



INDIA ADR WEEKDAY 5: DELHI

SESSION 3

**Transformative or Much Ado about Nothing? A Reflective Journey post
Amendments to the 1996 Act**

12:00 PM To 1:30 PM IST

Moderator:

Saman Ahsan, Partner, Khaitan & Co.

Speakers:

Justice (Retd) AK Patnaik, Former Judge, Supreme Court of India

Parag Tripathi, Senior Advocate

Hemant Kumar Singh, Group General Counsel, L&T

Kapil Chaudhary, Executive VP and General Counsel, Info Edge India Ltd.



1 **HOST:** Can I request everyone to please take their seats? We'll be starting with our next
2 session soon. This session is hosted by Khaitan and Co. on Transformative or Much Ado About
3 Nothing - A Reflective Journey Post Amendments to the 1996 Act. May I invite on the stage
4 the panellists. For this session we have with us Saman Ahsan, Partner at Khaitan and Co as
5 the moderator for the session. Justice AK Patnaik, former judge of the Supreme Court of India.
6 Mr. Parag Tripathi, Senior Advocate, Mr. Hemant Kumar, Group General Counsel at Larson
7 and Toubro, and Mr. Kapil Chaudhary, Executive VP and General Counsel, Info Edge India
8 Limited

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10 **SAMAN AHSAN:** Hi. Am I audible to the audience? Good afternoon and thank you so much
11 for joining our panel discussion. I'll make an introduction of our esteemed panellists over here
12 before we deep dive into the topic. We have with us Honourable Justice AK Patnaik, former
13 judge of the Supreme Court. Justice Patnaik, joined the Bar in year 1974 and practiced
14 extensively in constitutional and commercial matters. Sir, was elevated as a judge. He served
15 as a Chief Justice of Chhattisgarh High Court and the Chief Justice of the Madhya Pradesh
16 High Court, and then he was appointed as a Judge of the Supreme Court of India in 2009. Sir,
17 served in Supreme Court in June 2014, and as we know, he is one of the busiest and the most
18 sought after arbitrators today. Sir, presides on a number of Indian seated and foreign seated
19 Arbitral Tribunals and is very frequently appointed as an arbitrator by the Supreme Court, by
20 different High Courts, and by arbitral institutions today. Sir, we are very fortunate to have you
21 on the panel today, and thank you so much for joining us. Thank you, sir. We also have Mr.
22 Hemant Kumar from Larson & Toubro. Mr. Kumar is a General Group Counsel at L&T, which,
23 as we all know, is one of India's largest multinational conglomerate, and with business interest
24 in engineering, construction manufacturing goods, information technology and financial
25 services. Mr. Kumar, in fact, heads one of the largest legal in house teams in the country, and
26 he's always in some of the biggest litigations and arbitrations in the country. Sir advises the
27 group on various critical matters and has extensive knowledge and practical experience of
28 dealing with legal matters in multiple jurisdictions, including the US, UK, Middle East, Africa,
29 Europe. Sir is a prolific writer. He regularly contributes on arbitration matters. And, of course,
30 he's received several accolades for his General Counsel role. Sir, we are very happy that you
31 happen to be visiting in Delhi and we lucked out. Thank you so much for joining us on the
32 panel discussion.

33

34 **HEMANT KUMAR SINGH:** Hi, good afternoon.

35

36 **SAMAN AHSAN:** We have Mr. Kapil Chaudhary, who is the Executive Vice President and
37 General Counsel at Info Edge, which we know is India's premier Online Classified Company.



1 He brings over 24 years of experience in legal leadership, strategy and data privacy. Mr.
2 Chaudhry is in fact, also a fellow at Singapore Institute of Arbitrators. Mr. Chaudhry has been
3 in leadership roles with a number of multinational companies that include Twitter, Autodesk,
4 IBM, Schlumberg. Mr. Chaudhary, we are very grateful to have you for our panel discussion
5 here today. We also have Mr. Parag Tripathi, who should be joining us shortly. But I think we
6 can start the discussion. I'll speak a little bit about the topic before we sort of deep dive and
7 open the panel up for discussion.

8

9 We know that the Arbitration and Conciliation Act 1996, which is the primary legislation
10 governing the conduct of arbitrations in India underwent a major overhaul in 2015. It was
11 preceded by the 246th Law Commission Report that led to the 2015 Amendments. Since then,
12 we have had the BN Sri Krishna Report, and that led to the 2019 Amendments. We've also had
13 another round of amendments in 2021 and very recently we've had the Dr. TK Vishwanathan
14 Committee Report, which is as early as February 2024. So really, it's been a decade to these
15 amendments and we thought it's timely to introspect and reflect and really examine the impact
16 of these amendments in the way that we are doing arbitration today. And as we go through the
17 panel discussion, some of the questions that we will examine is, have the amendments really
18 change the fundamental mindset of the Indian litigant and the Indian judge and in the manner
19 that they perceive arbitration as a dispute resolution process? Are there enough checks and
20 balances today and do we really hold the arbitrators and the parties to a higher standard?
21 Third is, have the amendments really sought to achieve what they want to do? So are we
22 litigating less in courts? Are courts enforcing quicker? Are parties finally seeing the colour of
23 the money once they have the arbitration award? And then is there really a culture shift today?
24 Are we really going from ad hoc arbitration to institutional arbitrations? Do we have
25 Arbitration Bar, which is flourishing? And what are some of the more urgent reforms that are
26 required today? I think that's really the kind of introspection that we hope to have on the panel
27 discussion today. And I'll, of course, begin with Justice Patnaik. Sir, you retired in 2014, which
28 is just about a year before the amendments came in. What were your initial expectations in
29 respect of some of the initial appointments that you had and how have you really seen the
30 landscape change in the past decade or so, so far as arbitration is concerned ?

