



INDIA ADR WEEKDAY 2: MUMBAI

SESSION 6

Keynote Address - Hon'ble Mr. Justice Somasekhar Sundaresan, Judge, High Court of Bombay

07:00 PM To 07:30 PM IST



1 **HOST:** I request you all to please remain seated. We'll be commencing the Keynote address
2 very soon. A very good evening to everyone. I would like to invite on stage Mr. Milind Sathe,
3 MCIA Council Member and Senior Advocate to introduce the judge.

4
5 **MILIND SATHE:** Good evening, ladies and gentlemen. I have the privilege of introducing
6 this evening my friend Somasekhar. I could have said that Justice Somasekhar Sundaresan
7 needs no introduction to this crowd and I could have and should have sat down. But we belong
8 to the profession and vocation where after saying, needless to say, we write dreams and dreams
9 of paper. So, I will follow the precedent and say something more. Justice Somasekhar
10 Sundaresan is known in legal profession and now as a judge, as domain expert, but that is not
11 correct. Because he has, in a short span, after becoming judge in November 2023 has proved
12 that he is not only a domain expert in respect of the laws relating to securities, SEBI, markets,
13 et cetera, he has virtually mastered and has become a proficient expert on variety of subjects,
14 which has dealt with as a judge in this last span of about 10 or 11 months. He is an alumni of
15 R A Poddar College of Commerce and Economics and then alumni of Government Law College
16 in 1996. During that time, while he was pursuing his law, he joined the Times of India as
17 Assistant Editor of Business section of Times of India and he combined his skills of legal
18 knowledge, writing, with journalism, and he excelled in that tremendously, because virtually
19 he was reckoned during those times as a successful business journalist. After that, of course,
20 he took plunge into legal profession and under the guidance of Berjis Desai of Udwadia Udeshi
21 & Company till that firm rearranged and he joined J. Sagar and Associates, eventually to
22 become the Partner heading the Capital Market section till 2016, when he started his own
23 practice. During that period, from 1996 till 2016, when he was practicing law, he has excelled
24 himself in the securities laws and all related fields relating to SEBI's competition laws markets,
25 et cetera.

26
27 As a practitioner, he not only practiced in High Court at Bombay and Supreme Court, and of
28 course other High Court and various Tribunals, he also was part of variety of Legislative
29 Committees formed by Government of India, SEBI, Reserve Bank of India. And during that
30 tenure, he has been part and parcel of various committees for either framing, amending, or
31 drafting regulations relating to takeover, insider trading and variety of subjects. I cannot
32 enumerate them. The evening will not be sufficient to enumerate and elaborate his work in
33 that field. Thereafter, he continued his practice in Supreme Court and High Court side-by-
34 side, and he has been a part, he has argued successfully in Supreme Court series of matters. In
35 High Court he has argued series of matters. And, of course, the last assignment as a lawyer he
36 took was everybody knows about it. The Supreme Court had appointed a six-member
37 committee to inquire into the irregularities, if any, in the stock markets because of certain



1 reports. And he was a part of that committee. That was his last private assignment. And after
2 that he has been a judge of Bombay High Court from November 2023. And we are very proud
3 to have him as a judge of a Bombay High Court. Though he has a very short span so far, eleven
4 months, he has excelled, as I mentioned earlier, not only his domain, but in variety of subjects,
5 because as a judge, you do not get a choice of subjects on which you need to work on, what
6 cases you can hear, what judgments you get to write. That choice is curtailed, which you have
7 as a professional. So, he has not only authored judgments while sitting singly, most of the time
8 he has spent with the senior judges. But while he's sat singly, he has written large number of
9 judgments on arbitration law under Sections 11, under Section 9 et cetera.

