Delhi International Arbitration Centre (DIAC)

Delhi Arbitration Weekend

16 February 2023

"*Establishing India as a Leading Hub for International Arbitration*"

Lord Goldsmith KC

Introduction

Good evening, everyone. It is a great pleasure and an honour to address such distinguished members of the Indian legal profession and the international arbitration community.

- Dr Justice D Y Chandrachud, Honourable Chief Justice of India
- Mr. Justice Satish Chandra Sharma, Chief Justice, High Court of Delhi
- Mr. Justice Vibhu Bakhru, Judge, High Court of Delhi
- Sitting and Former Judges of Supreme Court of India and High Courts

I would like to thank Mr Tejas Karia and the Organising Committee for inviting me to deliver this special address at this inaugural session of the first ever edition of Delhi Arbitration Weekend.[1]

[1] With special thanks also to Shardul Amarchand Mangaldas & Co for their assistance in preparing this speech.

Three years ago, I had the privilege of speaking here in Delhi. I spoke then about the essential rules for counsel preparing for an international commercial arbitration.

Of course, a lot has happened in the world since then—not least a pandemic, which I know has affected the personal lives of a number of us. And, for better or worse, those events have also brought about a number of global changes.

One of those changes, which is undoubtedly for the better, is India's increasingly prominent global economic status. Just to take two parameters that demonstrate this:

- India has overtaken the United Kingdom to become the world's fifth-largest economy.[2] By 2030, India could be third.[3]

- India is poised to be the world's most populous country in April this year, surpassing China.[4]

So, India's rise as a global economic power continues, with increasing investment both inside and outside of the country.

This rise has meant that there is increasing demand from the international business community to have access to an efficient, reliable and final way of resolving their disputes related to India.

---

2 M. Armstrong, '*This chart shows the growth of India's economy',* (World Economic Forum, 26 September 2022).

3 The Times of India, '*India set to be third largest economy by 2030, says* EAM' (TOI, 15 January 2023).

4 L. Silver, C. Haung, '*Key facts as India surpasses China as the world's most populous country'* (Pew Research Center, 9 February 2023).

Given that the Indian domestic court system is occupied, I would say rightly, with a heavy case-load, dealing with the day-to-day litigation of 1.4 billion people, the demand from the business community to resolve their commercial disputes can only be met outside of the domestic court system.

It is in this context that India strives to establish itself as a leading hub for international arbitration and to emerge as the centre of gravity for disputes that currently might otherwise go to Singapore, London, Paris or Dubai.

It is in the pursuit of this goal that I would like to speak today.

India's ambition to be a leading hub for international arbitration has been clear for a number of years. From my perspective as an international arbitration practitioner, India is closer to achieving this goal than it has ever been.

Indian arbitrations are being increasingly seated in India, and this will no doubt continue but, this evening, I would like to consider how India can ensure that it becomes viewed as a viable, pro-arbitration seat for international commercial disputes, whether there is an Indian connection or not.

With that in mind, I will split the remainder of my speech into two parts:

- The solid foundation that India already has.
- Five key areas that I think will be critical to India achieving its goal of being a leading hub for international arbitration.

A strong foundation on which to build

For any country to become a leading hub for international arbitration, it requires a strong foundation. In my view, India's foundation has been strengthened over the years, of which I think four aspects are particularly worth noting.

First, India has an exceptional bar of advocates and solicitors, with a slew of major domestic firms boasting strong dispute resolution and commercial arbitration practices.[5]

The strength of the Indian legal profession is well-known, increasingly attracting international attention and global law firms. I have often worked with, and come up against, Indian lawyers, and I know from experience that they make both outstanding teammates and formidable opponents.

Second, India's judicial decisions today are increasingly pro-arbitration compared to the past. In this way, the Indian judiciary is continuing to play an active role in providing critical support for the arbitral process.