31

32 **JUSTICE AK PATNAIK:** When I retired from Supreme Court, I was thinking that I will not
33 take up any assignments, but I'll do some arbitrations. But I had not done any arbitration till
34 then as an arbitrator and arbitration matters as a lawyer. I'd also deliver judgments. In fact,
35 the famous judgment of a foreign award cannot be challenged under Section 34 in India. The
36 [UNCLEAR] court was mine only Chhattisgarh. That is a judgment in which I said no, no. The
37 foreign award, foreign city arbitration for award cannot be challenged in any court in India



1 under Section 34. That just came up to support and my view was upheld. I've also delivered
 2 judgments in the Supreme Court, other matters but I didn't have an arbitration experience, as
 3 an arbitrator. Only after retirement, I started picking up some arbitrations. Some were
 4 referred to me by the Supreme Court, some are referred to me by the High Court and some
 5 other parties. But frankly speaking, I didn't have any contacts with any commercial houses to
 6 be appointed as co-arbitrator. Most of my appointments were by the High Courts and so forgot
 7 and by two co-arbitrators who thought, I can do a good job as a presiding arbitrator. As I went
 8 on, I found that the arbitration was picking up and I thought I had to attach the right moment
 9 to pick up the arbitrations and do a lot of them. I have done first insurance claims as an
 10 arbitrator, then construction contracts, a lot of construction contracts of L&T, also
 11 construction contracts of highways, National Highways, then share transfer, disputes supplier
 12 to Army, Supreme Court appointed ones. Some jackets what we supply woollen jackets they
 13 ought to be used. They are force in cold climate, like in [UNCLEAR] or somewhere or Kargil
 14 those kind of contracts. Supply of railway wagons, mining and development operators. All
 15 kinds of arbitrations, I have done in the last ten years, 2014-2024. I don't know how they came
 16 but I kept on doing it. Now the fees initially, we fixed up, the fees went on rising but the claim
 17 was small. We charged the smaller fee with a plane because it became one lakh per two and a
 18 half hours. It became two and a half lakhs or two lakhs for two and a half hours. And now some
 19 of the arbitrations we are taking five lakhs per... Fees are very high. No doubt about it. Big
 20 change. So I think there has been a lot of change, but most difficult has been the award writing.
 21 And that is where, I think my demand has been come up to write good awards. Once you write
 22 good awards and they're tested in the courts, you develop a reputation. But it is very fair award.
 23 And they keep coming to you. They keep coming to you. So once I was in the arbitration field,
 24 my awards brought me more and more arbitration. By now, I must have done about 150
 25 arbitrations.

26

27 **SAMAN AHSAN:** Wow.

28

29 **JUSTICE AK PATNAIK:** Right, in ten years' time. Some got settled, many awards have
 30 written, both domestic and international. This is what the scope has been my experience.

31

32 **SAMAN AHSAN:** 150 arbitration would have kept you very busy.

33

34 **JUSTICE AK PATNAIK:** Very busy, very busy. And my colleagues started asking me, why
 35 are we so busy in arbitration? I kept on telling them for 20 and a half years I was a judge. I'm
 36 trying to make up for the lost income. I made up and I tried to get rid of them trying to get rid
 37 of them, but they keep coming to me. Yesterday I saw suddenly in the morning Delhi High



1 Court referred an arbitration. Right. And I looked at it, what to do? I can't write a petition
2 Delhi Court. I don't want to. Even if I don't want it, they keep coming to you. That's how your
3 reputation keeps bringing you. More and more arbitration.

4
5 **SAMAN AHSAN:** That's a wonderful problem to have, sir. Mr. Kumar, you, of course, are
6 equally busy. L&T is, of course, fighting a number of litigations and arbitrations and you not
7 only have those really high stake, complicated matters. But you also have a number of small
8 value or medium value claims. Does arbitration remain the preferred choice for dispute
9 resolution in most of your matters? And how have you seen the perception of arbitration as a
10 dispute resolution mechanism change over the years?

11
12 **HEMANT KUMAR SINGH:** See, let me tell you that, L&T is little complex organization.
13 Even after working eight years with L&T, I find that some of the businesses are indeed very
14 complex but I'm proud to be leading that a great institution. We have a very strong litigation
15 model, business model is very strong. We do not fight for 50 crores or 100 crores of amount.
16 Our claims are always as far as said always maybe 500 and above. 500 crores, 600 crores or
17 like let's say, for example, say coastal road or bullet train. These are 30,000 crores of project
18 as per the contract. They keep 10% retention money and that retention will be given to you
19 after completion of that. And when you ask that they answer money, they will say this defect,
20 that defect. It's a public money. We can't leave it as it is. So we are indeed there in litigation,
21 of course, in arbitration, big arbitration, but not in small arbitration.

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23 Second disadvantage with L&T is that our 90% Central Government, State Government or
24 PSUs. So we don't want to take a panga from those guys. Today we may be losing several crores,
25 but in second or maybe second project, we may be earning more. So we are not a litigant type
26 of company. You won't see that L&T is fighting for with the contract labourer or employee. Our
27 fight is mainly with the Government. Suddenly some GST claim comes, 5000 crores.
28 Somebody has written so you have to protect the interest. Now, second issue is that what is my
29 experience? I tell you my experience as an in-house counsel is very good. I always tell my
30 colleagues and my counterpart that it all depends on you as in-house Counsel. How do you
31 control the arbitrators? And control in the sense, in a positive sense. Let's say if you have a
32 claim,. First we decide whether we have at all merit in the matter or not. If we have merit, then
33 only we fight. Second is selection of your law firm and arguing counsel is the most important.
34 If arguing counsel is very busy or not available. My view is little careful because at the end of
35 the day, you are the custodian of the legal matter of the L&T. So you should be careful in
36 engaging the lawyer and law firm. And there are cases where I have taken aggressive action



1 also. I'm known for it and, of course sir, brilliant award we have received. So far all the award
2 we have recovered the amount also with interest.

3

4 So second important is that selection of your arbitrator. That is also very good and it all
5 depends on you. Of course it's a discretion of the arbitrator also whether to accept L&T
6 arbitration or not.

7

8 Third important thing is during the course of proceeding also we are always ready to
9 compromise the matter. We don't believe that oh, today evidence is given, therefore, we are
10 not even at the fag, we have compromised the matter. So these are the reasons we get a lot of
11 result and if such cases is thrust upon us, then we have no option but to fight out. And there
12 are cases where only recently we have recovered 2000 crore, 1998 crores from Supreme Court
13 order from of the State Government. So my experience as an in-house counsel, as a Group
14 General Counsel is very good, but subject to. Yeah, that we will deliver it separately on the
15 topic.

16

17 **SAMAN AHSAN:** Thank you. Thank you so much, sir. Mr. Chaudhary, I wanted to check
18 your views. Now, one of the reasons why the legislation underwent this overhaul was to make
19 India really the hub of arbitration. And in some sense, as clients. This is a legal service that
20 and your consumers of that legal service. And in that sense, your expectation as clients, I would
21 imagine, would be that the process is efficient and it's an effective process that gives you the
22 desired result. And you have, of course been as part of companies which operate in multiple
23 jurisdictions, what do you think is the perception of the arbitration processes in India, and do
24 you think that we have sort of changed the perception from a slow moving beast to a process
25 which is really giving the desired results?

