TERES

INDIA ADR WEEKDAY 2: MUMBAI

SESSION 3

Focus on the Client: Role of In-House Counsel- To Arbitrate or to Mediate? Deciding on the Most Appropriate Strategy

12:00 PM To 01:30 PM IST

Moderator:

Payel Chatterjee, Partner, Trilegal

Speakers:

Nicholas Peacock, Independent Advocate & Arbitrator, Peacock Arbitration

Jatin Jalundhwala, General Counsel, Adani Group

Shyamala Venkatachalam, Chief Legal Officer, Zee Entertainment Enterprises Ltd

Chitra Rentala, Partner, Dispute Resolution & White-Collar Crime, Trilegal

Pratibha Jain, Head of Strategy and Group General Counsel, Everstone

Daniel Cai, Director, Dispute Resolution, Drew & Napier LLC

HOST: Can I request everyone to please be seated? We'll be starting the next session soon. The next session is by Trial on Focus on the client role of In-House Counsel to arbitrate or to mediate, deciding on the most appropriate strategy. Can I invite on stage the panellists for this session? We have Ms. Payel Chatterjee partner at Trilegal, who will be moderating the session. Mr. Nicholas Peacock, independent advocate and arbitrator at Peacock Arbitration. Jatin Jalundhwala, General Counsel, Adani Group. Ms. Shyamala Venkatachalam, Chief Legal Officer, Zee Entertainment Enterprises Ltd. And Miss Chitra Rentala. Partner, Dispute Resolution & White-Collar Crime, Trilegal. Ms. Pratibha Jain, Head of Strategy and Group General Counsel Everstone and Mr. Daniel Cai, Director, Dispute Resolution, Drew & Napier.

PAYEL CHATTERJEE: Very good afternoon, everyone I am glad to have so many people, though. It's the second day and I'm hoping that the conference fatigue hasn't set in yet, despite, I think it's been starting on Monday and today we are on Wednesday afternoon. We promise we are not going to keep you away from lunch for a very long time, and keep this one hour as insightful, as interesting, as exciting as possible. And given the kind of illustrious panel I have with me today, I am sure everyone will go back with a food for thought. I think before we even begin the panel, I am going to take up five minutes just to introduce my esteemed panellists. I think each one of them have been in this particular area for so long, and none of them really need an introduction but for people who have not known them, have not worked with them in the past, I think it's my duty to let you all know the kind of great work each one of them have done.

And I'm going to start with my co-panellists seated right next to me, Nicholas, whom I have personally known for the last 15 years. Nick is an independent counsel and an arbitrator based in London. Obviously, everyone before his new avatar has already known him for the last 25 years where he's headed the arbitration practice at Herbert Smith and then at Bird & Bird. 25 years is a long time, and he's a known face when it comes to not just London or any other arbitral institution, but India itself. I would like to believe Nick has a soft corner for India, having done a lot of disputes with Indian parties, either as a Counsel or as an arbitrator. He's worked on various ad hoc and institutional arbitrations under all rules ICC, LCIA, SIAC and UNCITRAL. And I think he's known for this kind of strategic insight And the input he would give to a client. What will work and what will not work, I think that's what is going to come in very handy in today's panel as well. We have so many General Counsels on the panel today. What is it that they are looking for from their Counsel or when they are appointing an arbitrator?

Moving on, on the left of Nick we have Mr. Jatin Jalundhwala. I have been fortunate enough to have worked with him for a couple of years to have such somebody who is there to constantly guide you and tell you how is it on the other side of the world when you're not in private practice. He's at the helm of the legal affairs when it comes to one of the biggest conglomerates in India, The Adani group. He has been with the group for over 18 years. He heads their legal and compliance work over there. And having worked with him, I know what his job looks like and what his daily work is, which there's never an end. I think 24 hours, it's safe to say it's less for him because when you're at the parent entity with so many portfolios and with everyday portfolio which is increasing. You don't know what kind of transaction, what kind of dispute is coming your way. And you have to be prepared, because every day when you walk into office, you may have thought of these things. But something new comes his way and he has to deal with that. He has built a huge in-house team at Adani, which has over 100 lawyers, and he knows what is expected from each of those In-House Counsels and how to ensure each of them contribute to their best. He has worked on both mergers and acquisitions, as well as disputes and regulatory matters across industries, whether it be real estate, energy or infrastructure work. I'm really glad that he took the time today and has joined us today for this discussion.

Next to Mr. Jalundhwala we have Shyamala. Shyamala is the Chief Legal Officer at Zee Entertainment and where she leads the legal strategy as well as compliance. She has over 15 years of experience in media and entertainment sector and has held senior roles at prominent organizations like Star and Mediapro. She's known as a strategic legal leader with expertise in media and the entertainment sector. Having done a very brief stint in In-House Counsel, I think the importance of being a strategic leader is way more. Because it's not just legal that your role is restricted to. It's the insight, what will work in a situation and what will not, and being able to take that decision which matters the most.

Besides Shyamala, I think this is the most easiest introduction for me because having my own colleague on the panel itself, Chitra, with whom I have been working for the last one and a half year. Now she is a partner in the disputes practice at Trilegal based out of Mumbai. She's known for working on complex commercial litigations, arbitrations, and a lot of focus when it comes to insolvency matters as well as our white collar practice. I can say that she is the person we go to when we know there is a matter which has a mix of both issues. Chitra has actually advised a successful resolution applicant in the first ever corporate insolvency resolution process for an NBFC. Thank you, Chitra, for being on the panel.

The next introduction, again, one of my former bosses, which makes it easier. I don't know difficult for me to introduce her. We have Pratibha Jain who is the head of Strategy Group

General Counsel and a member of the management committee of Everstone where she oversees all legal matters and drive strategy. She was previously the founder of the New Delhi office of Nishit Desai Associates and laid its funds and regulatory practice. She has over 25 years of experience and having worked across jurisdictions, whereas India, Hong Kong, US, Japan, I think she has seen it all and has already been in various in-house roles even before joining Everstone, she was with Goldman Sachs. I think that mix of knowing in-house as well as having worked on the private practice. I'm sure she is going to give us impute today, which will be from both expertise and from both perspective of experiences on both sides, what will actually work or not work.

Last but not the least, we have Daniel on the panel. Daniel is a Director in the dispute resolution practice at Drew & Napier. He specializes in civil litigation and arbitration. He has extensive experience in handling disputes, banking and finance, and financial regulation related work. Obviously Daniel is also an author of the single civil procedure, which has been published and he represents a lot of clients when it comes to investigation work for various regulatory authorities. Thank you, Daniel, for taking the time and flying in for our session.