10

11 On DB, on Division Benches, he has authored judgments not only on arbitration law. But I
12 must say on variety of subjects, ranging from the Land Revenue Code, the Land Acquisition
13 Act, the Urban Land Ceiling Act, Cooperative Societies Act, and of course, whether you can
14 purchase agriculture land or not under the Bombay Tenancy Act. So, he has not practiced in
15 those subjects. But the bar is very, very happy and regales about his expertise on all subjects.
16 So, if you are a domain expert in one branch, one subject as a judge, you can certainly excel in
17 all other fields, as he indeed has done. As a judge, of course, he can now when he interprets
18 the laws, some of which are regulations, some of which he was part of drafting, he can proudly
19 profess the legal principle of interpretation, that original intent theory, he can authoritatively
20 say that that was the intent of the legislation because he was a part of the drafting of that
21 legislation. He, apart from being a lawyer and now a judge is a keen trekker. And he has been
22 to some unpronounceable places in Himalaya. And he has a dream of conquering Everest. I'm
23 sure that dream, he will one day fulfil and realize. But I am certain that before that, in the
24 career which he has now undertaken, that is the judicial career he will certainly conquer the
25 Everest in the judicial field, and I wish him success for that and welcome him in our midst this
26 evening. This is my first task, I'm performing as a Member of the Executive Council of MCIA.
27 So, I welcome him here in our midst this evening. Thank you.

28

29 **JUSTICE SOMASEKHAR SUNDARESAN:** Good evening, everyone. Can you do
30 something about the lights? Okay, good evening. It's a pleasure to be here in your midst. It
31 seems to be raining arbitration sessions, many of which use this venue. So, it's nice to be back
32 and see so many familiar faces in the crowd. What I thought of speaking about today is, pick a
33 few thematic issues that we face. The fact that we are doing this brainstorming and meditation
34 on what faces arbitration in India. I think it's important to introspect a little bit and think
35 about what are the challenges that we face. Has arbitration as a dispute resolution mechanism
36 worked? What ails its success? And what is it that we need to do as a community? We, as a
37 community we are all lawyers first, judges later. As a legal fraternity is there something we are



1 not doing right? What is it that commands attention to us, as a community which can resolve
2 disputes in preference to expensive litigation in courts? Expensive, not only in terms of money,
3 but also in terms of time. And in that context I was going through the themes of your sessions,
4 and I felt it'll be good to connect a few dots and see whether we could build a theme of what is
5 going wrong and think about what is a way to deal with it, if we mean to be a credible avenue
6 for dispute resolution.

7
8 I, for one, perhaps because I'm a markets lawyer in my practice, I do feel markets find a way
9 to value assets and services. Markets are good judges of whether a certain avenue is worth
10 investing in. So, we have to ask ourselves, do litigants to practice and by markets, I don't really
11 mean the practitioner market, but the markets that buy services from us, practitioners, from
12 lawyers, the clients, the litigants. Because the litigation is actually off the client. We lawyers
13 and judges and arbitrators are intermediaries between two competing contesting litigants to
14 try and get their disputes resolved. So, when I was looking at the sports the arbitration in sport,
15 as a team my thoughts went to why would it succeed when it is sport? I mean, you have an
16 Olympic, we all now know in India, thanks to Ms. Phogat, that there is an arbitration when it
17 comes to a dispute in sport. Why does it work? Of course, there were two extensions before
18 that award was given out. But I need to ask a question. Is it because there is no say in the party
19 to choosing the arbitrator? When you have, every Olympic athlete signs up to dispute
20 resolution by that arbitral court. But there's no haranguing over, who is the arbitrator? Is that
21 an objective person? I don't like his face. You don't like the one, I suppose. Then we go through
22 a mechanism to appoint an arbitrator. That process takes three years. Then an arbitrator is
23 appointed. That is absent in that Olympic Sport Tribunal. Is it time to think about creating an
24 institutional framework where party autonomy, great autonomy in terms of choice of the
25 dispute resolution mechanism, but stopping short of actually identifying who the arbitrator
26 should be? Let the institution deal with it. You don't get to choose which judge will adjudicate
27 your matters? The roster, the Chief Justice assigns a roaster. Whoever it comes before, it's a
28 roulette. You come before a judge, the matter goes on. But if you say, sign up to the MCIA or
29 the ICC or any arbitration forum, should there be an allocation system that does not involve
30 the Parties exercising a choice is a question to ask. When I took oath, I gave up my right to free
31 speech and expressing opinion outside the judgments. So, I'm only going to place questions
32 and see whether these are questions and these are points on which we need to introspect. So,
33 the sports session gave me that thought of whether... to succeed in getting the first step of
34 arbitration going. Do we need to think of a mechanism where an institution picks the
35 Arbitrator, cutting out one round of disputes over who the Arbitrator should be, leaving it to
36 the institution to perform well? Now, this again means that the institution for the markets to
37 believe in that institution must carry a lot of credibility. And that credibility has to be built



1 over time. The credibility of that institution and making the right choices of an appropriate
2 Arbitrator, of ensuring that conflicts of interest don't exist, of having mechanisms to deal with
3 disclosures and the like is something that one needs to think about. So, that's the thought I
4 thought I'll leave with you.

