

INDIA ADR WEEK DAY 3: MUMBAI

**Focus on the Client: In-House Counsel's Role and Expectations from the
Arbitral Process**

10:00 AM To 12:00 PM IST

MODERATOR

**Mr. Gregory A. Litt - Partner, Skadden, Arps, Slate, Meagher & Flom LLP and
Affiliates**

SPEAKERS

**Mr. Dr. Akhil Prasad - Board Member, Group General Counsel, Company
Secretary, Boeing**

Mr. Amber Gupta - SVP & Head Legal National Stock Exchange

Mr. Ravi Mahto – Assistant Vice President, Tata Sons

Ms. Tapasi Sil – General Counsel, Onshore Wind – South Asia GE Vernova

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1 **SHARMISTHA:** Good morning everybody and a huge thank you to the MCIA for organizing
 2 ADR Week. As I was telling Neeti Sachdeva earlier, she does a wonderful job and I don't know
 3 how she does it across 3 cities and many, many panels every single day. I have a distinct honour
 4 today to introduce Skadden's panel. I have visiting with me my dear friend and partner, Mr.
 5 Gregory Litt. Greg, although based in New York, has extensive India experience. He was one
 6 of the lead partners on the Tata Docomo Arbitration, which many people in this room must be
 7 familiar with.

8 Right next to him is Dr. Akhil Prasad. Dr. Prasad is a Board Member and the Group General
 9 Counsel and Company Secretary for all the Boeing India entities. He's also on the Board of
 10 Directors for all the Boeing India entities. Dr. Prasad, thank you so much for joining our panel
 11 and for agreeing to share your experiences. Right adjacent to him is Mr. Amber Gupta. Mr.
 12 Gupta has 25 years of experience, and he's the Head Legal of the National Stock Exchange,
 13 again, needless to say, I don't need to introduce the NSE to this crowd but given his role, he
 14 oversees all of the Litigations and Arbitrations at the NSE.

15 And last but not the least, is Mr. Ravi Mahto. Firstly, Ravi is a friend and I thank him so much
 16 for agreeing to come here and speak today. Ravi is with Tata Sons and in their group legal
 17 team, and he and I have had spent many nights discussing Arbitration clauses and provisions.
 18 So I said, Ravi, you are the perfect person to come here and share your experiences with this
 19 group. With that said, I'll lead it to Greg to moderate this panel, and I'm looking forward to
 20 lively debate. Thank you all.

21 **GREGORY A. LITT:** Thank you so much. It's really a pleasure to be here. First of all, just to
 22 be in Mumbai, which is such an exciting and vibrant city, and to be at this conference, and I
 23 really do have to thank Sharmistha, who has been at this conference in years past and has been
 24 urging me to come, and it was great advice. It's been so great to see so many friends and to
 25 meet so many new people and it's a delight to be here with you and with this really terrific
 26 panel. I'd like to get a sense before we start of who we're speaking to. I see some familiar faces
 27 and some new faces, so I'm going to ask for a little bit of audience participation just to get us
 28 started. I'm going to ask you a few questions and we don't have time to go around the room,
 29 but maybe with a show of hands. If you can give us a sense of who we're having this
 30 conversation with. Can I get a show of hands of who in the room is based here in Mumbai?
 31 Primarily here in the city of Mumbai? Okay, great. Thank you. And who is based in other parts
 32 of India? All right. Thank you for coming. And who is here from outside of India? Okay. So it's
 33 unscientifically, it's kind of evenly split between Mumbai, the rest of India and the rest of the
 34 World. So that's great, we can have a really nice conversation. Let me ask another question
 35 that well maybe a little indelicate, but I'm not actually asking you your age, but just to get a

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1 sense of people's relationship to the world of Arbitration. Raise your hand if you were involved
 2 in the world of Arbitration at the time the Supreme Court rendered its decision in the **BALCO**
 3 case? It's about 2012. Okay, a few, but a lot of people who have come to it over the last 10 to 15
 4 years and I think that's why I think that's great, and it's why we gather at these conferences
 5 because we want to learn from the people who have experience and the people who are
 6 thinking about the things that are important to our practices. I've been in practice of
 7 International Arbitration for about almost 25 years. I'm based in New York. I've worked with
 8 Sharmistha for many, many years in International Arbitration, and we've had the great
 9 opportunity to do a lot of work with India. Sharmistha mentioned the **Docomo Tata** case
 10 where we were actually on the non-Indian side of that case, but we've also represented many
 11 Indian companies over the years, and it's been fascinating to watch the development of the
 12 field of Arbitration in India over the last 25 years. There have been so many important
 13 milestones and changes, both in terms of Commercial Arbitration and the relationship
 14 between the courts in India and the world of Arbitration. And also, though, I think we'll talk
 15 about it less today in the Investor-State world, where there have been very important cases,
 16 some of which Sharmistha has been involved in over the years involving the Republic of India
 17 in bit cases and we've watched as they have increased, and then India has pulled out of
 18 Investment Treaties so they may perhaps have decreased and now there's a thought that India
 19 may be re-engaging in various kinds of Investment Treaties. So it's another interesting aspect
 20 of our world.