I'm not going to waste any more time. I know it has been a long introduction there, but I thought it was important for us to do this. Our discussion today is "What is the role of an In-House Counsel." I'm sure the first thing all the In-House Counsellors will tell me is we don't want a dispute. At least that's what most of our clients tell us. We are not spending time on money in any disputes. So the idea is to understand from them what is it that they are looking for when it comes to their external counsels. Do they want to arbitrate? Do they want to mediate or not even go that route and just settle a matter at the outset itself? I'm going to actually start with Pratibha over here. What do you do as a General Counsellor? What do you think is necessary for you to strike a balance because you all have your own internal stakeholders itself. You're dealing with various departments, different functions and the business guys, and whether it be a fund or a multinational, there are various portfolios where there are investments happening across industries and sectors. How do you get a balance whether I should mediate, I should arbitrate or just leave it to a management decision?

PRATIBHA JAIN: Thanks Payel, and thanks for having me here. It's always very difficult for me whenever I'm with lawyers in conference, I start tending to miss my role on the other side. I think what I tell in my business all the time is there is no such thing as a legal decision. Everything ultimately is a commercial decision. Legal is just a tool we use to achieve the commercial objectives. And that's why, as in-house, you cannot be the lawyer. You have to be part of the team. So I don't see myself as a lawyer anymore. I see myself as part of the business.

And that's why it's critical to have the right lawyers. And really, I mean, it takes time. But thankfully, this is my second stint as a GC. You've got to take off your lawyer hat and really start donning the hat of management and spend a lot of time in making sure that you have the right lawyer in the room. Step one. Step two is, yes, prevention is the best cure. So, for example across the group nobody's allowed, including in the portfolio companies, to sign a contract if it doesn't have arbitration. So making sure that you have the right tool to finally hopefully settle because of the threat of arbitration. I think that typically does work well. We as GC definitely I don't want a dispute as far as possible. Also given my industry, because ultimately we are fiduciaries. We don't like to waste the money that investors have given us on fighting. So, it's always the last resort, but you've got to play it well, that nobody starts abusing, knowing that your private equity and you're not going to fight. That was a view for a long time in the industry, especially when the industry was quite nascent. Promoters always thought that the investors, they're not going to fight. So I've seen that industry change. Ultimately between settlement, mediation, I think it bends really, on the matter. We very rarely go for mediation because you're dealing with typically, at my level, sophisticated parties and so the settlement acts kind of like a mediation but never say never but definitely love arbitration.

PAYEL CHATTERJEE: Are there any takeaways that without any thought, it's a given that you have to have an arbitration clause in your contracts. I think one interesting thing, which you said is the transition where you think you're on the side of the business now. I would love to know how that happens, whether it just automatically, it's a switch on, off, or it takes years of practice to actually understand that. Okay, now, I'm not just playing a lawyer anymore. Which takes me to the next aspect as to you mentioned that the settlement itself could be sort of form of a mediation itself and I think that's where I would want to ask Mr. Jalundhwala that when you are engaging in this settlement talks, would you prefer an external counsel to be involved, or would you want it to be happening on a counsel to counsel basis or at a principal to principal basis and can you share some experiences where, what has worked?

JATIN JALUNDHWALA: Good afternoon to all before I just give my idea, I must also introduce Payel. Payel has been with Nisith Desai for, I think, more than 15 years or so. Ten years. Then she was with us at Adani Group for about two years, and now she is with Trilegal. I have to tell only one thing. She's vibrant and she's excellent in her work and the inputs which we are getting are excellent. Sometimes a small example I can give you in the morning when we sit around 10:00. or 10:30 for some work. So she will come back at 11:30. I might be seeing case, she might be asking some questions what else has to be done. But she will complete the job and come back and say, "*yeh ho gaya hai*". So the way she is working 24 hours, that's Payel.

Say one point here because mediation has become nowadays an important instrument. Or we can say, for resolving the dispute. You all might be knowing an ounce of mediation is worth pound of arbitration and ton of litigation. So as of now I feel that this is the best course as far as mediation is concerned to resolve the disputes in a shorter time. Now, my question is that how to do it? Principle to principle, or we are saying lawyer to lawyer. But here it is, I am using a hybrid system. The way we are now using for court that physically and hybrid, both the ways it's going on. So, it's a must that we should use hybrid system.

There are two things involved here. Suppose we start principle to principle, sometimes it's a question of relationship, and that relationship may not remain thereafter. Secondly, when we are drafting the agreements, we have always a dispute resolution clause and the steps to be taken for dispute resolution. In that case we always write, let's have a meeting of the top two people or three people from one company or other company, then second line is CEO to CEO, and then if nothing happens, then it goes to arbitration also. And therefore, initially, it is essential that we start with counsel to counsel. Over a period of time if mediation goes on then, as a company legal person as well as a business person, both have to be involved because business person knows well about the transaction which has taken place, commercial transactions which has taken place. And that is the reason I see that it depends upon the circumstances and situation prevailing at a particular point of time and we should start with the counsel to counsel negotiation and then we should be involved as far as principle to principle, which will help to narrow down the gap and come out with the results which we wanted.

And in one of the cases, I must say we had the mediation in US and me and Payel both were there and it was started around 8:30 night and up to morning 05:00 India time and we were in a position to successfully complete that arbitration sitting both counsel as well as the business team and the legal team, and it was the first of its kind arbitration we could complete during the COVID time. So this is as far as my thought mediation or some settlement is going on, then we should have must counsel with us, but apart from that, we should not be aware of that discussion.

PAYEL CHATTERJEE: Thank you so much. I think there's no straight jacket formula which one can apply even. If something has worked in one case, it's not necessary it will work in another matter. The counterparties are different, it could be different jurisdictions. You have different counsels, and when you're putting in a lot of minds together you can come up with different results and in different situations which brings me to my question to the external counsels over here, and I'm going to start with Nick. When a client approaches you, I think

maybe we try to understand their business itself, because that lets us give them solutions. Whether mediation will work it will be arbitration or we should do a mix of something. Would you be open to give your client suggestion despite being in the disputes practice, which means maybe less work for the lawyer and the firm that. Okay, give it a shot. Try and see if you can settle the matter, be open to discussions. Nick, your thoughts before I go to Chitra.