5

6 The second question, the related question is about, for that institution to command respect
7 from the market. We have to seriously think about as an Arbitration Bar and as Arbitrators,
8 do we carry credibility where the markets choose us rather than the markets have to make do
9 with what they have, what's on offer? Is the profession of being an Arbitrator now a profession
10 like the law profession or the Chartered Accountant profession or the actuaries or the
11 architects? So many professions are regulated and self-regulation is how professions are
12 typically regulated. And the Governments are stepping in. Like if you've seen what's happened
13 to accountants, the ICAI now only makes standards. Conduct of Auditors, there's an NFRA
14 which is stepped in. So, the regulatory function or oversight of a professional's functioning,
15 professionals will seed ground to the state if they don't effectively self-regulate. So, how can
16 Arbitrators self-regulate? What is the forum? What should be the mechanism? What sort of
17 regulatory environment should Arbitrators have to regulate conduct of arbitration conduct by
18 Arbitrators when they conduct arbitration is also a theme I wanted to leave behind. These are
19 all conceptual policy choices that will need to be made. But policy choices are made by
20 Legislatures when a society is ready enough to present a policy choice. We've seen recent
21 amendments, where there is a schedule of fees. The best that the Legislator could understand
22 was, all right, we need to regulate fees. It's very easy. We in India have come with a legacy of
23 60-70 years of price control and state control. So, the first feature we've seen is to regulate the
24 fee through the 4th Schedule in the Arbitration Act. Would this suffice? Or is it even
25 appropriate? Is it a wrong medicine for a right ailment or... this is an area we need to think
26 about. So, what are the mechanisms that we, as a profession of an Arbitration Bar and panel
27 of Arbitrators, how do we regulate ourselves in a manner that the markets are given assurance
28 that the intensity of promise from the performance of arbitration as a dispute resolution
29 mechanism is worth the markets investing in. I can tell you, I was also a transactional lawyer
30 for a very long time. And over time, we found that corporates are abandoning arbitration.
31 Particularly in certain types of disputes. I mean, you may not be able to abandon arbitration
32 for a shareholder dispute or Shareholders Agreement, but where a pure summary suit would
33 do the trick, why would a commercial entity choose arbitration and risk not having that option
34 to strike at a summary suit without having to lead a trial? These are questions that we need to
35 think about.

36



1 Then I saw another theme about... the controversial question about whether courts should be
2 allowed to modify arbitration awards. And my thoughts go thus. The minute you allow courts
3 to modify awards, it's a horse which will run its own course. You may not be able to say on
4 what terms and in what circumstances can courts modify awards. Can you, say, bring a literal,
5 basic structure theory and say, without changing the underlying structure of the arbitral award
6 you may be able to modify. Only you may then correct errors. What is that error? What appeals
7 to being a basic feature of an award to one may look like a very peripheral thing to another,
8 and then the whole point about an arbitrary award being a binary situation, presenting a take
9 it all or leave it all situation. Sounds very drastic because at the end of an entire long litigation,
10 the court may be left with no choice but to set aside the award, when what may ail the award
11 may be a small portion of it. But the corollary to that is that in arbitration, law courts are not
12 meant to disturb awards. Even if there are errors, I mean the whole Section 34 regime we're
13 already seeing what's happening with matters of public policy? What about it being contrary
14 to the fundamental policy of India, et cetera? So, this is a slippery slope, perhaps, in terms of
15 allowing an amendment to an award in the hands of a court because it would then perhaps
16 translate into a full blown appeal. We can say that it's not an appeal. You can say it's only
17 limited, but we're already seeing the effects of Section 34. And there are Constitutional Bench
18 judgments that are coming out to deal with the scope of 34 and 37. So, this is something that
19 we need to think about. The binary position of take it all or leave it all is a very precious
20 position, because, again, inherent in it is the belief that market participants make their choices
21 to go to arbitration. And if they've made their choice to go to arbitration, they've made their
22 choice to offer a less formalistic declaration of the mixed questions of fact and law involved in
23 a dispute, and that should hold the field. Small errors here and there or what notions of it
24 being in conflict with, legal principles should not be allowed to come in the way and disturb
25 the award. We're also faced with situations where there's an award for specific performance of
26 a supplemental contract which has got blanks in it and Parties.... And there Arbitrator was
27 saying, yes, now you perform and then you come to court and you say what is it that you want
28 perform? And that litigation goes on for years and years. So it may be tempting to go down
29 this path, but a note of caution would be that if we embrace the principle that awards can be
30 modified by courts, we need to then embrace the principle that if not *de jure*, *de facto*, it may
31 lead to a full appellate review of the awards. How much are markets prepared for that? How
32 much are participants preferred for that, is something that we need to think about.