21 Today, what we'd like to do, especially for those of us who are in private practice and I've been
 22 in private practice my entire career. As we'd like to get a little insight from the people who hire
 23 us, from the people who make the decisions for their companies about what type of
 24 engagement with the world of Arbitration to have, how to have that engagement and when to
 25 bring in outside Counsel for their assistance and their help in achieving goals in the world of
 26 Arbitration. And so, we're very fortunate to have a panel of senior in-house lawyers with us
 27 today. They're from three different kinds of companies, I think you've already heard Akhil runs
 28 legal for Boeing India, which is, of course the Indian arm of a foreign company. Ravi works for
 29 Tata Sons, which is one of the most storied indigenous Indian companies that is famous to
 30 everyone around the world. And then Amber works in a very different kind of company,
 31 working for the National Stock Exchange. So we have a very interesting array of experiences,
 32 and I should tell you, having gotten a chance to talk with the three of them, each of them has
 33 a different type of career path and a different type of interaction with the world of Arbitration.
 34 And so we're all coming at this from different perspectives. And so what I'd like to do at the
 35 start is just ask each of our panellists to say a few words about their own career path and about
 36 how their career has led them to have interactions with the world of Arbitration.

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1 **AKHIL PRASAD:** Thank you, Gregory, for a wonderful introduction and thank you Skadden
 2 and MCIA for the opportunity. So, I'm fairly young in the profession, just 30 years of
 3 experience and I've been fortunate that out of those 30 years, I've been mostly working for
 4 American companies. Arbitration, what I have seen in the 3 decades, is India has really
 5 transformed especially the international outlook towards India on Arbitration. 30 years ago,
 6 perhaps there was a lot of talk about why Arbitration should not be held in India and how
 7 complex or bad it is to do Arbitrations in India. So last 30 years and especially the last 10 to 15
 8 years, have been really transformative especially because of the very important role that the
 9 Apex Court of India, which is the Supreme Court, has played in terms of recognizing the
 10 importance of Foreign Arbitrations and why they should be honoured. The Foreign Arbitration
 11 should be honoured in India. So that has been a sea change. As a General Counsel, my own
 12 experience has been which may not be good news for the practicing Counsel or the external
 13 Counsels in this room is to avoid Arbitration because the focus... If you look at us as a business
 14 we sell defence products to the Ministry of Defence where the Arbitration clauses are typically
 15 seated in India, although with ICC rules, and that's the government procurement requirement.
 16 For our commercial lane sale, Arbitration is not the solution, it is usually the courts in the
 17 United States because the point of sale is the United States.

18 On both these aspects, the questions that were asked to us is whether they should resist the
 19 MoD to insist on having Arbitrations in India. So I must say that our job was to first convince
 20 our global legal teams to tell them why Arbitration is perfectly okay if we do it in India and
 21 although there are some challenges there on the kind of the quality of arbitrators that we have.
 22 I'm not saying... people tend to say the retired judges, but I'm not putting a blame on the
 23 retired judges because it is more about individuals than it is about a category of people who
 24 are Arbitrators, but things are definitely... they have changed and there's a lot of scope of
 25 improvement for future, which means that we should have more arbitrary bodies like MCIA
 26 and others. And of course, we need to have institutional process in India, where the
 27 International Arbitration agencies also should, and this is what we've heard from the
 28 government that International Arbitration forum should also have a substantive presence in
 29 India, and that is only the way how the Indian ecosystem on Arbitration is going to improve.
 30 So, a lot of work is being done. I think a lot of improvement also will be in the horizon, this is
 31 my opening thought.

32 **GREGORY A. LITT:** Thank you. Let me ask you one question before we move on. You said
 33 that you had to do work, maybe in your current role, or maybe in other companies where
 34 you've worked to help make the sort of foreign companies, US companies you've worked for,
 35 comfortable having Arbitrations seated in India as opposed to having the venue exclusively

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1 outside of India. Can you tell us a little bit about what that work entailed and what were the
2 kinds of questions that they had that you needed to answer?

3 **AKHIL PRASAD:** So, generally the question was whether we have good capable Arbitrators?
4 And that was an easy one for us to answer, because the kind of talent we have in terms of the
5 external counsels in this country who can advise you on Arbitration it was not a difficult thing.
6 I think people were more worried about the involvement of the Indian courts on the finality of
7 a foreign award, so that is where they were mostly concerned, which over the period of years
8 the judgment from the Supreme Courts have definitely helped us, because the courts are now
9 very reluctant in terms of interfering in the finality or the implementation of foreign award.
10 The other thing was the quality, the quality of arbitrators, which I'm repeating myself, but that
11 was a major concern from our western counterparts.