NICHOLAS PEACOCK: Thank you. Thank you, Payel. Thank you to my panellists and thank you to the MCIA for putting on this great event and roadshow. So as an external advisor, as an external counsel, you've always got to be open to the idea of settlement. Of course you'll be guided by your client, but if you're not yourself prompting that question and being open to it, then you're not doing your client a correct service in helping them to pursue the settlement of the resolution of their dispute in the optimal way. Jatin has already mentioned of course, you might have a contract with an escalation clause in it. So I'd hope that all of us, of course, will first go to the contract. And have a look at the clause, and if it says escalation, then you'd better engage in that because, of course, if you fail to engage in escalation clause, that might itself have implications for how you could resolve the case going forward. I've sat as an arbitrator in such a case where parties told me I didn't have jurisdiction because one of the parties had not, it was said, engaged in the escalation clause before bringing the arbitration. Clearly and it's a nice academic point whether it's an admissibility point or a jurisdiction point, but we can discuss that another time. So, of course, you got to be open to it. You've got to be guided by clients. I often find actually, when an external counsel I get instructed on dispute, it's probably the least likely point at which it's going to settle, because this is the very point at which the business and their internal advisors have decided this is worth investing in, going to outside counsel, possibly drafting a claim or responding to a claim. So positions have already started to ossify. It can be the worst time to try and settle.

I was based in Singapore for a number of years and did a lot of work in Indonesia. Those who are familiar with that jurisdiction will know that some of the commercial courts there have a mandatory rule that as soon as you file a court claim, you have to engage in mandatory mediation, which is really the worst time to do it, because the very point at which parties are so frustrated being unable to settle a case that they filed for litigation. That's the time when, frankly, you're not going to reach a deal. So I think often it's the worst time but you still have to have a plan. Now, in the English court system, mediation is built into the court litigation process. And the first prompt is after pleading the closed. So after the party pleaded out their written case. And that can be a good time because actually, the heat of finding the case finding the defence has passed, and you set out your position, and you can now see the other side's position. And part of the problem you're trying to settle a case as an external advisor is, does

the client know their own position well enough. Have they had advice? Have they really tried to crystallize what their claim or defence is so they can value that position until they can then settle it. Before they then incur the legal costs of having to fight it all out. So those are just a few thoughts. I'll stop there because there's lots to say on this topic, but we've got lots of other views, so I'll hand back. Thanks, Payel.

PAYEL CHATTERJEE: Thank you so much, Nick. Chitra, I'm going to throw on one more additional aspect to this for you. Does this become different and tricky when it comes to Indian clients?

CHITRA RENTALA: No, I don't think so. I think it's pretty similar to what Nick said. I think even Indian clients are very focused on the business perspective. Right? That's exactly what Pratibha said that we want to focus...even when you're sitting in an organization, you're putting on the business hat and not really the legal hat. And I should tell Pratibha that we've also started doing the same thing for our clients. It's not very different anymore, because I think that's the only way you can service clients, right? And going back to Nick, when I'm also approached by clients on complex commercial arbitrations or any form of arbitration, there are two hats I put on. One is the pure legal hat which is something that is inherent in all of us as lawyers. And the other is the business cap. For the legal cap what I always ask myself is, let's go back to the dispute resolution clause. Have a look at whether it's a multi-tiered arbitration mechanism that has been built into the dispute resolution clause. If there's a multi-tiered arbitration we have to look at what are the steps to institute, an institutional arbitration. If the steps are in the nature of good faith discussions, then you have then you'll engage in those. If it is for appointment of a mediator or a third party, third party senior professional to resolve the dispute, then you'll appoint that person before approaching arbitration.

The other sort of limb that we also look into nowadays is whether it is directory or mandatory. If it's directory, then obviously, if clients are keen, then we can go for arbitration immediately. If it's mandatory, then obviously we advise, like Nick said, to actually follow the letter of the clause, because that is the intent of the parties. Now we have also seen that even when it's directory clients have sort of interacted with the opposite side on a number of occasions. There's been back and forth discussions on settlement. Right? But that has not been, that has not been fruitful. So what they end up doing is they ask us, can we just avoid it and go directly to arbitration, and courts have carved out that exception. So that is the lawyer and the more pedantic, technical approach that we apply as lawyers as the first get go. But like everybody has stated on this panel, that's not enough. Right? What are the factors that drive you in making that technical decision is also guided by the business perspective? When clients come

to you, continuity of business is the criteria for them and that continuity of business also includes keeping costs low. And lawyers, at the end of the day, are cost centres saying it even against my own interest. But that is true. That's how I see all clients. They think lawyers are cost centres. The only time they will say okay to a lawyer is whether lawyer actually assists in continuity of business and not in hindrance of business. So when I draft up a strategy, whether it's mediation or arbitration it's guided significantly by the decision of continuity of business. And I think that sort of resonates what the whole panel sort of would think.

PAYEL CHATTERJEE: Thank you, Chitra. I think, obviously, it's which hat you're wearing, and thinking from both perspectives matter. At the same time, I think what matters is what kind of a case are you faced with? Are you really strong on the merits, or do you know there are loopholes in your own case which you need to deal with. There might be straight answers. Just looking at the provisions of law or what is given in your clause itself that you can decide to do it. But I think where the In-House Counsels come to the external counsel says, can you think out of the box? It's not there in my clause, it may not be there as a direct provision in any other Arbitration Act for that matter. But is there something that I can maybe go to another court and file a declaratory suit? Maybe as a lawyer and me will be like, why am I doing this litigation, it's not the right thing. But that's what my client needs at the end of the day. Something which is out of the box may not be the right approach, you know it, but that's going to frustrate the other side and actually lead to maybe a settlement itself. Which brings me to my next question to Shyamala. It's great if you have a strong matter on merits in your dispute itself but the other side is willing to settle. What would be your considerations at that point in time? I know I am good. Do I want to fight it out or rather, actually, maybe take the money and settle the matter and not incur cost for my organization? How would you approach such a situation?

SHYAMALA VENKATACHALAM: Thank you, Payel. And it's lovely to be here and meet each one of you. So, Payel, I would say, put it like this, however strong your case is the outcomes are always very uncertain. And as many of my colleagues here said uncertainty is something that business does not want. As an In-House Counsel, we are required to control these uncertainties and create an environment which enables business and not disabled business. So, given this and it's just not about a strong case. Even if you do get a positive outcome, enforcement is another battle altogether, and there are costs involved. So keeping all this in mind, I think I would steer towards a settlement for three reasons. One, it allows you to take control of the dispute, because who knows it better than yourself with your business colleagues what your business wants. The second is you're able to control costs, and the third is it brings in finality and certainty. And I've been an In-House Counsel, and I've never been

on the other side for the last 30 years, and every time I've had discussions with my business colleagues one thing comes out very clearly. it is time is the essence. We can't wait. So delayed positive outcome from us is, zero outcome for the business. Because it may come in late, but maybe we have a great precedent set but ultimately as an In-House Counsel, some not...As Pratibha said, we are part of the business team, so I've not been able to help business with that outcome, it's not really meaningful outcome.