26

27 **KAPIL CHAUDHARY:** Thank you. Thank you, Saman, and it's a privilege to be here before
28 I actually dive in. Great question. Saman, I think just wanted to clarify being with a listed
29 company, it's important to make a quick disclaimer that I'm speaking for myself. And while I
30 represent Info Edge, the views that I'm going to express do not necessarily reflect the views of
31 my current or previous employers. So we got that out of the way. I think you nailed it, Saman.
32 I think the reality is that as lawyers, as practitioners, we are really consuming a service, right?
33 And I think I'll probably bring in this aspect of... because we are in a world where almost
34 everything is now a service, right? You have software as a service, you have cloud companies.
35 What fundamentally, an arbitration is really doing is, it is another way of delivering justice.
36 It's a justice delivery mechanism, right? So I think as commercial lawyers, as lawyers who are
37 trying to add value to your companies to get the... an award really is the outcome of that service



1 right, which is which an arbitrator is delivering. Now this entire journey, and I'll come to the
2 point of India being a hub and give you a few quick anecdotes as well, is the entire journey
3 from filing the claim to defence and the appointment of the arbitrators, et cetera, ultimately
4 are steps in that journey. Right? So as consumers, as corporates, we will obviously migrate to
5 the most efficient delivery mechanism, if not today, tomorrow. And that's where this whole
6 debate about ad hoc versus institutional arbitration comes in. So when I sit in my office and
7 talk to my colleagues every day, right from drafting the arbitration clause, the lens that we are
8 applying before drafting that clause is where can you give the most efficient delivery of service
9 which is the most highest return to shareholders because we have fundamental obligations to
10 shareholders. So I think that's one aspect I wanted to really flag, that this is a justice delivery
11 mechanism and it's a service delivery mechanism one.

12

13 Secondly, I'll give you a very interesting anecdote. When I was with IBM in 2015, they were
14 kind enough to send me to Singapore on an international transfer. I being the busy body, I
15 tried to utilize that time and thought, let's do a fellowship with the SIACArb, the Singapore
16 Institute of Arbitrators, and I'll come to the point I'm trying to make, which is one of the key
17 ingredients of this service is the quality of the arbitrators which both Justice Patnaik and him
18 spoke about. Now we really are at a cusp where India needs to, and it's already happening,
19 right? SIAC did a panel a few weeks back where Senior Counsel Davendra Singh, was there,
20 and he made a very interesting observation. He said, now when he travels to US and other
21 jurisdictions, he sees a lot of Indian origin arbitrators who are doing phenomenally well. So I
22 think one is that which is the quality of the arbitrators, the quality of the people delivering the
23 award, secondly law school. So at the SIAC meeting, a couple of weeks back there was an
24 enormous interest in law students on arbitration. So you are seeing a lot of youngsters enter
25 the fray. So I think India is at a unique moment. One of the fastest growing economies, major
26 economy, and developing economies manufacturing taking off. Digital India taking off. So I
27 think this is really India's moment to kind of capture that moment. And I think, if not now,
28 then when? I think that's the question we need to ask ourselves. So I think we are very closely
29 there. The 2015, '19 and the '21 Amendments have all kind of chipped away at the old blocks.
30 And I think we continue to do that but I think to your question Saman, I would love to see
31 India becoming more and more of an arbitration hub, it's a competitive market, right? We
32 have the MCIA here. We have the SIAC and MCIA everybody and the ICC, of course.

33

34 I was having a very interesting conversation with Madhu and I'll probably just wrap up in a
35 minute, which is next year and I think MCIA is closing about 80 awards, right? So ultimately,
36 you have to also see, okay, how many awards passed by an institution, are getting challenged
37 or are getting set aside and would love to have that data and kind of do a comparative study.



1 Also see how long is the arbitral process taking on an average, 18 months to 24 months to
2 longer. So I think that's the data that we, sitting in our roles, kind of try and analyse before we
3 make that determination. And I think that was maybe just a circuitous way Saman, of saying
4 that India is close to becoming an arbitration hub. Would love to see us and hopefully very
5 soon compete very closely with SIAC and Singapore, but I think the building blocks are all
6 here. The right support of the Government is all there. I think it's just a mixture now of what
7 needs to happen is quality, and we already have a great pool of arbitrators who are going
8 global. So, I think somewhere all this has to come together and then push. And then I think we
9 are very close to being there.

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11 **SAMAN AHSAN:** Yeah, thanks. In fact, that was very insightful. And one of the key things
12 that you mentioned was that we are getting at par with what is happening in other, what we
13 consider as evolved jurisdictions. Justice Patnaik, one question to you, because you're, of
14 course, an arbitrator who's serving on both Indian seated arbitrations as well as foreign seated
15 arbitrations, and now with the amendment in terms of Section 29A. So you mentioned there
16 are these timeline Statement of Claim, defence within six months arbitration to be concluded,
17 in another 12 plus 6 months. And then, of course, you have to go to court for an extension.
18 Sitting as an arbitrator, Sir, do you think arbitrations are getting wrapped up in a reasonable
19 timeline today? And what are the biggest hurdles that you face as an arbitrator in ensuring
20 that those timelines are met?

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22 **JUSTICE AK PATNAIK:** Let's say timelines are met. But it has improved after the
23 Amendment to 2015. And the reason is and you can see the results those arbitrations which
24 commenced before 23rd October, 2015. That is when the 2015 Amendment came into effect
25 They are not yet over. One award I'm going to deliver tomorrow, pre-2015, invocation of
26 arbitration, was there in September, 2014. So we take it easy, parties also take it easy. But after
27 23rd October, 2015, once the amendment came in and the timelines were set in Section 20A
28 within one year. And thereafter, subsequently, they are very, what to call, amend it further and
29 said six months of pleadings and one year from completion of pleadings. That's right thing
30 they did, otherwise six months is to take place on pleading. The arbitrator got a time to decide
31 matters, so therefore this one and a half year. Now is the time, but the lawyers are not able to
32 do the job in that. Any time the arbitrators are willing to do it, some lawyers cannot do it
33 because they have got so many matters in the hand. But this is not happening because as
34 somebody said, the culture has not changed. Lawyers are still in the old mindset of court cases.
35 The Arbitration Act provides in Section 19 that the court of Civil Procedures 1908 in procedural
36 matters and the Evidence Act in an Evidence Act, they don't apply to arbitrations. But still
37 lawyers are still thinking that Evidence Act applies, Civil Procedure Code applies and they will



1 try to lead oral evidence, documentary evidence and keep on arguing that old set of mind. So
2 this is the hurdle. They are taking up their, they are wanting to lead evidence, oral evidence.
3 Oral evidence are not necessary. Most of the arbitration awards are given on the basis of the
4 documentary evidence. Documents that you file. Oral evidence may be necessary in criminal
5 cases whether there has been a rape, whether it has been a murder, whether has been hitting.
6 But in these kind of cases, commercial disputes, documentary evidence is enough. And the Act
7 provides in Section 19 that it is for the arbitrator to take a call on the admissibility, relevance,
8 materiality and the weight of the document. So strict rules of proof don't apply. Yet the lawyers
9 keep on thinking that it applies. They keep on putting cross examination questions to the
10 witness. Lengthy cross examinations. All these things take a lot of time, and as a result, the
11 awards are not that speed with which it should come from the arbitrators.