12 **GREGORY A. LITT:** Let me stop there and I'll have more questions, but let's get the rest of
13 our panellists involved. Maybe go to Amber and if you wouldn't mind telling us a little bit about
14 your path and work, which is a little different and interesting.

15 **AMBER GUPTA:** Good morning, everyone, and thank you, Skadden and MCIA for giving
16 this opportunity. I was personally very excited to see that this time, not one, but two sessions
17 are focused on In-House Counsels. So that's a great change which we are seeing and that also
18 indicates the importance of the In-House Counsels when it comes to managing the Arbitration
19 process because we as a user actually are the people who, day in, day out, are managing the
20 entire process along with counsel and we have to manage the cost, the timeline, update the
21 board, keep making disclosures. And the stock exchanges also, because now under SEBI
22 regulations, which is a capital market regulator. Any dispute is there, you have to make a
23 disclosure if it is above the material threshold and key updates also has to be keep given. So,
24 thank you for this session and as a user, as a professional in last 25 years, ADR particularly
25 Arbitration has always been an area of interest for me, and that is the reason that I also, a
26 couple of years back, completed my Fellow from Charter Institute of Arbitrators. Very few In-
27 House Counsels have been able to complete this, and thanks to MCIA and Neeti which manage
28 this process. And we were the first batch to do it from Mumbai.

29 I will go back a little bit in history and taking you what Akhil just mentioned about court
30 interventions, and I will go back in 2012, when the **BALCO** judgment was announced, and I
31 think that was the first time there was so much of international attention, which was given to
32 the Indian Arbitration which overturned the earlier **Bhatia** judgment which we all aware
33 about Part 1 and Part 2 and when the **BALCO** judgment specifically overruled and said no,
34 the Part 1 only applies for Domestic Arbitration and Part 2 continue to apply for International

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1 Arbitration and there's no specifically requirement to exclude Part 2 while we are drafting the
 2 Arbitration clause. So, I think as an in-house, that was also a good relief, which we thought
 3 and bring a lot of clarity. And what has happened after that, when we are negotiating
 4 Arbitration clauses with international Parties we are able to also explain them that you also
 5 will have ability to seek interim relief without excluding and specifically mentioning about Part
 6 9. It's a default, that you can also seek those relief. So that's the time when actually I also
 7 getting more attracted to Arbitration and the ADR mechanism and more so the fact that it is
 8 based on UNCITRAL Model Law, which is adopted by almost 180 countries, which gives a kind
 9 of uniformity in the manner in which the courts are interpreting about venue versus seat,
 10 about jurisdiction, about conflict of laws, about the Arbitrator qualification, conflict of interest,
 11 their competence, competence principles, manner of enforcement, public policy. So, all those
 12 things which are there are universally applied, whether you are doing an Arbitration in India
 13 or in Singapore or in London, whatever seated. If you are part of UNCITRAL Model Law,
 14 signatory to that, your convention. So that gives a lot of certainty, clarity, and also give you an
 15 edge in terms of how you want to approach an Arbitration when it comes so the processes
 16 remain same. There is a consistency. Most of the rules of International Arbitration Tribunals
 17 and the institutions, whether it's LCIA, ICC or MCIA, more or less they are in similar when it
 18 comes to manning with the Arbitration process is to be done. The timelines which are
 19 involved, of course, cost wise, there might be some differences. But so far, when it comes to
 20 the procedure and other things, there is a lot of similarity.

21 So, I think that way it gives a lot of, if you are doing an International Arbitration if you are
 22 doing agreements with International Parties, the knowledge of Arbitration as an in-house and
 23 with these developments which have been there really gives a lot of advantage to you in the
 24 current scenario when we negotiate contracts. As a user, of course, there have been various
 25 experiences in terms of the challenges which we face, whether in terms of managing cost,
 26 getting the good quality, or ensuring that the Arbitration procedures are completed within
 27 timelines. If it's domestic, of course the Arbitration Act has now amended in 2015 amendment,
 28 which allowed certain timelines within which the entire Arbitration process has to be
 29 completed. So those things are very positive when it comes. I work for a National Stock
 30 Exchange. We are own... We have our own mechanism of dealing with Arbitrational resolving
 31 of dispute between broker and a client or a shareholder or listed entity. And these have been
 32 given a special statute under Indian law. So earlier we had the entire Arbitration process was
 33 managed by the Stock Exchange itself, we had our own rules, we had our own timelines within
 34 the award has to be passed, which it is like a mini-institutional Arbitration, which is managed
 35 through the National Stock Exchange. Of course, 2 years back SEBI, our capital market
 36 regulator made a path breaking announcement of ODR mechanism. So again, capital markets

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1 were the first to adopt the ODR mechanism, where all the disputes will be resolved through an
 2 online dispute mechanism, through the empanelment of ODR institute and exchange, playing
 3 the pivotal role in terms of anchoring the entire process. Now this kind of process is now being
 4 also replicated by other sector regulators and for timely disposal of disputes or small values
 5 without getting into too much in evidence part which is most familiar document led evidence
 6 Arbitration. These are my opening remarks, and maybe we'll... in the second round.