33

34 Then there was this theme about in-house Counsels and the expectations from arbitration. In
35 some sense, what I've spoken already touches upon that. We need to ask ourselves, are we
36 delivering value for our stakeholders? I mean, we are stakeholders, all right, but we are still
37 intermediaries, the ultimate user of the law. The end user of consumer of justice is the litigant.



1 Are we delivering value to the litigant in terms of arbitration as a forum is a question we really
2 can't run away from. And if the answer to that is, maybe, then we are in trouble because I think
3 Justice Pitale was here this morning, spoke about the Government notification of disputes
4 above certain threshold. Governments are saying we'll take our chance with our civil courts.
5 We don't need to go into arbitration, and commercial parties may take that view and that's not
6 a good sign at all. Because we're then actually establishing a principle and a precedent that
7 markets are perhaps reconciled to the fact that this forum is not working. And because this
8 forum is not working, this is something we need to conceptually embrace, that effectively, a
9 good section of the market may choose not to opt for arbitration and to go to courts instead.
10 So, what lies ahead? I mean how do we build credibility? How do we build a regulatory
11 framework where Parties feel comfort, that opting for arbitration is going to be an effective
12 dispute resolution forum for them, is very important question that needs to occupy the minds
13 of the lawyers and the Arbitrators very intensely?

14

15 Arbitration Bar can't be a weekend Bar. It can't be that we'll do arbitration on Saturday and
16 Sunday and do our court practice during the week. I don't want to name names, but all of
17 Bombay you speak of, especially in arbitration, you get two names. These are the focused
18 Arbitrators in Bombay. Why then is we also as I don't know how many of us are purely Bombay,
19 and how many are straddling two worlds, like many of us did in practice of Bombay and Delhi.
20 We need to ask ourselves, why is Delhi stealing a march? If we... you have to first acknowledge
21 that Delhi is perhaps stealing the march. Acknowledging the existence of a problem is the first
22 part of the solution to the problem. It's the venue where you then get to do the arbitration, do
23 all your Section 9, Section 34s and appeals from that to the local High Court and appeals from
24 that to the Supreme Court, which is in Delhi. That's a huge strategic advantage that that centre
25 has over other centres like us. We are the commercial capital. So, as the Bombay arbitration
26 community, we need to rethink and reimagine what can we do to reclaim ground and maintain
27 Bombay as a centre of effective dispute resolution. I mean, we are a 4 trillion economy today.
28 Forget the 5 trillion number and when it will come. But even today, we are a 4 trillion economy.
29 And we are the third largest economy in the world in purchasing power terms for a few years
30 now. Do we have a dispute resolution system which effectively is commensurate and
31 proportionate to this standing that India as a community, as a market has in the world, is a
32 question we need to ask ourselves.

33

34 I'll conclude with, I didn't mean this to be a morose sort of theme. But I thought this
35 opportunity to table thoughts that came to mind. Many of you will remember this phrase, "ease
36 of doing business." It's such a bandied phrase that has found its way even into the preamble
37 of the Commercial Disputes Act in the statements objects saying we need to improve our