Indeed, in the last five years alone, the Supreme Court and High Courts have grappled with a number of important issues, including:

- Determining the seat of arbitration when an arbitration agreement expressly provides only for the venue.[6]

- The ability of parties to choose foreign law to govern an arbitration agreement between them.[7]

---

5 The Legal 500, '*Legal Market Overview in India'* (2021–2022).
6 *BGS SGS Soma JV v. NHPC Ltd*, 2019 SCC OnLine SC 1585.
7 *Dholi Spintex Pvt. Ltd. v. Louis Dreyfus Company India Pvt. Ltd* CS, (COMM) 286/2020.

- The ability of two Indian parties to choose a foreign arbitral seat in their arbitration agreements, even if the subject matter of their contracts and counterparties are fully situated within India.[8]

Honourable Chief Justice D. Y. Chandrachud has, of course, himself been involved in a number of important arbitration-related judgments, including:

- *Zehjiang Bonly Elevator Guide Rail Manufacture Co. Ltd v. Jade Elevator Components*, Arbitration Petition (Civil) No. 22 of 2018, which confirmed that, where a contract allows parties the option of approaching either an arbitral tribunal, or the courts, without providing any priority between the two, the parties will be referred to arbitration.

- *ONGC v. Afcons Gunanusa JV*, 2022 SCC OnLine SC 1122, which confirmed a tribunal's ability to determine its fees in domestic *ad-hoc* arbitrations.

This is perhaps unsurprising given his astonishing judicial career, in the course of which he has, during his Supreme Court career alone, written over 500 judgments and sat on over one thousand benches, including the highest number of Constitutional Benches.[9]

Third, India's government is invested in building the legislative and institutional support required for arbitration to thrive.

This is clear from:

---

8 *PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Lt,* Civil Appeal No. 1647 of 2021.

9 Supreme Court Observer, '*D.Y. Chandrachud'* (18 October 2022), p. 3.

- The legislative interventions of the Parliament, which have been aimed at bolstering India's arbitral framework. The 2019 and 2021 Amendments,[10] in particular, are aimed at promoting institutional arbitration in India[11] and at "*promot[ing] India as a hub of international commercial arbitration*."[12]

- The 'New Delhi International Arbitration Centre' ("**NDIAC**")—now the 'India International Arbitration Centre' ("**IIAC**")[13]—the objectives of which are all geared towards developing the IIAC as a leading institution for international and domestic arbitration and to creating an independent and autonomous regime for institutionalised arbitration.

- State governments, including those of Maharashtra and Telangana, have put in place policies for government contracts above a certain threshold to have institutional arbitration in place.

Fourth, India benefits from a common law tradition and history, which allows it to benefit from jurisprudence elsewhere. Indeed, the very foundation of India's laws, the Constitution of India, is sometimes referred to as a "*cosmopolitan document*" because it derives several of its features from foreign sources; including from the UK, Ireland, the US and Canada.[14]

---

10 The Arbitration and Conciliation (Amendment) Act, 2019 and Arbitration and Conciliation (Amendment) Act, 2021, respectively.

11 Bill No. 16 of 2021, The Arbitration and Conciliation (Amendment) Bill, 2021, Statement of Objects and Reasons (29 January 2021), p. 3, para. 3.

12 Bill No. 16 of 2021, The Arbitration and Conciliation (Amendment) Bill, 2021, Statement of Objects and Reasons (29 January 2021), p. 3, para 4.

13 Following the introduction of the New Delhi International Arbitration Centre (Amendment) Act, 2022.

14 A. Bhan and M. Rohatgi, '*Legal Systems in India: Overview'* (Thompson Reuters Practical Law, 01 October 2022), p. 1, para. 5.

In this outward-looking tradition, Indian courts regularly consider and rely on international legal principles and judicial decisions of other (mostly common law) jurisdictions while dealing with social, economic, environmental, governance and contractual issues.[15] This willingness to be outward-looking and flexible to the changing needs of the law stands India in very good stead.

It is clear, therefore, that India has a very strong foundation from which to pursue its arbitration goals.