7 **GREGORY A. LITT:** Thank you very much. Let me ask you a question. You were talking
 8 early on about the **BALCO** decision and the distinctions between Part 1 and Part 2 of the
 9 Arbitration Act as it was at that time, and how the Supreme Court made a clear distinction
 10 between Domestic Arbitrations and International Arbitrations. Obviously, that too many years
 11 ago, and there have been amendments to the Arbitration Act, and there have been a lot of other
 12 precedents, but sitting here today in 2025, from an in-house perspective, how do you view
 13 differently domestic Indian Arbitrations and International Arbitrations? And do you have a
 14 different appetite for the use of Arbitration in domestic matters versus international matters?

15 **AMBER GUPTA:** Yes, of course. As we all know, the most important factor when an
 16 Arbitration award is passed is all about enforcement, right? The two other important factors
 17 is, of course, time and cost and the enforcement part. So, I think recently in one of the cases,
 18 which has happened for the first time 2 years back where Indian courts have also given
 19 recognition to appointment of Emergency Arbitrator by the SIAC under SIAC Act, and it was
 20 fully enforced by Indian courts. So these are some of the development which has happened
 21 recently. Then how even... and that was an interesting case where both the Parties were Indian,
 22 right? The Arbitration was seated in Singapore. They got the Emergency Award, Emergency
 23 Arbitrator that was challenged in India and the court upheld that they have full right for the
 24 appointment of Emergency Arbitrator for 2 Indian parties for a foreign seated Arbitration. So,
 25 these are a very important development.

26 Also on the issue of public policy, which always been a major concern, right? And there have
 27 been recent very judgments where courts have also held that in the matter of International
 28 Arbitration, the public policy element is to be seen very in a limited phase, especially if your
 29 assets and recovery proceedings are to be done outside India compared to Domestic
 30 Arbitration. In case of Domestic Arbitration, the scope of arguments of challenging the award
 31 under public policy is much wider compared to International Arbitration and there has been
 32 some judgment by Supreme Court of India where they have ruled this kind of precedence. So,
 33 these are two important aspects which I feel are positive and giving definitely a change of
 34 mindset, which Akhil also mentioned in his opening remarks. So, these are two considerations,
 35 we will look at it. Of course, the overall aspects of what you call as efficiency in the entire

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process that also creates a lot of importance when it comes to looking at the Domestic versus International Arbitration. As an in-house, there's been my own experiences and no offense to any of the people who are sitting here, currently, when it comes to domestic there is still a lot of focus to go for *ad hoc* rather than choosing Institutional Arbitration like MCIA or any other institutions. But when it comes to International Arbitration, people are still preferring for Institution-led Arbitration process. So that's the distinction, which is also there.

GREGORY A. LITT: Do you have a personal view about that for *ad hoc* versus Institutional Arbitration for domestic cases?

AMBER GUPTA: All my views are personalised, should not get quoted as an exchange...anyways my own experiences. Yes, definitely, see because my own experience is that when I'm negotiating large contracts, wherever I'm negotiating, large contracts, which involves shareholders, which involves larger contract values where confidentiality is very, very critical for me. My preference will be still to go for Institutional Arbitration because of process efficiencies, because the manner in the secretary and the process, even the way they also ensure that timelines are met, but for other aspects which are not so critical my preference will be still to go for *ad hoc* because you can also manage the... not the manage ... At least you can have more say in terms of process, there is more flexibility compared to Institutional Arbitration, where the flexibility is very limited, but confidentiality and all those things takes precedent. So based on that different set of contracts which are there a different set of clients which are where those strategies has to be applied with.

GREGORY A. LITT: Thank you. Thank you. That's great. Let me stop you there, I want to bring in Ravi and Ravi, you have a somewhat different path because you've been both at some of India's top law firms and then also now in one of India's most famous company's In-House. But you come at it as a transactional lawyer rather, and not as a disputes lawyer. So I'd be interested to hear where Arbitration has come up in your practice and as fundamentally a transactional lawyer, what you think of this world of Arbitration?