PAYEL CHATTERJEE: Thank you so much, Shyamala. Daniel, one thing is key from Shyamala's response is that there's uncertainty for sure. And business does not like it. Now, even if you have chosen arbitration, I don't think that is also certain. You never know what's coming your way during the course of the arbitration proceedings as well. As an external counsel, would you tell your client to be open to settlement mediation as you move on in the proceedings itself? It could be at any stage or only something, which, if you have a tiered clause you look at, at the beginning, or a lot of times we see arbitrations getting settled just before the final hearing is going to happen but do you really need to wait till that? Could you do it a little earlier itself? How would you approach a situation and advise your client?

DANIEL CAI: Thank you, Payel. I think that mediation and settlement is open at any stage, and it's in the client's interest to try to settle things if the outcome is acceptable to the client. The role of external counsel and mediation, I think it's quite different from the role of counsel in arbitration. There are different skill sets slightly. In arbitration, Counsel is trying to persuade the arbitrator like Nick, who is impartial, who is neutral to the party. We are trying to persuade him of our position based on the law, based on the facts. But in mediation, the temperature of the room may be quite different, the clients may have a heated debate, heated dispute and what we are trying to do is to persuade the other side to see things from my client's perspective. One is trying to persuade from law evidence. The other is trying to persuade from a reasonable position, compromise.

So, how I approach mediation is I think the first thing to do is to do a risk assessment, need to figure out how strong your case is. No matter how strong your case is there are always uncertainties. Some of my co-panellists have pointed out, the Tribunal may not agree with interpretations of certain clauses. Your client may actually not have the documents to back up what he is telling you. You get to the evidential hearing and witness falters under cross examination. Those are all stories that some of us have been through before. So, if there is a mutually accepted agreement that can be reached between parties, I think that helps to remove risks and uncertainties and the client can get on with business, continue to grow the business and generate revenue. So, I think that's how I think I would approach it. But that being said

while I was a mediation cookie you still need to, as I say, keep an eye on the merits of the case so you figure out what you are willing to pay for that to remove that uncertainty.

PAYEL CHATTERJEE: I think from personal experience also I would say that at the end of the day, it does boil down to intentions of the parties also. Even if you are deciding to mediate you should really be approaching that yes, I want to settle it. Not that I have to do one step before I get into arbitration then that just defeats the purpose of doing a mediation itself. And yes, we have uncertainties and I think the common problems faced is we do not have the documentation to back up your case or suddenly your witness is not willing to testify anymore. Maybe it is easy for me as an external counsel then tell it to my client, "You had said you have all of this but now if you don't have it, what am I supposed to do?" Which makes the role of the In-House Counsels even more difficult because you are going to face with these kind of procedural issues, these kind of unexpected developments that come up during the course of the arbitration. Flexibility is very important in those cases. In that case, I would ask Mr. Jalundhwala, how are you going to internally address your stakeholders? You may have promised internally. I don't think any lawyer promises. Let's be clear about it, about the outcome. But when you are telling your CEOs, okay, this is what the strength of my case is. And there's always something the business wants to know, what percentage that you can say that, this is where I'm going to head it, and I'm going to win. But then there are unexpected issues coming up. How would you address that internally?

JATIN JALUNDHWALA: Good question. And it always putting the In-House Counsel in soup. Because you are right. Two things are very important here - flexibility and adaptability. Say when arbitration is going on, and there are two types of... you know 50% is in our favour of 50% maybe in favour of the other side. And always business feels that I am right and whatever I have done is correct, and therefore I am entitled to receive or I am not to give anybody, either side. Since a situation, it becomes very difficult. But sitting with the business what I tell to my people or I do that first of all, go through the proper documents. What you rightly said sometimes documents are also not available. Go through the documents and find out which points are against us. What in favour? Forget favour for the time being, that will be taken care by the counsel first. So as far as internally, we will analysis, we will estimate what are the points against us, discussed with the business and say these are the points where you are given one email, send an email where you have accepted, say yes, I have given a delivery which is beyond a period of 50 days or so. That means you have accepted wrongly given.

Secondly, sometimes when quality issue is there, then also you said yes, we will get it back and replace it. So in such situation, if you are going for arbitration, all these will go against you. So

in such situation, during the arbitration, we have to be flexible. In one case, what happened an arbitration was over, and we won the arbitration, which was against public undertaking and then they went to Section 34. They do not get any stay. We went for execution along with it. But what happened during the execution, and this... they also find, and we also find this will take a longer time and which will not take less than five years down the line. Because, you know, nowadays at 34, 37, it may go to Supreme Court and Supreme Court may go up to the curative, looking to the recent case. So they said out of, say, about 100 crores, we have to pay, we are ready to pay 70 crores or so. Then we discuss internally, we discuss with the management and we came out with the settlement agreement. And I'm saying you before, I think, 15 days or so. We filed that settlement agreement in the court, Delhi High Court and closed the matter. So this is the flexibility even not only at the arbitration, even after that also we have to do, and that is the only a businessman can do. And some more of commercial calls. Sometimes as a lawyer in-house lawyer, we have to tell. This is a commercial call, you have to take later. What I am giving you this, you should close it and you should settle it, but later on if you find case till you want to get the money after five years, then you continue with it. We are here to help. So this is the...

PAYEL CHATTERJEE: I think what in-house does teach you also is to know that when you need to tell your business guys that this is the hard reality. Take it, accept it, or you decide. I mean, are you okay with money being there and not coming in for as long as possible. I think which brings me to a question which should be easy for Pratibha as a General Counsel to tell me. When you are engaging your external counsels, how do you ensure rather they are on their toes? I can say it nicely that okay, they need to be agile. They need to be responsive. But what is it that you are looking from them to ensure your job gets done?

PRATIBHA JAIN: Actually not difficult for me at all. Just hire the right lawyers.

PAYEL CHATTERJEE: How does someone do that?

