

INDIA ADR WEEK DAY 3: MUMBAI

08:30 AM To 09:00 AM IST

Opening Remarks By

Hon'ble Mr. Justice Kamal Rashmi Khata, Judge, Bombay High Court

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1 **NUSRAT HASSAN:** If you all can take your seat, please. Honourable Justice Mr. Kamal
 2 Khata, esteemed panellists and esteemed guests, distinguished guests, good morning to
 3 everyone. As the Chairman of the Chartered Institute of Arbitrators India branch, I sincerely
 4 thank you all for coming for this breakfast session. We are going to discuss less spoken about,
 5 at least in the India context, a very thought provoking question. Are you interviewing your
 6 Arbitrator? Let me answer that right away from an Indian context to start with, we probably
 7 are not. In fact, at present, it is neither a common practice in India nor something we typically
 8 consider before appointment and that is precisely why today's discussion is so important, so
 9 important and timely. As we all know, India is on a significant journey towards building
 10 greater trust in the quality, independence and capability of Arbitrators with the aim of
 11 elevating Arbitration to the same level of confidence as a judicial system. Interviewing and
 12 getting to know your Arbitrator is the very foundation of this trust. It helps Parties to ensure
 13 transparency, impartiality and competence in arbitration. Today, the CI Arb, which I mean the
 14 Chartered Institute of Arbitrators and the Mumbai Centre of International Arbitration MCIA,
 15 are honoured to have the distinguished presence of Honourable Mr. Justice Kamal R. Khata,
 16 Judge of the Bombay High Court, who has graciously agreed to deliver the keynote address.

17 Justice Khata graduated from KC Law College, Mumbai. He enrolled as an advocate in '93,
 18 which is the same year which I enrolled too and handled wide range of matters including
 19 company law, property law, testamentary, admiralty, arbitration, trademark, writ petitions,
 20 and public interest litigation. I've had the pleasure of knowing him right from the days when
 21 he was a junior in Janak Dwarkadas Chamber, and have had the opportunity to brief him when
 22 he was a counsel. And I must say, I've always enjoyed the pleasure of having had the
 23 opportunity to work with him as a Counsel. But now, of course Your Honour, we are very happy
 24 that you're here today.

25 He has conducted Arbitration, both as a Counsel, as an Arbitrator, so he does know the subject
 26 matter and served as an honorary legal advisor to various community trusts, as well as
 27 Honourable lecturer to JC Law College. He was elevated as a Judge of the Honourable Bombay
 28 High Court in 2022. As a Judge, Justice Khata is widely respected for his meticulous approach
 29 to legal reasoning and his steadfast commitment to delivering balanced and well considered
 30 judgments. His dedication to delivering justice with integrity has earned him the respect of
 31 both the Bar and the Bench.

32 Yesterday, when I and some of my colleagues went to meet him, just to make sure that he was
 33 coming, he made a striking observation. I'm taking the liberty of saying that. He says we need
 34 five times the number of judges to deal with this enormous cases which we have in the court.
 35 Despite these enormous challenges, His Lordship remarked, no matter how difficult it gets, he

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1 finds purpose and passion in serving justice with dedication, always going an extra mile to
2 ensure that cases are not merely dispose-off but are truly resolved. It is my great honour to
3 invite Honourable Justice Kamal R. Khata to deliver the keynote address. Please give him a
4 big applause. Thank you.

5 **JUSTICE KAMAL RASHMI KHATA:** Thank you, Nusrat. I don't think I deserve so much
6 of credit. Good morning, ladies and gentlemen. It's a privilege to be here. This I understand,
7 is the India ADR Week, and I'm thankful and grateful to PMCIA and the CIArb India branch
8 for inviting me to speak today. Our topic is one that is both timely and provocative.
9 'Interviewing your Arbitrator Changing Mindset in the Indian Landscape'. Now imagine for a
10 moment that you are about to enter litigation, the Judge will be assigned to your court and you
11 will have no say in who that person is. In Arbitration, however, the picture is very different.
12 Here the Party enjoys a unique and powerful right the ability to participate in choosing who
13 will decide their dispute. It is this freedom that makes Arbitration distinct, but also raises a
14 difficult question - how far should Parties go when exercising it? Is it appropriate, even
15 desirable to interview a prospective Arbitrator before appointment?

16 Over the last decade, India has taken remarkable steps towards becoming an Arbitration
17 friendly jurisdiction. MCIA has seen a remarkable 48% increase in the new cases in 2024 itself,
18 showing a growing confidence. We have seen stronger institutions, modern legislation, and
19 increasingly supportive Courts. Judgments, affirming party autonomy, discouraging frivolous
20 objections, and clarifying procedure, have all contributed to making Arbitration a more
21 predictable and reliable process in India. But laws and institutions, important as they are, do
22 not by themselves guarantee success of arbitration. At the heart of Arbitration lies something
23 more fundamental, the confidence the Parties place in the Arbitrators who will decide their
24 disputes. Without that confidence, this system cannot truly survive.

25 Today we are seeing a broader acceptance of Arbitrators who are not only experienced lawyers
26 but also subject matter specialists from various fields such as engineering, finance,
27 construction and technology. This is a welcome development, but with this shift comes a
28 crucial responsibility of ensuring that the Arbitrators possess the precise expertise required
29 for a particular dispute. That is where the interviewing Arbitrators becomes critically
30 important.