RAVI MAHTO: Thank you, Greg and thank you, Sharmistha for inviting me on this. Pleasure to be part of this panel, and I'm pleasure to be here in this room. You are right, so I don't have so much of a disputes experience so, to speak of. I was a transactional lawyer earlier, so I negotiated clauses. Arbitration Clauses at times, they were treated as boilerplate clauses, but my view as when I came in-house and probably it's the legacy of **Tata Docomo** which we acted on. We don't treat Arbitration clauses or negotiating Arbitration clauses anymore, just as a boilerplate. We do a lot of stress test, we do a lot of scenario mapping of how things will play out, even how the substantive provisions will play out in an Arbitration. So, yes, I haven't

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1 seen disputes, but we anticipate. My lot of my work is anticipatory, and it's a rigorous exercise,
 2 the way we have done in a number of transactions which we are working right now. So, it's not
 3 easy, it requires... So, without having a facts and ground you are mapping out. So you are
 4 looking at many more hypothetical situations, probably than what would actually transpire.
 5 And to cover for all of that, it's not an easy task, but I think that is a way to go. And as the
 6 maybe other organisations when they actually face real life situations they will also inculcate
 7 this practice. I think it's important what we also do is when we are doing a transaction in
 8 addition to, say, M&A lawyers, we get the disputes lawyer involved upfront in the drafting to
 9 do that testing. It's not limited to the M&A lawyers, and that is a very... when they ask of course
 10 we are willing and at times it's our own ask that okay, please get this stress tested by a disputes
 11 lawyer. So a lot of this what Akhil and Amber has been saying the evolution of Arbitration law
 12 gives a lot of confidence, maybe it's not perfect. There is still some difference between the
 13 sophisticated, the more Arbitration-friendly and sophisticated jurisdiction as compared to
 14 India, but I think we will get there. And we'll also start looking at probably India as a viable
 15 Arbitration venue and Institutional Arbitration in India, because when I hear, I always hear
 16 that, okay, this differentiation, when it comes to Domestic Arbitration the differentiation
 17 between *ad hoc* and Institutional Arbitration, like there is a particular choice, there is a cost
 18 difference. But kind of transactions which we are doing at least Tata Sons level maybe it might
 19 be a concerns at operating companies level when you have recurring contracts, but at least for
 20 us we are doing that evaluation that whether Institutional Arbitration works for us or not. We
 21 are testing, we are checking with our lawyers that okay there could be other factors also. Like
 22 okay, which Arbitration in India itself is better whether the Delhi is a better jurisdiction,
 23 because it also comes to how the courts in those states are looking at Arbitration, how
 24 Arbitration-friendly those courts are? So we are evaluating and as an opportunity arises, at
 25 least at Tata Sons level we are looking at Institutional Arbitration now.

26 **GREGORY A. LITT:** So when you say you're looking at Institutional Arbitration, you mean
 27 including for Domestic?

28 **RAVI MAHTO:** Including for Domestic, for outside, it's always Institution.

29 **GREGORY A. LITT:** I know you haven't been at Tata Sons for your whole life, but based on
 30 what you see there, do you think that there's been a change in their view? Has that evolved?
 31 Did they previously use *ad hoc* and have shifted, or has that always been their practice?

32 **RAVI MAHTO:** Certainly even earlier... So we don't do lot of these *ad hoc* arbitrations, we
 33 didn't do because generally, we had a Counterparty who was coming from a different country.
 34 So in those cases, it's difficult to push for *ad hoc* Arbitration. But in terms of approaching that

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1 Institutional Arbitration framework itself, there is more debate going into it, which is a better
2 institution, whether cost is important in a particular case or not, whether interim relief is
3 important in a particular case or not. So we are mapping scenarios, what is our need out of
4 this contract? What is it that we are commercially trying to achieve out of this and whether
5 Arbitration framework will support it or not, eventually?

6 **AMBER GUPTA:** Allow me to...

7 **GREGORY A. LITT:** Sure.

8 **AMBER GUPTA:** I was negotiating a very large shareholder deal couple of years back and
9 it's a large deal in my previous company, previous to previous company. We were trying to buy
10 out one insurance company. This was a hundred percent cash deal. We had two prominent law
11 firms representing we as Buyers and the other side as a Seller and when it came for negotiation
12 of the Dispute Resolution clause, I suggested for Institutional Arbitration for MCIA. To my
13 shock and my surprise, both the law firms opposed that, and they said, no, we will go for *ad*
14 *hoc* Arbitration, we'll not go for Institutional Arbitration. That was about 7 years, 6-7 years
15 back. And when I came and I told this Neeti also, and I gave their law firms name also, I said
16 I think you need to talk to them rather than reaching out to In-House Counsel. You have to
17 also tell your law firms also that when it comes to, they should accept that and the reason,
18 which I got was very funny, which was ... And they said that same thing that in *ad hoc*
19 Arbitration, we will be in a position to more have flexibility in terms of managing the entire
20 Arbitration process. Of course, that was 7 years, 6, 7 years back when the entire concept of
21 Institutional Arbitration in India was still growing and things have changed now but some of
22 these experience have been there when even as an in-house, you might like to push for
23 Institutional Arbitration, Parties may continue to push for *ad hoc*.

24 **AKHIL PRASAD:** Yes, so for innovation and for the MoD requirements is to have an
25 Institutional Arbitration. But the kind of industry we are, the aviation industry, the supply
26 chain is huge and if you manufacture a plane, you need parts and components from 180
27 countries. So, to have an *ad hoc* Arbitration perhaps is not a non-starter, at least in our
28 industry.