1 rankings in the 'ease of doing business' survey. This is a survey conducted by the World Bank
2 with various statistical tools and metrics thrown into put an economic model to features and
3 India improved significantly in many features. But it remains static in one chapter-
4 enforcement of contracts. Enforcement of law and contracts, we remained in the bottom 10 or
5 15 or 20. I don't remember the exact ranking now. Of course, these studies were being gained
6 because various economies merged ten steps into one. If you had ten forms to fill, they would
7 make one form of ten pages, and they said, oh, there's been reform and these rankings were
8 gamed. And many countries game did so well that the World Bank stopped this survey. It's not
9 an effective survey anymore. But in there lies a message that we need to think about why would
10 we lag so far behind in law enforcement? Individual symptoms don't present the problem. You
11 can say we have very few judges we can say under-resourced judiciary, we can say
12 overburdened judiciary with government as a litigant. There are many, many truths coexisting
13 and colliding but arbitration, let's remember, was meant to be an alternate dispute resolution
14 mechanism where we don't need to burden the courts more with what we have. We need to be
15 able to have an effective resolution on our own. Have we succeeded in that or have we failed
16 an opportunity to do good, to do well and improve? Because people don't realize that a
17 commercial dispute can finish a business. A small business, a medium sized business, an
18 MSME, if it has a 20 crore claim and it can't recover that 20 crores in a commercial dispute.
19 Chances are that enterprise may shut down. If their enterprise is shut down the cost of
20 reinitiating that enterprise is so huge that it has a significant impact on the economy on a
21 larger scale. So, we need to take these headwinds. We need to take these symptoms seriously
22 and consider what is it that can be done as a community to improve the standard, to improve
23 the quality of arbitration. Are our rules commensurate? I mean, I know that you all are
24 discussing your draft rules just now, and that's up for grabs for discussion. How seriously does
25 the community participate in rulemaking?

26
27 Not many are aware that even subordinate law under Parliament made statute, there is a
28 public consultation in almost every regulatory agency. How many people actually participate
29 in that pre-legislative consulting, to add value? We, in fact have one Supreme Court judgment
30 on the call drop system, where if a call drop, the theory was, if you penalize the telecom service
31 provider for every call dropped, the problem would be solved. In the pre-legislative consulting
32 technically, it was demonstrated that just putting a monetary penalty is not going to solve the
33 call drop because the problems for the call drop was something else. The Regulator ignored
34 that feedback and still implemented the law. The Supreme Court struck it down using this pre-
35 legislative consulting as the empirical means of saying it's arbitrary and disproportionate,
36 because available was evidence about the policy choice being totally a misfit to the problem
37 sought to be solved. So likewise, when there is draft rules of the MCI A or it's anything to do



1 with even draft amendments to the Arbitration Act, how effectively does the community
2 participate in these legislative exercises in this consultation exercises is also an area I want to
3 leave behind for us to introspect on. Because we get the laws we deserve. If we don't
4 participate, if we think that nothing is going to happen, this law will never come up like we did
5 with Companies Act 2013, everyone said, oh, this bill is never going to be passed into law we
6 are months away from the next election, and lo and behold, we had the Companies Act 2013,
7 which was perhaps one legislation which sought to address everything that was found wrong
8 in one case that went horribly wrong in the governance of a company. So, these are, again,
9 things to ponder over. How effective are we in all these areas? And if we participate in all of
10 these, if we think about every time you take a decision to oppose the appointment of an
11 Arbitrator, every time you advise your clients to challenge an award, we ask ourselves, is there
12 an externality that's being created by this? Are we also, for every effective delay in enforcement
13 of an award, are we also sending a signal that no one ever comes to arbitration in future? We
14 will then perceive the cost of the decisions we take as professionals on what advice we give
15 clients, because you may get that fee today, you may get that delay in enforcement today, but
16 two years down the line, clients may actually say, you know what, we really don't want to
17 arbitrate. And that catchment area is actually eroded with every such decision.

18

19 So, I just wanted to leave you with these thoughts. I'm sorry if this has been a bit of a polemic
20 or a very morose or a negative thing, but I thought it's a good way to end the day, having sat
21 through all these sessions, to introspect on what can we do better in terms of the content of all
22 these sessions that we've articulated through the day. Thank you very much for having me. It's
23 always a pleasure to speak for all of you. Thank you.

24

25 **HOST:** Thank you, sir, for your insights. I would now like to invite Mr. Nish Shetty, a Co-
26 Chair of the MCIA Council to give the vote of thanks.