The question, then, is how does India build upon that foundation to fulfil its ambition and become a leading hub for international arbitration?

It seems to me that the most straightforward, and most certain, way to answer that question is to look to other leading seats—I have in mind, for example, London, Paris, Singapore and Hong Kong—and to establish what it is that has enabled their success. India can then consider those aspects and how they can be incorporated in the context of its own ecosystem and arbitral landscape.

It is that exercise that I will attempt to undertake this evening, with the hope of providing what I see as a potential roadmap towards that goal.

Keys areas for establishing India as a leading hub of international arbitration

To be able to add itself to the list of leading hubs of international arbitration, it seems to me that there are five key areas that India will need to ensure that it is on a level footing with other leading seats for international arbitration.

[15] A. Bhan and M. Rohatgi, '*Legal Systems in India: Overview'* (Thompson Reuters Practical Law, 01 October 2022), p. 7, para. 2.

Those are:

- Recognition of party autonomy.
- Strong home-grown arbitral institution(s).
- Arbitrators' independence and impartiality.
- Adopting international best practices.
- Innovation.

I will take each of these in turn.

Before I do so, I note that there may be other aspects that could do with reform, such as loosening restrictions on who can appear in court proceedings.

In 2015, I co-authored the Chartered Institute of Arbitrators Centenary Principles, which provide principles for an effective and efficient seat in international arbitration[16] and which, I think, provide a roadmap for any jurisdiction looking to establish itself as a hub for international arbitration.

For present purposes, though, I will focus on the fundamentals I think India will need to bolster, given the foundation that it already has.

Recognition of party autonomy

Party autonomy is the backbone of international arbitration.

What do I fundamentally mean when I say party autonomy? I mean respecting parties' decisions to arbitrate their disputes but also to choose the forum and

[16] Chartered Institute of Arbitrators, London Centenary Conference 2015, '*CIArb London Centenary Principles*' (CIArb, 2015).

governing law that will apply to their arbitrations. I also mean recognising and respecting the parties' freedom to choose their own arbitrators and, indeed, advocates.

This will be crucial for fostering the trust and confidence necessary for the international business community to seat their disputes in India.

India will need to ensure, therefore, that there is a framework in place that gives businesses confidence that they will be able to resolve their disputes and that their choice in these key aspects will be respected in India by courts and arbitrators alike.

We have, of course, seen positive steps towards this.

One of the most welcome developments in this regard is the relatively recent Supreme Court decision of *PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Ltd*.[17] Following that decision, Indian parties can choose a seat outside India and, in an arbitration between Indian parties that is seated outside India, any award will be considered a foreign award and enforceable under the New York Convention. In another decision, the Delhi High Court, in *Dholi Spintex v Louis Dreyfus*,[18] recognised that Indian parties could have a foreign law governing their arbitration agreement.

It is precisely these sorts of jurisprudential developments that will catch the attention of the international business community and encourage them to think about seating their disputes in India. However, it will be vital to ensure that that positive trend continues moving in the right direction.

---

[17] *PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Ltd*, Civil Appeal No. 1647 of 2021.

[18] *Dholi Spintex Pvt. Ltd. v. Louis Dreyfus Company India Pvt. Ltd* CS, (COMM) 286/2020.

It will be very important, therefore, to carefully consider two points.

Arbitration Council of India

First, is the role of the Arbitration Council of India ("**the Arbitration Council**"), which will be an independent body nominated or appointed by the central government. The 2019 Amendments envisage the Arbitration Council being responsible for a number of things; including framing policy and guidelines for professional standards, grading arbitral institutions and accrediting arbitrators.[19]

This is a broad mandate, and it seems clear, therefore, that the Arbitration Council stands to play a large role in the future of Indian arbitration.

During my speech, I will touch on the potential impacts of the broad mandate of the Arbitration Council, but for now I make two brief comments.