31 Unlike litigation, where a Judge is assigned, Arbitration gives Parties the freedom to choose.
32 This is often described as the most important decision a Party will make in any arbitration. It
33 is natural then, that the Parties want reassurance. They want to know that the Arbitrator is not

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1 only independent and impartial, but also has the right expertise, temperament and
2 availability, very important.

3 In India, this trust is still in the process of being fully ingrained. Many Parties continue to view
4 Arbitration as an untested alternative to litigation or an extension of litigation, formal, rigid
5 and somewhat opaque. A short, carefully structured conversation before appointment can
6 provide exactly the reassurance Parties seek. It can reveal whether the Arbitrator has dealt
7 with similar disputes before, whether they are comfortable with the governing law and
8 whether they have the time to devote to what may be a complex and a lengthy case. It can also
9 give Parties a sense of Arbitrators' communication style, something that can greatly influence
10 confidence during the proceedings. Traditionally, however, in India the process has been
11 passive. Arbitrators have often been appointed without any meaningful interaction with the
12 Parties. This, don't ask, don't tell approach leaves much to chance. It is time we shift to a more
13 transparent and proactive practice.

14 Today's panel will deliberate on several thought-provoking questions regarding interviewing
15 arbitrators. Internationally, the practice of interviewing Arbitrators is well recognized though
16 carefully bounded. The IBA guidelines on party representations, the CI Arb guidelines,
17 interviewing Arbitrators is followed, provides a practical framework, encouraging structured
18 conversations focused on competence, neutrality and ability to serve while emphasizing what
19 must not be asked. Major institutions like the ICC and the LCIA also accept limited pre-
20 appointment contact. They recognize that the Parties must check for conflicts and availability,
21 but they condemn any attempt to gain advantage by probing into substantive issues. The
22 consistent message across these frameworks is simple. Interviews are permitted, even useful
23 but they must be transparent, professional and firmly bounded.

24 Turning to India, our law is aligned with these principles. Section 12 of the Arbitration Act
25 requires any person approach for a possible appointment to disclose any circumstance that
26 might give rise to doubts about their impartiality. This, in practice, necessitates some form of
27 preliminary exchange. The Fifth Schedule provides a list of circumstances that may raise
28 justifiable doubts in the independence, for example, repeat appointments by the same Party.
29 The Seventh Schedule goes further, setting out the situations where a person is outright
30 ineligible to act as an Arbitrator. The Supreme Court made it clear that neutrality cannot be
31 compromised by one-sided appointment procedures. Building on this foundation, the CI Arb
32 India Guidelines, interviewing Arbitrators provide much needed structure. They encourage
33 Parties to approach interviews in a professional and transparent way, focusing on matters that
34 truly count competence, independence and availability. In a sense, these guidelines mark the

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1 beginning of a cultural shift in India from passive acceptance of Arbitrators to informed,
2 responsible selection.

3 So, how should interviews be conducted? A few principles are essential. Set boundaries clearly.
4 Make it known from the outset that the discussion will be limited to the background
5 availability and conflict. Nothing on merits. Keep away from substance, even hypothetical or
6 academic discussions of legal issues, risk being perceived as prejudicial. If in doubt, don't ask.
7 Prepare a briefing note, share Parties' names, Counsels', general subject matter, governing
8 law, value of claims and anticipated time-table. This allows the Arbitrator to run conflict
9 checks, assess the suitability without straying into detail. Stay professional, keep the meeting
10 short and formal, with only essential attendees present, no inducements, no formal
11 assurances. Handed carelessly, interviews can threaten impartiality. Handle it carefully, they
12 can enhance trust and reinforce Arbitration as a fair and effective process.

13 Now, looking ahead, the real question is one of balance. On the one hand, Arbitration is built
14 on party autonomy, the right to choose who will decide your case. On the other hand, the
15 legitimacy of the process depends on Arbitral integrity that justice must not only be done, but
16 be seen to be done. As India continues to strengthen its Arbitration ecosystem, institutions
17 like CIArb, MCIA, IAMC and HIAC are leading the way by training Arbitrators, setting
18 standards and promoting best practices. Their work ensures that when Parties interview
19 arbitrators they do so within a framework of professionalism and transparency. I believe that
20 as this culture takes root, interviewing Arbitrators will not be seen as an indulgence but as a
21 responsible step, one that builds confidence, safeguards neutrality and ultimately strengthens
22 Arbitration in India.

23 At its core, Arbitration rests on consent and trust. Parties choose Arbitration because they
24 trust the mechanism. They choose Arbitrators because they trust them as individuals.
25 Interviewing your Arbitrator sits on a fine line. A well conducted pre-appointment interview
26 can strengthen that trust, while still preserving the impartiality. But if we lose sight of the core
27 principle, that is, justice must not only be done, but seen to be done, then no amount of party
28 freedom is worth the cost. If we approach this practice with moderation, transparency and
29 professionalism, we can ensure that Arbitration in India continues to grow as a trusted,
30 efficient and equal pillar of dispute resolution. So, let us all work towards the building of an
31 ecosystem where Arbitration is seen not as an alternative, but as an equal, parallel pillar of
32 dispute resolution, trusted, transparent, efficient and competent. Thank you very much.

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