29 **GREGORY A. LITT:** So, I'd like to shift to a question that I think is on the minds of many
30 people here in the room and we will try to save some time to get their actual questions, but I'm
31 going to predict that this is one of their questions, which is I'd like to get a sense from each of
32 you about when you decide to involve outside Counsel? Because you're all in companies with
33 extremely capable In-House Counsel who seem to know quite a lot about the field. So, when

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1 do you decide to instruct outside Counsel in connection with Arbitration either at the
2 transactional level or when a dispute is arising and then since we have a mix of local and
3 foreign practitioners, why don't we also talk about when you decide to instruct Indian Counsel,
4 and when you decide, it's also worthwhile to bring in an international firm?

5 **RAVI MAHTO:** Sure. So, I think I briefly touched upon this, Greg. So, the involvement we
6 are not averse to bounce our thoughts with our external Counsels. We might have our views,
7 we will look at a particular clause. We know what we want, but what helps is like to use our
8 external Counsels as sounding board. So, we would use them... all depends also on the stakes
9 involved and the value of the transaction. Of course, they are those variables as a matter of
10 approach we would like a discussion at the time of stage of drafting when we foresee that, okay,
11 a particular situation may turn contentious eventually, we would take that view. There would
12 be final path, eventual path can be very different, and it can be sorted out commercially. But
13 from our perspective and advice is sought from us that okay, how do you see ourselves placed
14 in this particular situation legally if things don't turn out as well? Then we need a particular
15 answer, and that's where a realistic answer. So it's not just a theoretical answer, but it has to
16 be a realistic answer. So the more brains we put to it, it's better for us, considering the stakes
17 which might be involved. So we do involve transaction lawyers, we involve disputes lawyer at
18 the stage of drafting and also eventually, as things progress, we would like to get our lawyers
19 involved at an early stage.

20 **GREGORY A. LITT:** Thank you.

21 **AMBER GUPTA:** So, there's no one size fits all answer for this particular question, and it
22 really depends on the nature of transaction, the type of agreement, the Parties which are
23 involved in nature of disputes, likely dispute that can happen. Of course, if it is a matter of a
24 transaction, for example, I mentioned there is a Buyer or there's a Share Purchase Agreement
25 then, of course, the involvement of external Counsels are much high when it comes to even
26 drafting of the Arbitration clause or negotiation of the Arbitration clause or the Dispute
27 Division clause, which happens. In case of potential disputes, which is likely to happen, again
28 in my own experiences, where the Parties involved are of international stature there is always
29 a push to seek external advice at an early stage to anticipate. Because my own experience,
30 international companies especially based out of US, they try to keep a lot of documentations
31 through emails which can be used later on as evidence to prove their Statement of Claim. So
32 most of their emails and notices of disputes or even early pre-dispute notices are vetted and
33 drafted by their Counsels compared to in India, where most of the things come to Counsel
34 much later, when dispute has already reached to a... Differences have already reached to a
35 stage that now it has come to invoke the dispute resolution clause and send Notice of

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1 Arbitration. My own experience when you deal with the International Parties they tend to
 2 involve these kinds of vetting and reviews quite early, the moment there is some difference
 3 have started between the Parties. So if it is an international Parties and if you are getting these
 4 kinds of notices or any likelihood of potential disputes, my advice would be definitely to get an
 5 early references for external Counsels who can also help you in drafting proper replies, more
 6 so from evidence perspective later on because some of these emails in my own experience later
 7 on becomes difficult to defend and explain when it comes to evidence stage.

8 **AKHIL PRASAD:** I agree with Amber because there is no one size fit or especially for our
 9 sales contracts, we don't go to External Counsel because usually it's a global template for
 10 selling an aircraft and the dispute resolution will be in the US, even for the Ministry of Defence,
 11 wherever you sell to Ministry of Defence whether in India or wherever it's all governed by the
 12 procurement policy of that country. So there also, you do not perhaps involve External Counsel
 13 because it's a part of the procurement policy of a country where the Arbitration would be held.
 14 But when you are supposedly Boeing is doing something new in the country, for example, if
 15 we are doing services contract with Ministry of Defence, that is where you will be negotiating
 16 that new contract with the Ministry of Defence for servicing, whether a Apache or a... for a C
 17 17, that is where there is definitely a requirement of working with the External Counsel on the
 18 Contracts, especially the Dispute Resolution. Or if you are doing a Joint Venture for
 19 implementing certain projects in countries, whether it's a JV with Tata for manufacturer of
 20 aerostructures for Apache, that's where Tata Sons and Boeing law department will sit together,
 21 of course, with their respective External Counsel support and negotiate on an Arbitration
 22 clause. So for our industry anything which is international perhaps the involvement of
 23 External Counsel would be less because of documents contracting is very, very standardized.
 24 But if there is something new and upcoming for the aviation industry to do some new things
 25 in India that's where....