First, that while there may be examples of a body of this kind being engaged in *promoting* arbitration—for example, Japan's Ministry of Justice—I cannot think of an example in an arbitration-friendly jurisdiction, where such a body is also charged with *regulating* it. It seems to me that that is because the business community puts considerable weight on the autonomy of the arbitral process; an autonomy that is, at the very least, at risk of being significantly eroded, where a governmental body or regulator becomes involved.

Second, and relatedly, I can see a real risk that, if there are signs that the Arbitration Council's mandate will end up cutting across parties' autonomy and

[19] Sections 43D(1)–(2) of the Arbitration and Conciliation Act, 1996. Note that, as of February 2023, Part 1A (Sections 43A–43M) of the Arbitration and Conciliation Act, 1996, which contains provisions on the establishment, composition, duties and functions of the Arbitration Council is not yet in force.

control over the arbitral process, that that could lead to businesses removing India from its list as a potential seat for their disputes.

I have already expressed my reservations about the Arbitration Council previously, and I will not further detail and repeat them.[20] For present purposes, what I will say is that, while this is not an initiative that I would generally consider to be arbitration-friendly, I can understand the rationale for it in the context of the Indian landscape.

It is now on the statute books, and careful consideration will need to be given to how the Arbitration Council could help in supporting India's ambitions about becoming an international arbitration hub.

Confidentiality

My second point relates to India's approach to confidentiality.

The choice of international parties to arbitrate invariably includes a choice to keep that dispute out of the public eye. It is a prime example of the kind of autonomy that makes arbitration so attractive for resolving disputes. In support of that autonomy, the 2019 Amendments[21] provide for the kind of blanket confidentiality that businesses have come to expect. This is a very welcome change.

The confidentiality of the arbitral proceedings is, in my view, an attribute that the judiciary can strengthen. For example, where court proceedings arise out of

---

[20] P. Goldsmith 'Essential Rules for Counsel in Preparation for an International Commercial Arbitration' (11th Annual Conference of the Nani Palkhivala Arbitration Centre, 16 February 2019), p. 2, para. 4.

[21] Section 42A (*Confidentiality of information*) of the Arbitration and Conciliation Act, 1996, as inserted by section 9 of the Arbitration and Conciliation (Amendment) Act, 2019.

arbitrations, as they often do, the judiciary should consider whether the hearing should take place in private and whether the judgment should be anonymised, something frequently considered in the UK.[22]

While I am acutely aware of the heavy caseload of the Indian judiciary, there are no doubt other circumstances in which confidentiality and anonymisation are implemented in Indian courts, particularly in family matters. It is therefore not something completely novel to the Indian courts.

If the confidentiality of arbitral proceedings was extended to court proceedings, I think it would give confidence to international parties that their failed business deal or financial difficulties will not be out there for the whole world to see. Of course, there may be cases where confidentiality is not required, but giving parties the option is yet another way to respect party autonomy and their decision to arbitrate.

Strong home-grown arbitral institution(s)

There are over 35 arbitral institutions in India. Institutional arbitration has received extensive support from the Indian judiciary with High Court annexed institutional arbitration centres such as the Delhi International Arbitration Centre, the Gujarat High Court Arbitration Centre, the High Court of Orissa Arbitration Centre and the Chandigarh Arbitration Centre.

The novelty of court-annexed arbitral institutions may give international parties reason to pause, as they are accustomed to independent arbitral institutions that function outside of the domestic court system.

[22] See: Civil Procedure Rule 62.10, which provides that the court may order an arbitration claim to be heard in either public or private.