12

13 And there is no arbitration bar as such. The lawyers come from the general bar and their
14 request is, sir, kindly take it up at 4:30, after the court hours. So the arbitrators are not busy
15 during the daytime. If they have matters, they can pick up also right at 11:00 or 10:30, begin
16 the case from there then the cases can be wrapped up. But lawyers don't want it that way. They
17 want at 4:30. They don't want to give up their court cases. They don't want to give up their
18 arbitration cases. So, Mr. Hemant Kumar is right that you have to be very choosy about
19 lawyers. We have seen international arbitrations, I've gone to Paris ICC Arbitrations. Then I
20 went to Singapore SIAC Arbitrations, then LCIA arbitrations. The lawyers come at 10:30, 11:00
21 then they don't say, please fix up the matter at 4:30. That is how they formulate the application
22 and our arbitrations don't go faster. So this is very, very important. And one more aspect you
23 see in the arbitrations. In the foreign seated arbitrations most ICC and SIAC, they don't pay
24 the arbitrator any amount out except the expenses till the award is made. After the award is
25 made, signed, notified, they pay your fees and handsome fees depending upon the volume of
26 the quantum of the claim or counterclaim. But India, they affected Fourth Schedule earlier. It
27 was only day wise, so arbitrators and lawyers were going on freely day wise, day wise, day wise.
28 Doesn't matter. But once it is foreign seated arbitrations, very conscious. We don't want to
29 spend so much of time. We know we are going to get the lumpsum fees at the end of the award.
30 So we fixed a few dates. First calendar for filing of pleadings, then calendar we fix up the
31 witness evidence and next arguments. Three set of dates, over. But domestic arbitrations in
32 India don't go like that. They go on, go on, go on right. And the fees may not be also.... Now
33 you're made Fourth Schedule. Mostly if the Fourth Schedule is with the public sector
34 undertakings the Fourth Schedule then it is fixed to 30 lakhs. And if you want real quality of
35 watch the best, I would have to say why now they are declining it. Why should we go in for so
36 they will not go. They'll go for better awards where there is no Fourth Schedule fees. So these
37 are some of the hurdles. I don't know how the government will think of getting these.



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SAMAN AHSAN: Some excellent points you've made, and I think those give rise to some questions that I'd like to ask Mr. Kumar. Mr. Kumar, two things that sir mentioned. One is, of course, the timelines, and I think so the experience is that with the timelines coming in, arbitrations are concluding faster. We were looking at the annual reports of some of the international arbitral institutions and the average time, even for a foreign seated Arbitral Tribunal is still about between 12 to 24 months. What has been your experience, post the amendments and do you think your arbitrations are also getting wrapped up in a shorter time frame? And not really related, but stemming from what sir said, the issue of fees, which of course we know can get quite controversial? So what is your view on fees and the Fourth Schedule? And there is also a school of thought that if you want the best, it should be a free market of sorts? And if you want the best arbitrator, you just have to end up paying. More what are your views on that aspect as well?

HEMANT KUMAR SINGH: See, first issue is about the timeline. Again my view is, and my experience is it depends on the general counsel of that institution. In L&T I tell you, there are 13 cases where we have almost achieved the award within 18 months to 20 months. How we have gone into this journey most of the time, we are the Claimant. We are aware of our claims. So why can't we just draft our SoC and present before the first procedural date your SoC. In that case, what has happened? You are saving two, three months' time, or at least eight weeks or ten weeks' time. So we are ready with this SoC and there is no compromise on this.

Second important thing is that selection is important for L&T business. Our business is very complex. We cannot take that risk of just... I have a highest regard for all my arbitrators and I'm not commenting anything. But yeah as the custodian of the legal department, I have to look into all these things. So first, thing you file your SoC on the first day or request for only one witness you are saving time. Second important thing is for a GC is go through the pleadings to your own claims and try to minimize the number of witness. There's no need to have five, six witness. One witness facts. Another is the commercial matters, so finance or technology. If you have already decided about the witness also, you are reducing the time.

Third important is about the fees of the arbitrator. Yeah, it's a mootable question. But, if I'm engaging my honourable arbitrator in a complex situation, fairness demands that I must also pay accordingly. So this is the first tips I would like to say. Now what was your second question?



1 **SAMAN AHSAN:** Sir, it was on the fees. I was asking you whether if you think the Fourth
2 Schedule is something that...?

3

4 **HEMANT KUMAR SINGH:** See, the Fourth Schedule, that in my view is not workable. Of
5 course, on this point, Supreme Court has also given guidelines but, yeah, if both the party
6 agrees that fees can be increased and I've already addressed that our business is very complex.
7 And therefore, we can't take that risk of appointing anybody. The other important thing for a
8 guy who is dealing a complex arbitration is that on the first day of procedural hearing, if you
9 give five minutes or ten minutes of video, let's say for Coastal Road project or say any big other
10 project, defence project, Chandrayan Project. So, those project, if you give the clipping of 15
11 minutes. What is this project and what is my claim? Whether this claim, that gives a very clear
12 idea amongst the arbitrator, all the Tribunals oh! this is the project. And that gives an overall
13 view of your controversy, your claim also because on the first day they will ask what is your
14 case? The other side will also deny the case. But if you have that concept of 10-15 minutes of
15 video of your project, and then you are putting your claim, that is another interesting idea.
16 And that has done wonderfully in our cases.

17

18 Another important thing is once you get an award, recovery is another challenge in India. So
19 you should be very open that if award has come, if other party approaches you for settlement,
20 we are the business. We are having such a company who always believes in settlement. So
21 notwithstanding we have a great award of say 1000 crores. If we find that it is negotiable and
22 we can just avoid it, we go for the settlement. So these are the things which indeed helps us,
23 and therefore we have a very limited number of litigation, even in Supreme Court. You go to
24 the Supreme Court site, see how many? I'm talking about the group of L& T. Not, I'm talking
25 about the L&T Construction. We are in 37 businesses. You see how many cases are in the
26 Supreme Court? Very minimum number. These are the reasons we have a minimum number
27 of cases. Otherwise you would just fight and just pay on everything.