26 **GREGORY A. LITT:** Okay, and that's on the drafting side. How about on the dispute side
 27 when you see somethings maybe not going right, what's the moment?

28 **AKHIL PRASAD:** Yes, so the moment typically is whenever you have to seek an advice on
 29 what the other party is claiming from you. So how good is the claim? So I think the importance
 30 of an External Counsel advice will be to validate those kinds of things, which usually starts
 31 with a typical sales team not seeing eye to eye. They sending you some harsh emails. So, you
 32 go back to the External Counsel with some facts and data which doesn't come to you often
 33 unless there is an Arbitration notice only then teams start to sit together and really think. But
 34 the discussion with the External Counsel, I would put a red flag, the moment you think that
 35 the discussions are not going in the right direction. So, my approach personally has been and

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1 thanks to the networking that we do in India with all GC's, most of them are friends. So, if you
2 are facing a big problem, the first thing is better to talk to the GC of the other party and most
3 often than not, in my so many years, I have seen that works very, very well that if you are facing
4 a problem with a supplier, go to the supplier, supplier GC, and then the person understands
5 your point of view and you tend to break the ice with their business teams through the GC.
6 And that's how we've been able to dissolve all of many risk issues. If that doesn't work, then
7 you need a specialist, the go-to doctor, which is you, and then involve your firm to validate the
8 claim of the other party.

9 **GREGORY A. LITT:** Yes.

10 **AKHIL PRASAD:** That's how I've been doing it and avoiding the risks.

11 **GREGORY A. LITT:** Yes, that makes sense and either, want to comment on that?

12 **AMBER GUPTA:** Sorry. Carry on, please.

13 **RAVI MAHTO:** So, Akhil, I understand, like, okay it's your contract, so you don't need to go
14 to external advisors while drafting it. You know what the implication of those clauses are. But
15 what's your experience with your counterparties, like, even if it's non-negotiable and I think
16 that's a position which Boeing would take. At least it also helps in understanding what they're
17 getting into, right? So wouldn't your counterparty at least involve external lawyers then?

18 **AKHIL PRASAD:** Yes, of course that happens, it happened to us when we were negotiating
19 the Akasha deal. It was Denton's Indian Link Legal and this was peak of Covid. 400,000 cases
20 in US, 400,000 cases in India. I was asked to at a 2 days' notice I was asked to go to US because
21 our contracts team in the US were not able to convince Link Legal's questions and that is where
22 the power so they brought in Link Legal, which was Akasha and here was still the External
23 Counsel was not brought in by Boeing. It was Boeing's legal team, which was discussing or
24 negotiating with Akasha's External Counsel, which was Link Legal. So we did not press the
25 panic button because there was no panic.

26 **GREGORY A. LITT:** Yes, and that probably works for you very well because I think, as Ravi
27 was sort of implying, you're doing the same deal over and over again, but for the customer it
28 may seem new.

29 **AMBER GUPTA:** So, it also has a flavour of the territorial jurisdiction where this contract is
30 being negotiated. In my own experience if you are negotiating contracts, say, with the
31 counterpart which is in Europe, they tend to more rely on External Counsel at a very early

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1 stage, even at the drafting, compared to when you negotiate a contract with somebody sitting
 2 in a pure UK, outside Europe or American party that way, because recently I was negotiating
 3 contract with the German counterparty and their Counsels were very much pushing for certain
 4 clauses, and it was taking advices on that. Even though I was trying to explain how these
 5 clauses will not work in India. so when it reaches to a particular stalemate, then for giving
 6 comfort to management, sometimes it is also important that you may seek an external help
 7 and bring a third-eyed perspective to close the issue in the interest of to go ahead with the
 8 transaction. Either ways, whatever be the management will take the final decision, but always
 9 get that third perspective, a neutral one look at it and do a risk assessment in terms of validated
 10 rather risk more of a validation by a third party, so that at least contracts get closed and
 11 business starts.

12 **AKHIL PRASAD:** I must give you one more example. So, when you are negotiating
 13 contracts, especially with Government, so they somehow take an offense that lawyers are in
 14 the room. It may sound very odd because I think it sounded very odd to our US attorneys and
 15 they had been pushing me, why don't we go into the negotiation with MoD and the sensitivity
 16 here is that if you are going to a discussion with MoD on a contract, MoD will not bring in
 17 Ministry of Law. And the moment you say that our Boeing's Counsel wants to come, they said
 18 they don't like it and they said, we do not want lawyers in the room. So that also depends on
 19 the kind of negotiation you're doing.

20 **GREGORY A. LITT:** Yes, does that include you? Or is that only with External Counsel?

21 **AKHIL PRASAD:** No, it's both of us. The Government of India, typically because their
 22 process is such, it's so robust, that when they are negotiating, I think the negotiating team has
 23 all kind of authority because they are working on their contract, and they will not accept any
 24 deviation. But if you insist on a deviation, they will tell you that we will have to go to the
 25 Ministry of Law, they will not appreciate having lawyers in the room, which is both the In-
 26 House and the External.