Moreover, as Justice BN Srikrishna noted in his invaluable 2017 report, the quality of these institutions varies in terms of the: (i) efficiency and speed of the arbitral process; (ii) on-site infrastructure; (iii) available arbitrators; and (iv) quality of the awards made.[23]

One of the core aims of the 2019 Amendments was to strengthen those institutions. This aim was very much pushing at an open door, acknowledging as it does that institutional arbitration is really the only way to attract foreign parties to include India as the seat in their arbitration agreements.[24]

The Arbitration Council is also set to have a key role in this area, as it will be charged with framing policies for grading arbitral institutions,[25] which the Supreme Court of India and the High Courts will be able to designate to appoint arbitrators, where the parties cannot agree on who to appoint.[26]

I can see that these amendments will help in lifting the burden of arbitrator appointments from the purview of the courts.[27] The appointment of arbitrators being undertaken by designated arbitral institutions brings India in line with international standards, and limiting judicial intervention in the appointment process should, in theory, improve efficiency.

Again, though, this will need careful handling. In particular, while there are criteria by which that grading is to be done—for example, infrastructure and

---

23 Justice BN Srikrishna, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (30 July 2017), p. 49, para. 3.

24 S. Vasudev, '*The 2019 amendment to the Indian Arbitration Act: A classic case of one step forward two steps backward?*' (Kluwer Arbitration Blog, 25 August 2019), p. 2, para. 3.

25 Part IA (*Arbitration Council of India*) of the Arbitration and Conciliation Act, 1996.

26 See: section 3 of the Arbitration and Conciliation (Amendment) Act, 2019.

27 See: sections 11(4)–(6) of the Arbitration and Conciliation Act, 1996.

quality and calibre of arbitrators[28] —there is inherent risk in the almost unavoidable discretion that goes into such a grading.

This is where I think that the Arbitration Council can provide significant benefits. That is because, unlike a number of other leading jurisdictions, India has a number of cities that could contend to be the seat of arbitration but, to a large extent, they require benchmarks and harmonisation.

The Arbitration Council could, therefore, have a strong, positive role to play in establishing those benchmarks and, consequently, in that harmonisation, with the result that businesses can expect a greater level of certainty with respect to the various Indian arbitral institutions.

Therefore, while there will be some reservations in the business community with respect to interference, there may now be an improved platform for ensuring that India benefits from strong, home-grown arbitral institutions. However, to provide this, the Arbitration Council's mandate in this regard will need to be executed with those reservations in mind and with the aim of reducing judicial intervention in the arbitral process.

Access to high-quality, independent and impartial arbitrators

I do not think that it is an overstatement to say that, for India to become a leading hub for international commercial arbitration, the international arbitration community must have access to high-quality, independent and impartial arbitrators—both as a matter of fact and of perception.

[28] See: section 43I of the Arbitration and Conciliation Act, 1996 as detailed in section 3 of the Arbitration and Conciliation (Amendment) Act, 2019.

A high-quality arbitrator is, to some extent, in the eye of the beholder. Some, for example, prefer the rigour and gravitas that is often brought by retired judges; others look for arbitrators who not only have a good knowledge of the law, but also have the benefit of relevant industry or commercial experience.

However, it is not so much the characteristics of what a high-quality arbitrator is that I wish to stress and on which I think that most would agree—competent, independent and impartial and so forth.

Like the parties that India is seeking to encourage to seat their arbitration in India, high-quality arbitrators are scattered around the globe. As with India's potential to be an international arbitration hub, there is huge potential for Indian lawyers and ex-judges to become arbitrators that are in demand across the globe. However, this potential is, as yet, unrealised.

While I hope that this changes in coming years, it is likely that international parties will wish to look internationally for those that will arbitrate their dispute. Indeed, that is the case in all leading arbitral seats. London-seated international arbitrations, for instance, seldom see the appointment of three arbitrators that are all English-qualified and based in the United Kingdom.

