are still practicing as
6 members of the Judiciary and those that have retired. The training may slightly be slightly
7 different but that's something that we can certainly look at. Now let me just finish one thought,
8 if I may. And that is just to share the Singapore experience. I know Singapore is held up as the
9 sort of in Asia as a standard in terms of arbitration. So, I've been practicing since the early 90s
10 in Singapore, and I can tell you there was a period where the very same discussions were taking
11 place in Singapore, about how judges were not getting it right. Judges were still hoping to do
12 in their view justice and interfering with awards. And it took multiple actions on the
13 legislature's part to basically effectively overturn some of the judgments that were there. It also
14 took what we're talking about right now, training for the judiciary in Singapore to finally get
15 to a stage where the judiciary is now viewed. Singapore judiciary is now viewed as being pro
16 arbitration. So, I think this is a journey, that that jurisdiction has also gone on and I think it's
17 a good time for us to have this discussion. Sorry I interrupted the gentleman in the suit right
18 in front.

19

20 **AUDIENCE 3:** Since we are before a very distinguished panel here, you can just register the
21 query. Some of the members have been a part of the committee. So just a small little question
22 comes to the mind, how is there a road map for the arbitration bar that we are looking at? Or
23 of course the full-time arbitration lawyers say definitely would take some time. Is there a
24 timeline that the committee has or is there any are there any thoughts on that?

25

26 **JUSTICE RAVINDRA BHAT:** Are you talking about the present committee?

27

28 **AUDIENCE 3:** No, present committee of course is privy to the arbitration issues and matters.
29 So, My Lord, Justice Bhat referred to Culture of Arbitration.

30

31 **JUSTICE RAVINDRA BHAT:** The culture of arbitration ultimately is emanates from here
32 so...

33 **AUDIENCE 3:** In the mind, of course of course

34

35 **JUSTICE RAVINDRA BHAT:** So, I was mentally thinking out when Mr. Atul Sharma was
36 saying about how retired arbitrators, retired judges, need to be trained. Well, one part of the
37 one good thing which has happened out of the Arbitration Amendment is the squeezing of



1 timelines, which means whatever massive, at least in domestic litigation, whatever massive
2 documents you might have, the arguments are limited to a certain number of days. So, lawyers
3 have had to retrain themselves. And I wish that kind of thing is done in the courts because the
4 courts are woefully overburdened with interminable arguments. That is, the culture which
5 prevails in the country, unfortunately, even the smallest of application is for tooth and nail.
6 Therefore, until we get out of that culture, train ourselves to be precise and we reach a stage
7 when we have time limits for arguments, we have time limits for not just filing the claims and
8 set time limits for the award but time limits for everything. Oral arguments. If the arbitrator
9 is to be the centre, the Tribunal is to be centre in control it is necessary that the arbitrator is
10 trained and informed and resourceful enough to control the proceedings, control the witnesses
11 and even control the lawyers. So, it's important. Otherwise, this culture that we speak of will
12 be just an illusion.

13

14 **AUDIENCE 3:** I think might just also include controlling the French agreement as far as
15 [UNCLEAR]

16

17 **JUSTICE RAVINDRA BHAT:** Yes, absolutely.

18

19 **AUDIENCE 3:** Thousands and thousands of documentations unless you...

20

21 **JUSTICE RAVINDRA BHAT:** No, documentation is something one cannot avoid, because
22 when you're talking of technical disputes, there are masses and masses of technical data,
23 whether it is in construction arbitration, and all...

24

25 **AUDIENCE 3:** And yes repetitions of course...

26

27 **JUSTICE RAVINDRA BHAT:** Repetition all those are devices to cut down. One cannot cut
28 down the documentation that is the party autonomy part. But the precision and brevity in
29 argument is very essential. And I think that's where this is heading to. We have to look at that.

30

31 **NISH SHETTY:** And on that note of timeliness, we have come to the end of our time for this
32 particular of this panel. Will you join me in thanking the panel in the usual way? Thank you
33 judges for your time this morning. Vyapak will you give a vote of thanks?

34

35 **CHARVI:** Thank you. I would now like to invite Mr. Vyapak Desai, co-chair of the MCI
36 Council and Partner at Nishith Desai Associates to give the vote of thanks.

37



1 **VYAPAK DESAI:** As Nish mentioned, I think even if we start late at MCIA, we end on time.
2 So, I'll not take any more time to end this session. But I should definitely thank Justice Bhat
3 and Justice Muralidhar for taking this time and more importantly, the audience because you
4 are actually standing up against India, Pakistan, and you are here. I think we could not have
5 got more brave and more confident and passionate to arbitration audience today in this room.
6 And thank you all the sponsors here, I think who have supported this conference, and more
7 importantly, Madhukeshwar, Neeti, Adina, Charvi, I think. I don't know who else in the team,
8 but to do a six-day event with a Saturday, only one Saturday, not six Saturdays. That's generally
9 what India does, working days between Bangalore, Bombay, and Delhi is incredible and
10 unheard of. So, congratulations, everyone to get this event through. And only one point when
11 I think both the chief guest and the guest of honour talked about Arbitration Council of India.
12 And only thing I wanted to say at that point in time was that when the amendments were
13 proposed, it was called Arbitration Promotion Council of India, and the most important
14 amendment they did was to drop the word promotion. So, I don't know what was the intent
15 behind the dropping the word promotion, but I hope it doesn't come out in the actual execution
16 of it. And they do that what it was meant as per the proposed amendments, Justice Srikrishna
17 suggested. So, thank you everyone. I don't want to take any more time. Thank you again Nish
18 and everyone to be part of this conference. Thank you.

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~~~END OF SESSION 1~~~