28

29 **SAMAN AHSAN:** Sir, you mentioned a very important aspect which is enforcement and
30 really seeing the colour of the money once you have an award. But even before that
31 unfortunately, at least prior to the amendments situation, where there was a whole lot of pre
32 litigation, even before you went into arbitration. And then there were amendments to Section
33 9 and Section 11, where the court was to take a *prima facie* view. If the agreement exists, they
34 were supposed to refer the matter to arbitration. Mr. Chaudhary, as someone who's seen how
35 arbitration matters play out in court, do you think there is still enough wriggle room for parties
36 to delay matters even before it comes to a stage of arbitration? And do you see a perceptible
37 change in the way courts are dealing with these matters?



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KAPIL CHAUDHARY: Sure. Thank you, Saman. Great question. So I think I'll approach it quickly in two ways. Once the law is kind of settled in terms of the reference, which is under the line of cases from *Vidya Drolia* and following that segment. The Arbitral Tribunal is now only required to determine that there is an arbitration agreement and they are bound to refer the matter for arbitration, so that's settled. You spoke about 11. I think the good thing is certainly some very good things have come out of Section 11 amendments. One particular subsection I'll call out is 3(a) where, if the parties are unable to agree on an arbitration on the appointment, the Supreme Court and the High Court have been empowered now to also have the to designate arbitral institutions which will be created by the counsel. Right? So that's one aspect. Also, I think the interesting bit is the nationality of the arbitrators has been opened up. So now pretty much anybody from any nationality can be appointed, which really opens the choice to what Hemant was saying in terms of the quality of the appointments itself. Right? Because the quality of the award is directly related to the quality of the arbitral panel.

Now I'll come to the practicality Saman, which is what you said is part 2 of your question. So, look, I think there is probably the scope of the wriggle room that you spoke about. The scope has been limited now, with all these amendments, which is great but I think we have to blame ourselves, right? Lawyers are really clever human beings, so we always find a way. So I think there is still a little bit of mischief left in terms of clever lawyering. I won't name companies here or cast aspersions, but the reality is that a lot of times, a lot of clever minds are thinking in terms of how do we negate the process because at the very outset, if you are for want of a better word, if you are a reluctant litigant and you want to delay the process, then you have many ideas and you have many avenues available to kind of delay the appointment to the extent you can. I think Justice Patnaik's book very, very eloquently and rightly on the time frames have been shortened. So we've seen honourable arbitrators being very particular in terms of pleadings. Six months, the process to be completed in 12 months because obviously, and I think Saman and I were talking this before the panel, is the arbitrators also have a lot at stake, right? Especially if it's a judicial appointment, you owe, you're kind of a custodian to the parties to deliver that award in a specific timeline. So Saman, I'll say a lot of good work with the amendments under Section 11 but parties will eventually file room to wriggle out. Maybe we'll probably touch upon then we come to the enforcement bit on how 36 has still kind of introduced this element of fraud and corruption. I'll also maybe just spend a moment here to say that the ICC, and now I think the latest amendments have done this wonderful thing, which is disclosure of the impartiality and independence. I think that's really crucial because as Hemant said as responsible corporates, as public listed companies who owe fiduciary duties and we have responsibilities to our shareholders, it is very important to understand that the



1 arbitrators you are appointing are independent, are impartial. So I think, that's also probably
2 an opportunity, and I know the institutions already doing it. But I think once you are coming
3 up with a panel of the enrolled and the empanelled arbitrators on these institutions and they're
4 already doing it. You are on an obligation now to file the disclosure on your impartiality and
5 independence. I think those are some of the checks and balances, especially corporates look at
6 because for us and Hemant will probably agree. For us the very fact of appointment of the
7 Tribunal itself is a big thing. We can probably spend an enormous amount of effort just to get
8 the Arbitral Tribunal right. So I think these are probably some of the steps, and you're probably
9 now thinking, oh, the job of a GC is not easy. But reality is, it's not because you have to look at
10 even the appointment and the formation of the Tribunal with so many lenses. So, I'll probably
11 end to say that good, positive developments with these amendments, especially Section 11. But
12 then the Section 36, Fraud and Corruption element is something, we'll reflect on later.

13

14 **SAMAN AHSAN:** No, actually, in fact, we can dive straight into the aspect of enforcement
15 and once we have of course, as we agree on the panel, we have better timelines now and awards
16 are getting delivered in a quicker time frame. But when it comes to enforcement, that, of
17 course, can be a different challenge altogether.

18

19 **HEMANT KUMAR SINGH:** It's very interesting, therefore what we have explored and that
20 has successfully given a great result to us. I'll give you how to reduce the time and also to
21 recover the fruits of the arbitration award. What we have been doing is, that when 34 is filed,
22 most of the time the other side, the decree holder suggests that let us ask for the deposit of the
23 money. Now you take one year in. They will always try to linger the matter and you will try to
24 just file by execution petition. What we do it and that has really helped us. Okay, we will not
25 ask for the deposit money. Let us request that arbitrator just to fix the day for final hearing
26 and what happens thereby. By adopting this particular process, you are reducing at least six
27 months to one year time if you are proposing that let us speak for the final hearing. The other
28 side will be excited, or at least my client is not depositing an money. So we should also explore
29 that idea and once again in 34, if it is appeared or it is an award, then you have an excellent
30 chance of getting everything in your favour. So this reduces also the time. And always, I suggest
31 to in-house counsel that why don't you do in-house arbitration process? Why you are
32 depending on the law firm or the lawyer outside lawyer? And in L&T we have been doing our
33 self-arbitration, and there are a couple of arbitration we have got an excellent award. And that
34 award has not been challenged by the other side. So that is other way to also reduce the time.

35

36 **SAMAN AHSAN:** Thank you. Thank you, sir. So you mentioned how does one ensure that
37 the timeline for enforcement doesn't take much, and it moves quicker. Justice Patnaik, I have



1 a question for you because also you've been on the bench and now as an arbitrator and what
 2 some people call as the due process paranoia, where one feels the need to address every
 3 argument and every contention and to give a reasoned judgment, because the apprehension is
 4 that it'll get challenged at some point in time. And even though eventually, the experience is
 5 that courts in India do not interfere, and they say that the scope of interference is fairly limited
 6 in an enforcement proceeding to come, to that conclusion that itself takes a few months and
 7 sometimes, perhaps even years. So what are your thoughts on that? And does that sort of need
 8 a mindset change?