It was with that in mind that, in my 2019 speech, I offered a heavy caution with respect to the then-proposed, and since enacted, Eighth Schedule, which would have effectively excluded foreign arbitrators from sitting as arbitrators in any Indian-seated arbitration.[29]

---

[29] P. Goldsmith '*Essential Rules for Counsel in Preparation for an International Commercial Arbitration*' (11th Annual Conference of the Nani Palkhivala Arbitration Centre, 16 February 2019), p. 3. See also: P. Goldsmith, "International Commercial Arbitration in India: Some Reflections on Practice and Policy", *International Arbitration and the Rule of Law: Essays in Honour of Fali Nariman*, edited by G. Banerji, P. Nair, G. Pothan

In particular, I was concerned that foreign businesses would *"not be prepared to sign up to agreements providing for Indian arbitration if they will not have the chance to appoint arbitrators from jurisdictions with which they are more familiar,"* with significant consequences for Indian arbitration.[30] These were, I think, widely shared concerns.

It will be no surprise, therefore, that I was relieved to see that the Eighth Schedule was removed by the 2021 Amendments, paving the way for parties to access a global pool of arbitrators.[31]

There is, however, reason to pause, as those qualifications, experience and accreditation norms for arbitrators remain to be specified by "*regulations*," which will include regulations made by the Arbitration Council. [32] Here again, then, the Arbitration Council has a potentially key role to play.

It is, of course, not yet clear how the Arbitration Council will approach those regulations, so we must, as it is now often put, "Watch this Space".

In the meantime, however, I would like to stress one point; namely, that we must not now go backwards. As such, whatever the approach taken to those regulations, party autonomy must feature front and centre. By that I mean, at the very least, making provision for parties to be able to appoint arbitrators from other jurisdictions (for example, those that they are more familiar with).

---

and A. Ambast, Permanent Court of Arbitration, 2021, pp. 383–384; and S. Vasudev, '*The 2019 amendment to the Indian Arbitration Act: A classic case of one step forward two steps backward?*' (Wolters Kluwer Arbitration Blog, 25 August 2019), p. 3, para. 2.

30 P. Goldsmith '*Essential Rules for Counsel in Preparation for an International Commercial Arbitration*' (11th Annual Conference of the Nani Palkhivala Arbitration Centre, 16 February 2019), p. 3.

31 Section 4 of the Arbitration and Conciliation (Amendment) Act, 2021.

32 Section 43J of the Arbitration and Conciliation Act, 1996 as inserted by section 3 of the Arbitration and Conciliation (Amendment) Act, 2021.

Adopting international best practices

Over the course of what has now been a fairly long career, I have seen a number of international arbitration best practices develop.

I will touch on two examples.

First, the selection of arbitrators. As I have just mentioned, parties will wish to have access to independent, impartial and high-quality arbitrators.

I understand from my Indian colleagues that conscious efforts are already being made by the courts and arbitral institutions to ensure that the best candidates are chosen, keeping in mind the subject matter of the dispute, amount in dispute, arbitrator's expertise and availability and the requirements of the parties.

For example, the Delhi International Arbitration Centre has a distinguished panel of 454 arbitrators, which comprises not just former judges but also senior advocates, engineers, chartered accountants, architects, professors and international arbitrators.[33]

This kind of exercise is very welcome. However, less than 2% of panel members are categorised as 'international arbitrators', while retired judges comprise approximately 65% of the panel.[34] I hope these statistics evolve in the future to offer more diverse categories of arbitrators for appointment.

---

33 Delhi International Arbitration Centre, '*Journal of Arbitration 2021',* Message from the Patron-in-Chief (Justice Dhirubhai Naranbhai Patel).

34 Delhi International Arbitration Centre, '*Journal of Arbitration 2021'*, p. (v).

The protection and immunity now offered to arbitrators in respect of legal proceedings under the 2019 Amendments will also give further confidence to those who are considering becoming arbitrators.[35]

Of course, it will now be all the more important to continue to focus on related best practices, for example, the processes of: (1) interviewing prospective arbitrators; (2) selecting a chair; and (3) highlighting conflicts of interest.

India has already gone some way on the third point by incorporating the IBA Guidelines on the Conflict of Interests in International Arbitration in Schedules to the Arbitration and Conciliation Act, 1996 ("**the Arbitration Act**").

Second is ensuring that full autonomy is given to the parties to agree the rules of procedure.