PRATIBHA JAIN: So in my case, I'm very lucky, right? Because I was in private practice for so long. There are enough people I've worked who are now in senior positions that... I know the market. But building that personal relationship with your lawyers, even in my first stint as GC I remember, the first dispute I had literally because we were setting up Goldman Sachs in India. There was a regulatory issue that required like if we didn't solve it immediately it was a million dollar loss a day. And as first time In-House Counsel, it's suddenly on you to make sure the firm is not losing a million dollars a day, and that's a huge responsibility. And the only way I solved that was, I called one of my friends who is a senior partner in a leading law firm, and

I said you please come to my table, in my office and we're going to sit down and we're going to figure this out tonight. And he came and he helped me figure it out tonight. We filed, we completed the application overnight and filed it with SEBI in the morning.

So, I think that kind of, (a), knowing who the experts in the field are. And (b), having the red button that you can press, and they'll come to help. And it works both ways. I've flown all the way from Delhi for this panel. So you have to pay back in kind also, is something I'm realizing more and more. But it's an amazing fraternity, and once you've hired the right counsel, I've never found it difficult. So, touchwood, I've not had a situation. Maybe others can talk about this. But especially in India, I have found that the lawyers are once they're on your matter like it was music to hear Chitra speak about how they're wearing the business hat for you. And that's what typically happens. If your lawyer is not doing that, you should get rid of them sooner rather than later, because otherwise, you know, it's going to be a disaster.

Having said that, having touch points you can't be involved day to day. That's not your job. Because if that's what you're doing, you're not doing your other job, which is being part of the management. You can't just run the litigation. But having touch points to make sure that your counsels are on the right track and your business is briefing them, right. And there's no miscommunication happening there. Having those regular touch points and telling your counsel to make sure that they're telling you regularly what is happening. If they're not calling you once and depending on how long this is going, on but once in a few weeks and saying, this is what happened, what do you think. Then, I know there's something wrong, and I start calling up.

PAYEL CHATTERJEE: So, key is the trust and relationship with the counsel?

PRATIBHA JAIN: Yes, absolutely.

PAYEL CHATTERJEE: You're choosing your counsel itself. Chitra, which puts a lot of responsibility on all of us when they are putting reposing their trust in us as too. But there could be situations where we have known a certain set of facts and we start approaching the matter in a particular way. Then new information comes our way, which requires you to change your strategy completely and maybe the case evolves during the course of the proceedings itself. There is always this constant requirement that at every stage you need to map your outcomes depending on what the situation currently is it could change. Is it incumbent that at every stage you are actually keeping your client informed completely, ensuring that these are the reasons why we are saying this today, it could change? It has led to

a change. Because this has happened. How would you actually keep your client informed? And let them know that, okay, we are doing our job.

CHITRA RENTALA: So I think both, I think what Jatin and Pratibha are both saying, they rely heavily on us to guide them. And with the experience, you already know that these shifts in positions do happen in the middle of proceedings. So the question is having that experience, do you wait for the shift in position or do you account for it from the very beginning? So from the most basic thing a clear requisition list, and that is the first thing that I tell my team. I tell myself that we need to send that out to the clients. That requisition list is not in the sense of I need A,B,C,D,E documents, or the clients have given documents and I draft up pleadings, right? The requisition list is very tailored for the particular matter to ask you, do you have information A,B,C,D,E? The clients will say, okay, I have information. And corporates today with their different organizations built in, they will tell you whether they have the information. This information is not available or this information may be available, but we may be able to acquire it later. We may not be able to acquire that. Having that information, that level of information itself is powerful. Because then you draft up your pleadings in such a way that you account for the fact that the situation may change in the future. And I think that's why you don't have to take this call in the middle of pleadings. Rather be prepared from the very inception.

Then coming to when the matter sort of changes or shifts or the client's target shift in the middle of it. To account for that, you have to go back to our original discussion, which Nick and I, we were answering on what is it that the clients really want. They want to make sure that there is business continuity. If lawyers keep that in mind, whether you are having, whether you're in the middle of an aggressive litigation, whether you're in the midst of an aggressive arbitration. The moment you keep that in mind, you will be able to pivot your strategies accordingly. I think what ends up happening is lawyers are sometimes very focused on the outcome of winning because it's X versus Y and winning. In winning and calling it, I have a victory, I have an order or a judgment in my favour is a victorious feeling, but I think there needs to be a shift to understand settlement or mediation is probably more of a win for clients than even a victory X versus Y. And that's really how I would think of giving pivot to one's own decision the moment you understand what the client wants.

PAYEL CHATTERJEE: I think we have had quite a bit of to and fro between the In-House Counsels and external counsels. I'm going to shift the gears a little bit and actually talk about something which is a lot more concerning for the In-House Counsels and which I think they heavily focus on before they make their decision, which is obviously how you're managing the

cost itself. What do you have in mind? Because you need to know you have a budget at the beginning of the year. What happens when suddenly something which you have not accounted for, suddenly you have faced with the dispute. It could be an arbitration. It could be some sort of investigation. How are you going to balance the expectations of the stakeholders? You have a lot of pressure coming in from the management, from the business. I think that's a question for both Shyamala and Pratibha. When you're faced with that situation how is it that you address the issue of costs? Shyamala, if you could start.

SHYAMALA VENKATACHALAM: So first year, too, as somebody mentioned here, we are seen as a cost centre in-house as against an external for counsel. They are revenue generating partners. We are cost centres. So obviously we have a budget. But at the same time, we also know that there is uncertainty in business and something which you believe is like I'm partnering with somebody may turn into a dispute later, an ugly dispute. So we do have provision for special budgets, and it's not that the management...management understands. And we take responsibility as a management to control those cost costs also. But there are some fights that you have to take. You cannot run away from it. It's not that we wouldn't want to spend anything, but the responsibility is to make sure that we do a cost benefit analysis and we engage the right team, and we ensure that it is controlled properly, as we said, directed properly and supervise it properly. And that requires a teamwork, that requires flexibility, that requires to see how things are going and quick decisions. But yes, but at the end of it, we have to take responsibility as a senior management team to make sure that we manage the costs.

PRATIBHA JAIN: I agree with all of that. But also, I think this is a pet peeve of mind in India. While legal, is seen as a cost centre. If you see US budgets for companies, the legal budgets are huge. And I think the industry is also still nascent in India, the corporate legal industry. I think once we start growing, it's our responsibility to make sure that we are not seen as cost centres. I'm not just talking about in-house legal counsel. Now I'm talking about the external counsels. It's really the responsibility of our external counsels that they don't just have that relationship with me, but when they're dealing with business, business doesn't see them as a cost centre. They don't see that way for Big 4s or the consultants. My God, I've seen the budgets, how much they pay them. It is upon us as an industry to start providing that value. Even today, when structuring is done, you go to the Big 4s first and the lawyers don't even get involved till you have to actually draft. I'm changing that in my organization. But it is an uphill task. You have to tell each team that you have to get legal involved earlier. So I think it's an industry imperative from other than everything that Shyamala said. Fact is that I hate it because I've been in private practice for so long, I hate cutting...negotiating with my lawyers but till that mindset changes we have to keep doing that.