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 10 **JUSTICE AK PATNAIK:** In fact, when I was on the Supreme Court, I kept on dismissing
 11 matters again under Section 34 which came from the High Court. High Court, single judge
 12 says no, no and will not interfere with the award. Division Benches will not interpret the order
 13 and when it comes to court, we say enough is enough. You had two trials against the award. As
 14 a matter of judicial policy we will not interfere in such. So therefore, first thing is judicially
 15 must have a policy towards challenges to the award. Section 40 at least you should not delay
 16 and for that most judges who hear Section 34, are thoroughly acquainted with the arbitration
 17 law, thoroughly acquainted with the contract law, thoroughly acquainted the developments of
 18 arbitration law in country and abroad that is not there in a country they are not there at all.
 19 And the High Court very few may be there because Supreme Court judges never do arbitration
 20 matters until they retire. This is a chaos in our system. This is where our country has not done
 21 a good job at all. You must have a separate hierarchy of judges sitting on arbitration awards
 22 starting from Section 34 right up to the appellate level. In Singapore even SIAC award is made
 23 by us. Such quick decision they make. That also has delayed. In one matter, we gave an award
 24 went to the High Court to the, what do you call? Appellate Court of Appeal in Singapore, on
 25 one point got remoted back to us. You will decide matter is over but in India first of all, forget
 26 about Delhi forget about Bombay judges who are looking to arbitration. If you go to, say,
 27 Punjab residuals who had no idea whatsoever he'll be content with Section 34 petition
 28 finished, so arbitration award is made. But Punjab, Orissa, Madya Pradesh all these places
 29 where awards are made finished, Andhra Pradesh, no idea whatsoever there are commercial
 30 courts just sitting there. They shouldn't have an idea till now, all that. They have learned very
 31 well is how to grant time extension that they know there also. They were really a city on it. Now
 32 the grant may extend the mandate under Section 29 A for another six months, one year at the
 33 job they picked up High Courts and the Supreme Court are concerned. Section 11(a) after a lot
 34 of time, they have developed this law. Once an arbitration agreement, please don't interfere
 35 with Section 9 also, they say. All right, now, let the arbitrator decide in Section 17. Then
 36 whether arbitrator has got Section 16 all the same arbitrator decide it. But when it comes to
 37 Section 34 I think now cannot handle Section 34 laws. Some judges are fast, but in the High



1 Court, it cannot go to one judge. The Supreme Court cannot go to one judge. They have to work
2 and distribute it. So we have to have specialized hierarchy of High Court over Appellate Court
3 to take up this award settings award. Otherwise you can't export it and until the Section 34
4 petition decided one, enforce it. Yes, that's the problem. This is the biggest problem and
5 nobody's looking into it. They are sending back the High Court and Supreme Court. You have
6 to have experienced persons, maybe experienced arbitrators, maybe lawyers, you have to
7 induct them, put them in the bench, let them scrutinize the awards. That is the only way in
8 this formal, separate forum. That's the only way. And one forum at all that they will not
9 interfere. Thereafter if two forums have handled it speedily they will not interfere and
10 admission should be very rare. Notice should be very rare and to speed up that process one
11 shall go read the award, understand it. Go to the court and ask a few questions and either
12 entertain it or dismiss it. Then getting forced. This posture has to be, the whole procedure has
13 to be amended. This aspect of law has to be taken care of by the legislature.

14

15 **SAMAN AHSAN:** Absolutely, sir. Some very good points there and, in fact, I think one of the
16 key amendments that the 2019 amendments, not all of which have come into force, wanted to
17 get in and also if you look at the TK Vishwanathan Committee Recommendations. They are
18 really aiming at a culture shift. And as you mentioned, we are still to some extent

19

20 **JUSTICE AK PATNAIK:** TK Vishwanathan, who is the Secretary of the Lok Sabha?

21

22 **SAMAN AHSAN:** Yes, I believe so.

23

24 **JUSTICE AK PATNAIK:** He is good, but only thing is Government should form a committee
25 where there are experts, experience without they can only recommend it. But the present
26 approach of any government you go in the country, is he our man, does he believe me? Is he
27 loyal to our party apparently in the commission. This way, this country can never develop. This
28 is the worst thing that has happened to the country. Political lives of the entire country,
29 whether it's the man, our man or not he must have very good experts and minds, honest people
30 to guide the lawmakers. What law should be made to bring the arbitration system speeds to
31 business, speeden it this is the only way in this country.

32

33 **SAMAN AHSAN:** Sir, just addressing some of the points that you made and just tying it up
34 with the culture change where what you're saying is that we need to have judges who are
35 seasoned and trained in arbitration and how to conduct arbitrations. And we also need to have
36 an arbitration bar, which is not treating arbitration as something which is secondary to court
37 work. One question to actually, Mr. Kumar, before I come to you, sir, is what has been your



1 experience over a period of time in terms of the culture shift and today, do you find increasing
2 number of practitioners who are only and exclusively practicing arbitration and on the bends?
3 So do see a change in attitude? You see that judges are now more and more keen to not
4 interfere with awards, to have proceedings referred to arbitration as quickly as possible and to
5 really follow the mandate of very limited judicial interference?

6

7 **HEMANT KUMAR SINGH:** Before that, I would say that India is a country where an award
8 pronounced by two Chief Justice of India and one judge of the Supreme Court set aside by the
9 Commercial Court. So such a power is given under 34. Now coming to the enforcement or
10 quality and interference. See post amendment, both the amendment 15 and 19 indeed, we were
11 very excited. If you see the judgment, excellent judgment pronounced by Supreme Court,
12 where they had virtually directed less interference under 34. Recently, one of the judgment
13 has created a controversy and because of that, now I find in one case because we don't have
14 maximum...

15

16 **JUSTICE AK PATNAIK:** Five judge bench?

17

18 **HEMANT KUMAR SINGH:** Yes, sir. So what has happened in that the Commercial Court
19 judges are little reluctant in 34. They say, no, I'll go through this document, that document
20 whereas prior to that it was there that very less interference was there but still, I feel that some
21 of the High Courts, especially the Delhi High Court, excellent judges, are there who doesn't
22 interfere if is a reasoned award and is a good I mean everything as per the law they do not
23 interfere. I have been suggesting at many forum and at the ministry level also with due respect,
24 the judges also need training, commercial training. What do you mean by commercial business
25 efficacy? That is very important. If we train them that business efficacy means this, like when
26 the contract is signed, no lawyer is there. No technical expert is there. Two businessmen
27 understand and they sign the contract. So therefore, they are training to the judges is very
28 important, I tell you, if they are referred to Section 34. Again, this is my personal my
29 organization view, is that I have observed you have been dealing only [UNCLEAR] matter for
30 the last 20 years, 25 years. Now appointed as a judge suddenly the matter is given to you 34 or
31 something complex, then it's not easy. If an award is pronounced by three Supreme Court,
32 excellent judges, you have to understand the whole complexity of the award. So these are the
33 reason I think delaying the process otherwise. My personal experience is we have not faced
34 any much problem in enforcement of the award, and I have pointed out that it depends on
35 your mindset also. Do you want to only litigate? You want to just close the matter? If you want
36 to close the matter, you follow the procedure. What is the problem in suggesting the high court
37 judge? You finally hear the matter. I'm not interested in deposit of the money. So you can get



1 a lot of earliest judgment in your favour. And once 34 is decided in your favour, then further
2 interference by the Supreme Court or LP is very limited.