However, one area where I understand that it is common for tribunals in India to proceed as though they are in court is evidence. But, as with all aspects of arbitration, parties considering India as a seat will expect to have flexibility and control over their proceedings and align with international practices when it comes to issues of procedure and evidence.

The importance of this was noted over a decade ago by the Supreme Court in *Sahyadri Earth Movers v. L and T Finance Ltd. and Another*, where the Court noted that "*[t]he power of Arbitral Tribunal to determine the admissibility, relevance, materiality and weight of any evidence just cannot be overlooked*."[36]

---

35 See section 9 of the Arbitration and Conciliation (Amendment) Act, 2019, which inserted section 42B into the Arbitration and Conciliation Act, 1996.

36 *Sahyadri Earth Movers v. L and T Finance Ltd. and Another*, 2011 SCC OnLine Bom 434, at [11].

Further, in *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*,[37] the Supreme Court confirmed that, while a tribunal may "*draw[…] sustenance*" from the fundamental principles underlying the Code of Civil Procedure, 1908 ("**CPC**") or the Indian Evidence Act, 1872 ("**Evidence Act**"), the tribunal is not bound to observe the provisions of the CPC and by extension the Evidence Act.[38]

In my view, it would be most attractive to international parties if tribunals were encouraged to use the IBA Rules on the Taking of Evidence in International Arbitration.

In 2016, a report confirmed that nearly half (48%) of arbitrations worldwide referenced the IBA Rules of Evidence, with common arbitral seats, such as Singapore and England, adopting those rules in 78% and 70% of arbitrations, respectively.[39] The same report found that those rules were referenced in only 33% of arbitration proceedings in India and that they were considered binding only in 50% of cases.[40]

I am sure that that percentage has increased in the seven years since but, anecdotally, my understanding is that it could do with being improved much further.

All that is to say that adopting international best practices will provide a sense of stability and familiarity for international parties considering whether to make

---

37 *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd*, (2018) 11 SCC 470, at [15].

38 Note that section 1 of the Indian Evidence Act, 1872 excludes the application of the Indian Evidence Act, 1872 in arbitrations. Section 19(1) of the Arbitration and Conciliation Act, 1996 states that the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

39 IBA, '*2016 Report on the Reception of the IBA Arbitration Soft Law Products*', p. 12, paras. 29 and 32.

40 IBA, '*2016 Report on the Reception of the IBA Arbitration Soft Law Products*', p. 12, para. 29 and p. 19, para. 56.

India the seat of their dispute, and it will encourage them to consider Indian cities as a viable option.

Innovation

Finally, I will talk a little bit about innovation. Looking across other jurisdictions, most leading seats are innovative in the sense that they are ahead of the curve in responding to the needs and demands of the international business community.

I would like to talk about three examples, which I think show that India has this well in mind.

First, India's decision to legislate and adopt timelines for arbitrations. This, to my mind, was a way of solving a uniquely Indian problem with a uniquely Indian solution.

Timelines have, of course, been implemented by a number of arbitral institutions, including the International Chamber of Commerce and the Stockholm Chamber of Commerce, in response to user demands for streamlining and time and cost-efficiency.[41] But in India, given the wide prevalence of *ad-hoc* arbitrations, the concern was that there would be no supervision or administration of these arbitrations.

To improve the situation, and in an attempt to rebut the presumption that proceedings in India are infamously long, [42] the 2015 Amendments to the Arbitration Act introduced timelines for arbitrations.[43] I understand from my

---

41 See: Articles 24 and 31 of the ICC Arbitration Rules 2021; and Articles 28 and 43 of the SCC Arbitration Rules 2023. See also: Article 30 and Appendix VI (Expedited Procedure Provisions) of the ICC Arbitration Rules 2021; and the SCC Expedited Arbitration Rules 2023.

42 *NCC Ltd v. Union of India*, 2018 SCC OnLine Del 12699, at [11].