27

28 **NISH SHETTY:** Thank you very much. I was going to say that the theme of both my Vote of
29 Thanks and my concluding remarks was going to be in capsulated in the phrase, "Look how
30 far we have come." Now, after hearing Justice Sundaresan's comments, I'm still going to say
31 look how far we have come. But I will also address some of the points that Justice Sundaresan,
32 you have very, very helpfully raised. So, I think rather than apologizing for it being depressing
33 or polemic I think it is absolutely the thing that we should be doing in conferences of this
34 nature. It is about thought leadership. It is about addressing the issues of the hour and seeing
35 where we can go to from here, what are the changes that are the most pressing and what are
36 the changes that we need to focus on. So, you raised a number of issues. And I'm not going to
37 deal with each and every one of them, but I will just remind everyone of some of these, and in



1 doing so, I will invite both the members of the Judiciary and also members of the Indian
2 arbitration community to perhaps reflect on some of this.

3

4 The first issue that I thought I would focus on is your comment that, institutional appointment
5 of Arbitrators is something that should perhaps happen. Now, again, this is something that
6 does happen outside of India and happens quite routinely, quite regularly, without the
7 involvement of the court. Now, that obviously will involve some change. But the point that I
8 want to make is, with dealing in international arbitrations, with dealing in domestic
9 arbitrations, there is a great amount of precedent out there, and I would invite everyone to
10 look at what happens outside of India while you're also looking at what happens within India.
11 There are lessons that are unique to India. And I imagine that not everything that happens
12 outside can be translated into India, but there is a lot that does happen outside of India that
13 could perhaps be introduced here as well. Even within the current system, MCIAC has been the
14 beneficiary of referrals from the judiciary, both from the Supreme Court and other courts
15 where the MCIAC has become the party that would otherwise appoint an Arbitrator. So, that
16 perhaps is one solution.

17

18 Judge, I know we didn't discuss this, but I'm very glad that you raised this issue of whether
19 summary judgment, for example, which is available in court, is something that the arbitral
20 community should perhaps be cognizant of and whether that's a differentiating factor. Now,
21 you'd be happy to note that as part of the rule changes that have been proposed, that is a
22 concept that we are proposing to introduce into the arbitration world. Now, this is not novel
23 in the international arbitration world. It has been introduced in the context of many other
24 institutions around the world. And when I come to how far we have come, I'll deal with that in
25 a bit more detail. But perhaps, I just wanted to flag that, to say that even within the arbitral
26 world that is a gap that has been filled through institutional arbitration and institutional rules.

27

28 The third point that I thought I would focus on in my Vote of Thanks to the Judge for raising
29 these issues is really around modification of awards and your candid feedback that it's, to
30 quote you, "a slippery slope." I couldn't agree more. The whole idea of having an alternative
31 dispute resolution process is that it's an alternative. And if Parties have chosen that, barring
32 very specific instances the idea is not to have an appellate process through the court system.
33 If Parties have voluntarily chosen that and have consented to it, then really what the courts
34 can, in my respectful submission, what the courts should really be doing is presenting a
35 supportive role to what the Parties have already chosen. And that's what the intent of the
36 legislation is, and that's how it's again applied in many, many jurisdictions around the world,
37 that have virtually the same laws that India has. In terms of the UNCITRAL Model Law, it is



1 not that different. So, perhaps that experience from overseas can also be considered when
2 we're considering this issue.

3

4 The final point is really around ease of doing business. And Judge, again, thank you for raising
5 that. Because in my view we're going into again, I'll use this phrase, "a golden age for India".
6 Again, I practice in Singapore and I'm looking almost from out, in. I think the inflow of capital
7 into India, in my view, will be unprecedented in the next decade or so. And Indian
8 practitioners, Indian Judiciary should really be, should celebrate that and should also facilitate
9 that in whatever way it can.

10

11 So, finally, in terms of how far we have come, what I wanted to touch on was this. When we
12 started MCIA in about eight years ago one of the things that Madhukeshwar and I were
13 discussing was the need to have a conference. An arbitration conference. Because, again,
14 internationally, you could, you could attend two arbitration conferences a day and you would
15 still would not finish attending all of them. But in India that was not quite a thing. And
16 Madhukeshwar said, who's going to come? Who's going to leave their busy court practice and
17 comfort arbitration conference? And also, I said, okay, we should also charge money for it.
18 And he looked at me as if I was crazy, and he said, you're going to charge money? Take them
19 away from the high paying practice in court and ask them to come for an arbitration? In eight
20 years, we've gone from having a half-day arbitration event to a week-long event across three
21 cities. And that too a sold-out event weeks in advance where you're having distinguished
22 members of the Judiciary and other practitioners, sharing thoughts and discussing what more
23 we can do to improve the arbitration landscape. So, I think we have come a long way. And we
24 shouldn't forget that while we're considering what are the challenges, we shouldn't forget how
25 far we have come.