3

4 **SAMAN AHSAN:** Thank you. So I also want to touch upon the 3rd June Memorandum. But
5 before I come to that, sir, I'll just ask Mr. Chaudhary. Sir, what do you think, sir, of course we
6 want this push from ad hoc to institutional arbitration but we still see reluctance to some
7 extent in Indian parties, perhaps because there are concerns on misplaced concerns on costs.
8 Or perhaps there are concerns on the choice of arbitrators that would be available. Sir, I
9 wanted to ask you, how does one bring about, and particularly as a client, how do you think
10 one can change this mindset and push Indian clients to opt more and more for institutional
11 arbitration?

12

13 **KAPIL CHAUDHARY:** Thanks, Saman. Ad very mindful that this panel is between you and
14 lunch, so we keep it really short. I think I probably go by the rule of thumb, Saman. As
15 somebody who's been advising a bunch of corporates, what we look at is obviously the quality
16 of the institution, the quality of the awards. Was having a great discussion with Mathew and
17 Neeti earlier. How many awards have been set aside or challenged the timeline for disposal.
18 Right. 18 months to 24 months? And ultimately, I think the big elephant in the room, if I can
19 call it as enforcement and an execution. So I think those are some of the lenses we apply to. I
20 must also say that some concerns and I'll be amiss if I don't mention those is that sometimes
21 we also scratch our heads and said, hey, look given this is taking, going to take time, and then
22 they're going to run into enforcement and execution issues, are we still okay staying with a
23 regular litigation code process? And with great respect to our judiciary, I think very grateful
24 and we see ourselves as offices of the court, but I think then the balance really comes Saman,
25 is that do you kind of want to subject yourself to a civil litigation route and then the appellate
26 process, or do you want to then go to a more determinative process, where you have at least
27 some control over the outcome and timelines? I must also say that what really pegs in favour
28 of arbitration is that, especially as listed companies we want a determinative value. We want
29 costs, because we are running a very strict business. You want your cost to be controlled called
30 out. I have some of my external counsel in the audience, and they can vouch for it. We reach
31 out to them every month and every couple of months. We want your provisions for this quarter
32 because our books are accordingly have to reflect that, we have to carry those figures. So I
33 think for in-house corporate commercial lawyers very important to have a process you can
34 have some level of control on, some degree of control on the outcomes in terms of costs and
35 time frames, and I think that's what kind of tilts the scales toward institutional arbitration.

36



1 **SAMAN AHSAN:** No, absolutely. It's definitely a driving factor insofar as the desire to make
 2 India as an arbitration hub is concerned and sir has talked about how institutional arbitration
 3 is more effective for sure. So while Mr. Kumar, while we have this whole talk about ease of
 4 doing business, we have this whole talk about contract enforcement, India's rankings in
 5 contract enforcement and also the desire, as I said, to make India the arbitration hub, we of
 6 course, have now the June, the 3rd June Memorandum, and the memorandum says that
 7 arbitrations should not be routinely included in large procurement contracts and arbitration
 8 should be restricted to dispute with values less than ten crores. If you have an arbitration
 9 clause and values more than 10 crores, then it requires a higher level of scrutiny from
 10 Government officers and you're, of course, as you mentioned, litigating with government in
 11 and out. How does this memorandum, how do you perceive this memorandum, and do you
 12 think it sort of undoes the good that has really come about in the past decade?

13

14 **HEMANT KUMAR SINGH:** Before I address your query, let me just quote, Honourable
 15 Prime Minister suggests that there is a need to promote India globally as an arbitration hub
 16 whereas the Finance Minister suggests arbitration in India is a truly an aspect of make in India
 17 and there are many such quotations keeping in mind those quotation whether this circular. I'll
 18 tell you, the circular briefly contradicts this statement or it is in line with that statement. See
 19 third circular. As I told you earlier that most of the client in India Government PSU. This
 20 particular circular. It is an notification by the Ministry of Finance. It suggests that in a contract
 21 tender or anything if a value is up to 10 crores then you can go for the arbitration. But if it is
 22 more than 10 crores or 10 crores, then it will be referred. It will be referred means, suppose I
 23 am a Claimant and the other side is a Public Sector or Government. They will refer it to the
 24 competent authority and who is the competent authority? IAS. Do you think that who will take
 25 a *panga* and say then no, go for the arbitration. Because there is a CBC, CBI, everything is
 26 there. So they will not take any decision whether to go for arbitration clause or go for the
 27 Commercial Court suit. Our problem is that when the tender is issued there is no clause for
 28 arbitration 10 crores. Then you have to negotiate pre arbitration sitting. Now during this
 29 sitting also I have come to know, I have observed that they are not having all that, they are
 30 groundwork. They will say, we will discuss the matter and then decide the matter. Now, if you
 31 see the funniest part of the reasons for issuing this notification. Three reasons they have
 32 provided (a) quality of the award are not good if you think that quality of the award, then (a)
 33 indirectly you are suggesting the Tribunal is not good. If the quality award is not good in 34
 34 also you lose. Then you are affecting that even there are 34 judges. Also not good most of the
 35 litigant in India are Government Sector and Government only. They go to the Supreme Court.
 36 So why we're giving such reason that quality of the award is not good and therefore we are
 37 suggesting this.



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Second thing is that it takes time and therefore we are suggesting that let us go to the commercial court route. It takes time you always. Sir will, I mean, support me. They most of the time seek adjournment. It is not the Claimant because we are always interested to go for the fast track system.

Third important is what they say that their officers, who are dealing at the budding stage of those dispute are transferable in nature. Is it my problem? You are talking about such type of circular, whereas your Prime Minister and Finance Minister and Industry Minister suggest something. And you suggest that no, you go to the old area where you file a suit and go for the 30 years. Your objective is very simple. You don't want to honour my claim. That's all. but don't think that the person sitting against you are also, I mean, just take it lightly. If you think that to India to prosper as a really hub, arbitration hub, you have to don't... I mean, issue such type and notification, and I'm sure that this notification may be impugned before any High Court.

SAMAN AHSAN: No, you are absolutely right. So I believe the Arbitration Bar of India has also written a very strong letter on this. I'm conscious that we are nearly out of time. And I'll wrap things up and just in conclusion to the topic, which is transformative or much ado about nothing. May I ask each one of you sir, what is that one urgent reform, do you think, which is absolutely necessary today to really change, further change the landscape of India and to bring us up when it comes to factors like ease of doing business and contract enforcement? I'll start with you, Justice Patnaik.