43 Section 15 of the Arbitration and Conciliation (Amendment), Act 2015 inserting sections 29A and 29B into the Arbitration and Conciliation Act, 1996.

Indian colleagues that the timelines have been largely successful in making *ad-hoc* arbitral proceedings more efficient.

Of course, as the institutionalisation of arbitration increases and as better institutions have more oversight over arbitrations, I expect (and hope) that these timelines will play a lesser role in due course. However, as international arbitrations are usually administered by institutions and can be more complicated, these timelines were not strictly necessary for international arbitrations.

Recognising this, the 2019 Amendments replaced the time limits with the gentler guideline that parties "*endeavour*" to complete international arbitration matters within a period of 12 months from the "*date of completion of pleadings*".[44]

In my view, this was the right decision.

Second, during and after the pandemic, India has been quick and adept at adopting technology in the context of international dispute resolution. I understand that, despite no longer being restricted by COVID regulations, Indian courts continue to hold virtual hearings.

This indicates to me that India is willing to adopt technological solutions to issues. One problem that relates to the technological infrastructure in India is transcription.

International parties are used to having access to real-time transcription. I understand that India still relies on service providers from Singapore and London to either travel to India to attend arbitration hearings or join them virtually for

[44] Section 29A(1) of the Arbitration and Conciliation Act, 1996 as inserted by section 6 of the Arbitration and Conciliation (Amendment) Act, 2019.

real-time transcription. This can be quite expensive and is, of course, quite inefficient.

Recently, I understand that Indian players have started to provide transcription services close to internationally prevailing standards by using different technological advances.

This is very encouraging, and I believe there is a lot of scope to find home-grown solutions to a number of these technological and infrastructural issues.

Third, the Indian judiciary will need to continue to support international arbitration. That is, of course, the position outlined in Article 5 of the UNCITRAL Model Law on International Commercial Arbitration, which provides that the courts should *support* but not intervene in arbitral proceedings. Further, part of the judiciary's ability to support international arbitration will turn on the judiciary's ability to innovate through grappling with difficult issues.

A recent example of this is the *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.* case, where the Supreme Court upheld the enforceability of an emergency arbitrator's order under the Singapore International Arbitration Centre (SIAC) Rules, despite there being no express recognition of emergency arbitrators' orders under the Arbitration Act.[45]

By upholding the legitimacy and enforceability of emergency arbitral awards though a supportive interpretation of the Arbitration Act, the Supreme Court has promoted the principle of party autonomy and institutional arbitration. This

[45] *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors*, 2021 SCC OnLine SC 557.

decision also further reduces the need to approach the court for urgent interim relief.

I look forward to seeing similar innovations in the context of international arbitration. India can further its ambitions as an international arbitration hub by thinking creatively and outside the box when it comes to issues that can otherwise appear to be roadblocks on her journey to becoming an arbitration hub.

Conclusion

To conclude, I would like to make four final points: two reflective and two prospective.

First, it is clear that India has a solid foundation from which to pursue its goal of becoming a leading international arbitration hub.

Second, India is closer than it has ever been to reaching that goal. Dialogue with each other through conferences such as these will only help build upon that foundation.

Third, while I am confident that the recent amendments will encourage the international community to consider India as a seat for their arbitrations, it will be important that special care is given when it comes to the Arbitration Council's regulations, including making sure that they take account of the views of all potential stakeholders. If the ultimate goal is to make India a hub for international arbitration, the regulations of the Arbitration Council should also be consulted with the international community.

Fourth, while the arbitration regime in India is important, it will be the execution and the experience of the parties during the arbitral process that will dictate

whether India becomes the hub that it seeks to be. As I see it, the most straightforward and certain way to ensure that that experience is a positive one is the adoption of international best practices, which are familiar to international parties.

In the meantime, I know that all of us working in the international arbitration world will all eagerly track India's continued progress. I look forward to continuing this conversation and to hopefully playing a small part in India's journey to becoming an international arbitration hub.