PAYEL CHATTERJEE: I think Pratibha has put the onus on us, Nick, that it's for the external counsels to actually ensure that this is not seen as a legal cost centre. You have worked as a counsel and as an arbitrator with various arbitral institutions. There is a concept of obviously awarding, of cost itself. But there is limited jurisprudence as to what is the basis, how you're awarding costs and which situation you're awarding costs. So, I mean, a lot of situations we now have been able to even recover half of the legal cost. So, there's so much money which has been spent on the arbitration itself. How do you ensure when you are representing a party that they are actually able to recover their cost? I think that could also lead to a change in mindset that, yes, it's not about actually, just cost, there is a light at the end of the tunnel.

NICHOLAS PEACOCK: Yes. Thank you. Well, so cost in arbitration. I think the first point to make here is don't make assumptions about how you think costs are or are not dealt with. Take it methodically. First important call of course, look at your arbitration agreement in the contract. What does the little bit of wording in there that you'd forgotten about because you read it twelve months ago say? Does it say, the Tribunal shall have the power to award costs? Does it say parties will pay their own costs? So always go back to the arbitration clause, of course. Then, of course, go to your Rules of Arbitration. If it's ad hoc, you check your Act, of course. But if it's institutional, go to your institutional rules. All good institutions and there's one put on this event, we'll have rules about costs. They might even have criteria about how those costs are to be awarded or assessed. So go there.

Then of course have a look at the law of your seat where your Tribunal is seated. Does the Tribunal have the power, under the procedural law to award costs? Are there wrinkles in the law of the contract? Is one party going to say, well, this is a French Law contract therefore you should follow French Law on costs. So you look at the framework and the power. Then you think about how to deal with that and how to maximize recovery. Again in doing that go back to the detail of your provisions. Are there restrictions on recovery? Are there suggestions about how Tribunals should approach recovery of costs? Many institutions now have provisions in their rules for the Tribunal to take account of delays, frivolous pleadings, those sorts of factors. That will give you an idea as you are, counselling as you are a party, what to do and what not to do to make sure you're maximizing your ability to recover cost. It will also tell you what buttons to press with a Tribunal to say the other side shouldn't recover costs or should pay more of my costs, because look at this meritless defence.

I think some other thoughts and practice. Have a think about the legal tradition of your seat that might also give a clue. I've mentioned my practice in southeast Asia. I had an ICC Arbitration one time in Jakarta, where we were entirely successful and asked for our costs and the Tribunal even though it had the power toward them, said, well, we're sitting in Jakarta, Indonesian courts don't tend to award costs, so we're going to follow that approach here. This is pointing for us, of course, but you need to know about that as counsel and as a party as you go into that arbitration. Also a real world issue here. Think about your Tribunal. Think about the makeup of your Tribunal. Ideally, you think about this when you're appointing your Tribunal members. We are, all of us creatures of our legal tradition. We all of us, think frankly what we've brought up doing is probably the best way, the right way, and that applies on costs. So if you have arbitrators from a tradition that has a loser pays cost mentality, as we do in the UK then it seems quite natural at the end of a case, that the party that has brought the bad defence or has brought the bad claim or is lost on this major issue, should pay the costs of that issue. There are likewise plenty of arbitrators from traditions that just don't give out legal costs. They think it's wrong or it's a bad idea to do so. Don't incentivize parties to rack up costs in the hope they can get them from the other side.

So if you appoint one of those arbitrators to your Tribunal and there's a matter of discretion as to whether the Tribunal can award costs. It has a power but in these two, exercise of discretion then you might have skewed the decision one way or another by the arbitrators you have chosen to put onto your Tribunal. So have a think about that at the very start of course when you're, when you're appointing your Tribunal. I think in practical terms, as counsel, make sure you put due and proper effort into your cost submissions. They are not just an add on at the end of the proceedings. They certainly are not your client who has the prospect as of getting back some or all of this immense amount of money they paid you. Over the last 18, 12, 24, 48 months. This is a big deal to fight over. So it should not be just a post script to your argument on the merits. So put proper effort into that. Put yourself in the position of Tribunal. What information do I need to give this Tribunal so it's clear on its power? It's clear on the fact that they should take into account of. It's clear on the reasons why as a match of justice and merit, I should get my costs.

And here, by the way, are all the details you need to get comfortable about the amount I put in, and I think sensibly you will address this at the merit hearing with the Tribunal. You will say as you're discussing post hearing briefs and what's to come next and Tribunal, what would you like to see on the question of costs? Would you like to see invoices, suitably redacted to the privilege, the information is taken out. Do you want to see disbursements? Because you got to give the Tribunal the information. They want to get comfortable. So that when they see

a large number that you're asking, for $2 million of legal costs. Can they check that numbers right and that they can feel justified in awarding it? And lastly on this, just have a think about the standard you will after Tribunal to apply in exercising any discretion on costs. So under the English Arbitration Act, we tend to have a rule of thumb. It's whether the costs are reasonably incurred and reasonable in amount. And I think that's not a bad approach to it. You may need to nuance it based on the Tribunals background and what your local law or rule say. But in every instance when you say to the Tribunal, I did this. Was it reasonable for me to do this, to incur these costs of counsel or these costs for appointing as expert? Why was that a reasonable step to take? And then why is it a reasonable sum? It's not excessive. It's fair enough. It's proportionate to the amount in dispute or to proportion to the risks to me as a Respondent. Maybe I was fighting a low value case, but it had huge significance to my business or my reputation, so I had to incur these costs. So make sure you really address those questions for the Tribunal and give them the chance to write that award that you want on costs.

PAYEL CHATTERJEE: Thank you, Nick. I think cost submissions is one aspect which is heavily fought upon. Your dispute is done. Your arbitration is also over, but both sides counsels will keep arguing on what on your cost, submissions and to ensure how much you can actually recover from it. I think there is a lot of expectation from the external counsels, but I feel, as In-House Counsels there's a lot of expectation from there are two other stakeholders at play as well. Your arbitral Tribunal as well as the arbitral institution in place, because there is a lot of expectation when you're choosing a particular arbitral institution itself while you're putting their name in the dispute clause, while you're selecting your Arbitral Tribunal. There are a lot of factors which are considered. So there's a huge onus on them, as well as to how a dispute actually gets dealt with.