JUSTICE AK PATNAIK: As you mentioned, you create the correct forum where arbitration awards can be challenged talking about Bombay, Delhi, Madras, maybe Calcutta. Some of these judges are competent they are but in most of the states they don't go to the High Court. They go to the Commercial Courts and Commercial Courts have a district judges and all that. They have no idea of arbitration. So you have to change the forum where you have can challenge an award under Section 34. And that forum should comprise or compose of people who have experience in arbitration, knowledge in arbitration. I have handled arbitration matters. If that is a forum on Section 34 then the interference to the awards will be released and then when it goes from there to the appeal, there also should be appraised forum must have people who have knowledge, experience and understanding of arbitration commission.

SAMAN AHSAN: Thank you, sir.



1 **JUSTICE AK PATNAIK:** This amendment was coming, and they should take it away Section
2 34. Section 34 challenge should take it, take away, take it away from the High Courts and
3 should be taken away from the commercial courts and put on this, this highlights for you.

4
5 **SAMAN AHSAN:** Thank you. Thank you. So, Mr. Kumar...

6
7 **HEMANT KUMAR SINGH:** If I could just tell you, you are aware that when a PIL is filed
8 in any High Court, the judges most of the time ask the petitioner that deposit money. Okay.
9 And I have seen in one of my case X Coastal Road where the judge, now he's in Supreme Court
10 asked that you deposit 10 cores. After 1 hour, the topmost lawyer of Bombay High Court comes
11 and says, sorry sir, we are not pursuing this matter Now time has come when judges should
12 impose heavy cost if they find that 34, simply don't take it unless you impose some peculiarity
13 penalty, things will not improve. Despite all this, our effort, once they come to know that now
14 there is likely that one core or two three crores. Because what has happened for arbitration
15 award. You are giving me my cost of litigation. But if you go 34 and other before Supreme
16 Court, rarely, you get this cost of your litigation. So my view is the heavy cost should be
17 imposed if you are going for unnecessary challenge. You see that the Qatar and some other
18 area there is virtually no scope for 34 type of petition. It is just like a curative. If you're
19 challenging it, judges may not hear you. They will just in the chamber will decide, dismiss. So
20 why can't we have in India? Otherwise you have to impose a heavy cost. Like 10 crores. 5
21 crores. Like PIL, you are imposing. Let us impose in these cases.

22
23 **SAMAN AHSAN:** Also Mr. Chaudhary.

24
25 **KAPIL CHAUDHARY:** I quickly wrap it up, so I'll take a very slightly divergent view here.
26 I'll say, look, like all things in India right now, right, we are in a flux. So I'll say, look, arbitration
27 is ripe for a disruption. There's huge, huge opportunity for any entrepreneur who wants to
28 come in, disrupt the field, because ultimately and companies and entrepreneurs look at
29 opportunities where there's a gap. Right? So, as you heard, from the panel. There are a few
30 gaps. I mean, we are obviously not a perfect process. So I think right opportunity, Saman, for
31 lawyers such as yourself. I'll say, I'm slightly on the other side of the age bracket, but would
32 love to, but right opportunity for young, ambitious, brilliant lawyers, entrepreneurs to come
33 into this field, disrupt. I would let a million flowers bloom. We have opportunities both on
34 institutional side, training, the counsel has to be set up. So I think this is one field which is
35 right for disruption in India, just like food delivery happened in the Zomatos and Swiggies
36 happen in the world. So I think apply that disruptive mindset. Huge, huge opportunities in
37 this field. And I think ultimately, when you start looking at this as commoditized services



1 without demeaning the role that arbitrators and courts play, I think huge business
2 opportunities, huge amount of work to be done, and fairly exciting times ahead. And thank
3 you for being such a patient audience.

4

5 **SAMAN AHSAN:** Thank you. Thank you, Mr. Chaudhry. I'll just very quickly open it up for
6 the audience questions. I know that lunch is outside, and I know that it is lunchtime, but if you
7 have any questions, then please anyone? Yeah, sure.

8

9 **AUDIENCE:** My question is to Mr. Hemant Kumar. You come from the construction sector
10 where there could be disputes involving multiple contracts and multiple parties. Do you face
11 issues regarding invoking arbitration where there are multiple parties or multiple contracts
12 involved? And do you see that the act should have amendments to allow for multiple contracts
13 and multiple parties to be joined in one arbitration?

14

15 **HEMANT KUMAR SINGH:** Let me address this query in this way. That say, for example, I
16 give you say Atal Setu. I don't know anybody has gone enjoyed that Atal Setu. I think one of
17 the finest road we have constructed in India. That is connecting from Navi Mumbai to South
18 Mumbai. Okay. So most of the time Government divides that contract if it is possible in three,
19 four packages like tunnel and one side of the party is the same, that is Government where the
20 other side is either L&T or some other party. When dispute arises, what we are doing is that
21 for one, say, particular cause of action, we have one arbitration later on. We have not
22 terminated, so we have another claim. We request the party that let us request the same
23 Tribunal to adjudicate all the claims. So we do not believe in having us for one project. Maybe
24 in parts of that project different, different arbitration. So we go for the same tribunal to decide
25 the matter. Of course, we can't impose on the other side. Other side may say no, we will have
26 another Tribunal. So you have no other option but to go for the other Tribunal but that is what
27 you said some very difficult and long, and it delays the whole process.

28

29 **SAMAN AHSAN:** Do we have any other questions? Sure.

30

31 **AUDIENCE:** So I wanted to ask a very direct question regarding the case of DMRC Deputy
32 Petition wherein even at the theoretical stage of the Supreme Court, so to speak, in your view,
33 is that the discouraging aspect why did we talk about India being an arbitration hub and on
34 the other hand, even at that stage, at that?

35

36 **JUSTICE AK PATNAIK:** Yes, it is very discouraging at all. Completely discouraging. The
37 five judges Supreme Court who did that, they should have thought how it will affect the



1 arbitration process in India. It's all right. Two judges of the Supreme Court have done it. They
2 have set aside the awards, judgments. You should not understand, interfere, and what
3 ultimately we should set aside by five judges.

4

5 **SAMAN AHSAN:** I think we are out of time. So we'll conclude the panel. I know that Neeti
6 is looking at me. Thank you so much Justice Patnaik, Mr. Kumar, Mr. Chaudhry, for taking
7 out the time to come to this panel, and I hope the audience is taking something productive
8 from it. Thank you so much for your time. Thank you.

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~~~END OF SESSION 3~~~

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