26

27 The transcription that you see is an example of this as well. The first time we introduced live
28 notes and something that Madhukeshwar and I discussed at the time and said, we want to
29 show how live transcription takes place. And at the time we had an international service
30 provider come and translate the conference as it was going on. And people were coming up to
31 us and saying, "Is everybody reading from a script? How is it that everything that is being said
32 is coming up on that screen right there?" Again, fast forward eight years, what you're seeing
33 on the screen is not an international service provider. It's an Indian service provider doing it.
34 TERES. So again, how far have we come? I think it's something to celebrate. And I'm told that
35 TERES is now transcribing in the Indian courts as well. So, we have come a long way. The
36 journey continues, but we have come a long way.

37



1 The third is around, really rules and I touched on the fact that, and the Judge as well, and
2 others have touched on the fact that we are hoping to amend the rules and we are going to
3 amend the rules. And the draft rules have come up for consultation again. In response, Judge
4 yesterday marked the day when those rules have been disclosed to the public for consultation.
5 Even the first set of rules that we introduced we consulted the Bar, we consulted members of
6 the Judiciary. We had Indian practitioners, we had international practitioners that came up
7 with the first set of rules. It's lasted us eight years. And at the point in time when we introduced
8 those rules, some of what we are introducing now was already in play in the international
9 context. But it was a deliberate decision not to introduce it in the first round of the rules
10 because the feedback that we got from very few senior members of the Indian community,
11 legal community was the market is not ready for it just yet. So, let's have the institution build
12 credibility, let the rules as they are come out, let us work through that. We'll see what issues
13 crop up. But today the same Indian practitioners and other Indian practitioners together with
14 the international practitioners have come to the conclusion that what you're seeing now in the
15 draft rules is best-in-class in the world. Now, when the rule, draft rules were being talked
16 about, for me, it was a moment of pride when a senior German practitioner is here saying, I
17 wish we had this in Germany, right? Many of us hold German standards as being among the
18 highest standards in the world for very many things, but I think we can take pride in some of
19 these things. The fact that the community has reached a point where we can be best-in-class
20 and we may be, well be setting the standard for others to come. And that's what MCIA aims to
21 do.

22
23 Two final points. One is referrals. I touched briefly on that again from the Judiciary, we've
24 been fortunate to get those referrals from the Judiciary. One of the messages I'd like to leave,
25 a thought I'd like to leave behind is for practitioners who are appearing before the courts in
26 India on these motions for appointment of Arbitrators, why don't you make that request of the
27 Judiciary that this be done by an institution rather than the Judiciary itself. Make that as a
28 request, and hopefully if the judge in question feels it's appropriate, will make that order and
29 will simplify that intervening process that Justice Sundaresan talked about.

30
31 Final point, really sort of way forward. MCIA, in the last eight years has done a number of
32 things. One is it's increased its caseload, it's increased its visibility, but it's also built a lot of
33 capacity on the ground in India. And I can see that as being part of that journey moving
34 forward as well. If you look at the MCIA Report, the Annual Report, you will see that nearly
35 half of the Arbitrators appointed are women. You have Counsel that are appointed. You have
36 international Counsel that are appointed in addition to the Indian judges that are appointed
37 to these arbitrations. So, I think building capacity, ensuring diversity and appointment and



1 ensuring timeliness. That's been the core of every message that we've delivered through MCIA
2 over the years and that I think will remain the core of MCIA's sort of ethos. So, do have a look
3 at that report. In terms of dispute resolution more broadly, I think MCIA just aims to be the
4 gold standard in India and perhaps it'll be the gold standard in the region as well. So, those
5 are my concluding remarks. I think we're all grateful to all of you for attending this event, and
6 I hope you've had a fruitful day of discussions and deliberations. And what stands in the way
7 now of me concluding this and drinks is virtually nothing. So, let's all conclude this evening
8 with some drinks and enjoy the networking thereafter. Thank you very much.

9

10 **HOST:** Thank you. Thank you, Mr. Shetty. And with that we conclude for the day. And I
11 request you all to please join us for drinks and dinner. Thank you. And we request you to join
12 us tomorrow as well at 08:30 for the breakfast event. Thank you.

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~~~**END OF SESSION**~~~

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