Daniel, in these situations, when there's so much expected out of an Arbitral Tribunal and arbitral institutions, how do you think they react when they are faced with a situation where parties suddenly decide that they are going to settle it? They want to go ahead with the mediation and not go ahead with actually a full blown arbitration. What is it that's going on in the minds of an Arbitral Tribunal and the institution? Will they be in favour of actually allowing a settlement, or is there going to be an aspect where they would want to drag it? How do you think, what is it that, what is it that back of their minds?

DANIEL CAI: Thanks, Payel. I don't think a Tribunal would deliberately want to drag things on just because they have an interest in proceeding with the matter. In my experience, the Tribunals I've dealt with have been very supportive of a settlement when they are informed that parties are considering settlement. They have been flexible about adjusting timelines to

let this happen. They have been granting extensions to parties to attend mediation. In one of the matters, I did, settlement even occurred after parties had completed the evidential hearing. After we filed our closing submissions. We're waiting for the final award and matter settled before then I never got to see the final award, which is a sell point. So I have not been in a situation myself. When parties wanted to mediate or settle and the Tribunal said no. I'm not going to allow this. This maybe could arise in a situation where there's a lot of time and effort that's put into preparing for the case. And then parties one day before the evidential hearing say, hang on a minute, can we postpone it because I want to settle. Or I want to discuss settlement. I can see a Tribunal being a little bit reluctant in that situation, especially if this would result in the hearing being pushed off by, I don't know, a year to coordinate schedules again. But personally, I haven't been in such a situation. I think that's a good thing.

PAYEL CHATTERJEE: Thank you, Daniel. Which brings me to my next question to Mr. Jalundhwala. We have several arbitral institutions in place now. Across jurisdictions, we have several in India itself. Could you tell us your experience of working with an India based arbitral institution? Have you been able to assess their effectiveness or do you think they are at part of the international standards? Or are there any improvements you're looking from them?

JATIN JALUNDHWALA: Yeah I've dealt with certain institutions as far as arbitration is concerned, and one of them is MCIA. And a big arbitration, which was going on just recently completed and where there was a clause related to the arbitration through MCIA. I do not have dealt with any other arbitration as far as institution in India is concerned, but in Singapore we have done it, SIAC. So first of all, let me tell you, as far as India is concerned, we are always going on an old thought. Our old thought is always when there's arbitral clause to be put in, I will say one arbitrator to be appointed by me, another by Payel and third is the empire. So that is our Indian tendency till time. And I am doing my arbitrator who is known to me. The other side will do arbitration hold to her and the third will be the empire. But nowadays it is necessary for India to come out with this thought process and to come with the institutional arbitration. And for institutional arbitrations, there are certain points which need to be reviewed by all of us sitting here, as well as the institutional arbitrators, such arbitration like we say, MCIA. Now it is necessary for this, they have to come up with some good quality. Like what quality I'm saying. No doubt it's a good quality, but one is that the presence across various jurisdiction. Say, suppose I have contract with some foreign party, then I must have that our institution shall have presence across other jurisdictions that will help us to name that particular institution.

Secondly, expert panel. The institution shall have the expert panellists on the arbitration like arbitrators shall be quite expert. So that that will help to have the image of India as well as the institution to go ahead with the arbitration. Third is the transparency. That's very important that any institution have the transparency and innovation, because if you see SIAC has done so much things what we all are, knowing that anytime now, previously it was LCIA. Everyone was putting LCIA as an institution for arbitration. Suppose I have something with London, I have something with Australia. But nowadays, everyone's mind is taking SIAC because what they have done, transparency, speed as well as innovation. All this is required for any institution, global reach and that quality of the award. When the institutional arbitration Tribunal is there, then a quality award of the award has to be like this has to be maintainable across.

Sometimes we have found that quality of the award is such that it is not maintainable even I say publicly against public policy or so then at the time of Section 34 also, it takes off. So this is required as far as India is concerned and when India is taking a global lead over a period of time and going to be the third largest economy then the institutional arbitration has to play an important role over the period of time.

PAYEL CHATTERJEE: Thank you so much. I'm cognizant of the time. I know we are left with only a minute, but I'm going to request MCIA to give me five more minutes. I'm going to skip a few questions. But I think one question is just most important, and I'm sure everybody would want to hear that, which is for all my panellists. And we can start with make itself, is sharing a practical experience where you have dealt with the matter which is important or memorable enough where you have faced different situations from a mediation perspective or leading up to an arbitration and vary faced problems where you have faced certain setbacks, how have you dealt with it to reach the positive outcome. I'm going to start with you, Nick.

NICHOLAS PEACOCK: Okay. Well, I'll give you two quick, practical examples of mediation. Mediation in the context of dispute resolution. There was one case we were dealing with many years ago, which was seemed intractable, and we had a two day mediation planned and are not really generally a fan of mediation that lasts more than one day. But we had two days planned, and the first day was entirely taken up with the issue of which party was going to be the net payer in the dispute because it was complex, and there were claims going both ways. And as we've heard before, often you'll see a counterclaim thrown in when a claim is brought. And so the first day was merely wrestling with the topic of which party would pay whom, and at the end of that first day that was finally resolved until he went into the second day. Now, it didn't settle on the mediation, but it just goes to show that sometimes small steps can take you a

significant way in a dispute. And, of course, that broke the back of it, as it were and led to a situation where the parties could settle later on. So that's an example of a sincerely wrestled mediation, leading to a significant step in a case.

I'll give you the opposite example. I had a very high stakes IP dispute some years ago where I was counselled, and we were trying to wrestle back some trademarks that were being pretty badly misused by a counterparty, and we suggested mediation. The counterparty came, I think with no sincere plan to try and settle and turned up and asked for a figure which is the sort of figure that Bond villains asked for when they're ransoming the world with the threat of nuclear warheads. So it had many, many knots on it. And it was a silly number, and that mediation didn't last very long at all, and twelve months later, to our great pleasure, the other side had to write the check, which had seven zeros at the end of it, and we cashed that check with a great smart knife faces. So if you're going to mediate, take it seriously. It can help. Don't waste anyone's time.

PAYEL CHATTERJEE: Well, a good result for your client at the end of the day. It's a long wait. But there's a good result. Mr. Jalundhwala.

JATIN JALUNDHWALA: Yeah. Recent example. We had a contract with an Australian software company and that contract was for about six years plus. That was done by a company which we took over recently, and therefore, that contract provides for no termination for six years. It's a lock in, like us from our side. So, when we came into, we said, this contract is not favourable, let us close it. So, we gave the notice and we terminated immediately they file SIAC arbitration, initiated the arbitration. There was going a Statement of Claim filed by them from oversight. Also, we filed objection. And the claim was around 50 crores plus or so. And meanwhile, we also find out some we dug out some documents from our side even though contracts started, but they have not acted upon it for a year or so because in the initial days we do not have the papers. But we found out from the old records which was given by that company to us. And then we found that one year down the line, they did not do anything, and we put also our claim counter claim.

Then later on we talked through our lawyer to them let's have the mediation. Initially they said no. So we thought, now this matter will go on, and we may lose because this termination clause is not provided at all. Then finally they came out and they said, okay, let's have a mediation. And you all will not believe that mediation went only for a day. Only for a day. It cost us only four lakhs as a mediator fees and it is closed at one fourth of the price. We are going to pay them. And another point, out of this total, we spent around 75 Lacs towards the legal fees

which includes the SIAC, we are going to get around 35, 39 lakhs back from the SIAC. So this is the fastest mediation I have seen. This has happened a week ago.

PAYEL CHATTERJEE: Wow! I think that's a great situation and a place to be in. Shyamala is a similar experience or slightly different?

SHYAMALA VENKATACHALAM: So I had different kinds of an experience of mediation. This was through a court monitored mediation process in the New York Court. And that was an amazing experience because it was a huge learning while I saw the judge itself. She put us in the courtroom and she said we are not going. I have cancelled my dinner appointments with my own daughter. I'm not going until you all have a deal, both sides. So, we had the business teams of both sides. And over a period of, it was amazing to see, over a period of five hours how she deftly kind of navigated the process. At the end of it, she was able to reduce the areas of dispute and the differences and also tone down expectations of parties. Because we go with the emotions high and she was able to give a third eye view and to tone down those expectations, bring us back to reality. And before we knew, suddenly we thought, it's not going anywhere. And before we knew in the last ten minutes, okay, it's done. So that was an amazing experience.

PAYEL CHATTERJEE: I think I'm going to agree with you, Shyamala. I've had similar experiences. Where there was a huge difference in the amount which the other side was claiming and which we were willing to settle at, but I think the mediator plays such a big, important role because we did it through a virtual mediation. And there will be breakout rooms. How the mediator could grasp the entire situation and his or her ability to tell you these are your strong or these are your weak points. Please understand. You want to keep harping on it. Go ahead. Be my guest. You are not going anywhere with this. This is the amount you will end up spending in a litigation or arbitration. You really want to go down that route and being able to do that with both the parties for them to ensure that, okay it may make sense. Let's just close it within an hour or two. We will all save money and move on with our lives. Chitra, I would love to know your experiences.

CHITRA RENTALA: So just slightly digressing from this part. I think in matters that I've been working on a lot of them have turned into settlements where clients have settled the matter. But one common theme seems to arrive that they want the settlement to be court driven process. They want the court to sort of say that this is a settlement that is approved by the court, which is pretty simple because you take the settlement agreement and go to court. But there's another layer that has been added by a lot of the clients today because they don't

want precedent to be set in for other clients. So they want such settlement agreements to form part of the court record but kept confidential.

So, when I first dealt with this matter, I went and saw precedents, and, funnily, there is no case precedent as such, but it's really done on a case to case basis. Right? So now what we have sort of established in all our matters, where clients are very particular, that it's a code driven process, and we also prefer it. That settlements are court driven, because then you can go for contempt. And there's slightly more protection than an out of court settlement. We also build in to the settlement terms that all of these settlement agreements will be placed before the court. The court will record that this is a settlement arrived at basis a settlement agreement placed in a seal cover. The sealed cover forms part of the court records but cannot be divulged to any third party. So that's a trend that I have actually seen only in my matters and probably two other matters in the country, and that is something that I think really benefits clients in their settlement. And to maintain confidentiality, even outside arbitration.

PAYEL CHATTERJEE: I think that's a great takeaway. And something which we need to think at the outset itself when you're drafting your clauses, and that's where the need comes to have your dispute lawyers at the beginning of the deal itself and not wait for a dispute to start. I think Pratibha, my question to you would be slightly different. Do you think arbitration actually helps to lead to a settlement or we should just go ahead and try and approach with a settlement talk and a mediation? Or depending on the party on the other side, you might change your strategy?

PRATIBHA JAIN: Yeah, very true, I think it totally depends, at least in my experience, on what the dispute is and who's on the other side. We're right now trying to settle a matter where both parties are going to lose considerably if you go into an arbitration. So we send a stern legal letter, and then we send the business teams to go settle and then we send a stern letter. So it's been going on. If I take in the talks that the business guys have been doing a year. Both parties, don't want to go for arbitration but both aren't backing down. Maybe I'll look at compulsory mediation and see if that helps. But I've had situations where, you know, the intent on the other side is bad. And as a lawyer, you just know that there is no way you want to... like their aim is to get you down to zero in that situation. Thankfully, we caught it early and we went and got our SIAC Order and enforced it in India, all in six months. So when you see something that you know is going to come and harm your business you catch it and a lot of time, business shouldn't be toxic settlement. And my answer was very clear, no.

PAYEL CHATTERJEE: Daniel, you're going to have the last word in the room today on this.

DANIEL CAI: So I think practical, experience wise, it's important to be realistic and practical when you attend mediation. I've been in situations where the other side attends mediation and they use it as a platform to just simply repeat their position, or worse, ask for things like an apology or damages from emotional distress and that really just derails the whole process and the waste of everybody's time. So I think it's important that when parties agree to go for mediation, they are realistic and practical about it. And I'll repeat what I said earlier, which is an early assessment of the strengths and weaknesses of your case is important. You may have a strong case which after you get legal advice on, you realize it's not that strong. Or you may think, you have a weak case, but you realize that your opponents has an even weaker case, and it's important to get the advice early, preferably in writing from your lawyers, so that memories fade over time. And you can take out that piece of advice that somebody sent you earlier and re-read it twelve months down the road to take an assessment again. That's all I have.

PAYEL CHATTERJEE: Thank you so much. Daniel. I am not going to stand in the way of lunch and everyone, because I know we have already extended by ten minutes. I hope you all enjoyed the session today and got a little bit of insight into the minds of the General Counsels and the external counsels, how they address those thoughts and how they try to ensure that their clients are actually well taken care of. On that note, thank you so much, everyone, for being here. Thank you.

~~~END OF SESSION 3~~~