27 **GREGORY A. LITT:** I've encountered a lot of people who didn't want lawyers in the room
 28 over the years but we do what we can. Okay, well, I want to shift gears a little bit to the
 29 discussion of who Arbitrators are because it came up before, sort of the importance of assuring
 30 foreign businesses and parent companies and so forth, that there are high quality Arbitrators
 31 in India and you know how to find them. There are many, many high quality Arbitrators in
 32 India. But I'd be interested in hearing from each of you to the extent you can share, what you're
 33 looking for in Arbitrators? In your mind, what are those qualifications? How do you find those

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1 people? What are the indicia of an Arbitrator being the kind of person you'd like to see on your
2 Tribunals?

3 **AMBER GUPTA:** Yes. So I think this topic was also touched upon in the previous session
4 about the entire appointment of Arbitrator. I'll take further from that what was discussed in
5 the last session, at least from... For example the overall experience, the credibility, all those
6 things are, of course, very, very important when you are looking for an appointment of
7 Arbitrator. And again, it has to be seen whether it's an *ad hoc* versus Institutional Arbitration,
8 right? If you have an *ad hoc* Arbitrator, you will again have a more say in terms of whom you
9 want to recommend an Arbitrator. And again, if it's a Sole Arbitrator, then in India, typically
10 it's always Section 11. I mean, court intervention is needed because whatever name of
11 Arbitrator you might be proposing the other Party always reject that. So, ultimately, it goes
12 through the court. And personally, I'm very hoping and very bullish on the amendment on the
13 Arbitration Act that the entire administrative procedure for appointment of Arbitrators is now
14 handed over to Arbitral Institutes so that court's time is not wasted on that. So that is one part
15 of it.

16 Of course, if it is the three Arbitrator, then you don't find that kind of issue much because both
17 the parties have a right to nominate one Arbitrator each, and the two of them will appoint a
18 third Arbitrator. But definitely in my own experience, domain expertise is something which is
19 very important because it saves a lot of time. Currently I'm also handling one software dispute
20 related Arbitration and we are definitely finding that thing that most of the Arbitrator who are
21 retired judges, they have a difficulty in understanding how the entire software Contract works,
22 right? In my own personal this thing domain expertise is very important. It makes the entire
23 thing very easy. It makes the process easy. If you have an Arbitrator who understand your
24 subject matter, then of course it saves a lot of time when Parties are making frivolous
25 arguments or they are trying to bring witnesses which are not required by some time and all
26 those areas. I am not aware of other jurisdiction but at least in India, the Arbitration Act when
27 you got amended in 2015, it has also prescribed who can be an Arbitrator. So they have given
28 certain illustrative list of qualifications. Like somebody an Advocate with ten years of
29 experience, somebody who is accredited by international certification agencies. So those
30 things are good reference point which you can take. There also... and when comes to, of course,
31 Institutional Arbitration, then you give that authority as per the process to the Arbitration the
32 Institutional Arbitration to recommend, and then you can choose from that list.

33 But second thing, which is very interesting and important to also note that there is also a
34 tendency to prescribe the qualification of the Arbitrator in the Arbitration clause itself. Some
35 people prefer that approach to ensure that there is more certainty in terms of what kind of

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1 Arbitrator they would like to have. They prescribe those qualification, but to me, I think it may
2 not be a best strategy because flexibility is gone. So if you are unable to get that kind of
3 Arbitrator, then you keep delaying the start of the Arbitral proceeding, so better not to
4 prescribe that kind of qualification in your clause itself. Keep it open. And of course, during
5 the appointment stage, you can bring those perspective.

6 **GREGORY A. LITT:** Ravi, when you're working on clauses and you're putting together
7 agreements, how much do you pay attention in the language there to prescribing the
8 qualifications for Arbitrators?

9 **RAVI MAHTO:** See aspects like qualifications, experience and all is a given. We don't
10 prescribe, just to answer to your question, we don't prescribe the qualifications typically, and
11 we would rely on a standard, more or less standard format Arbitration clauses from whichever
12 Arbitral Institution we are looking at. We prefer not to tweak them much, except as maybe
13 strictly required to suit our requirement. We wouldn't tinker much with the process. But in
14 terms of selection, just to respond to the question earlier, in addition to the technical
15 qualifications, legal experience, we have come to realize that power of persuasiveness is quite
16 important, and it comes from our learning from real life cases. It's important that the
17 Arbitrator who we are going for is able to persuade the entire panel and to what extent with
18 his own expertise and view. It does matter because ultimately there would be one Chairman
19 and a three member panel. So we are looking at, that's the decisive vote, in a way, and that's
20 where it's not only about what you have, but it's also how you... the capability of an Arbitrator
21 to persuade the entire panel becomes important and we do keep that in mind.

22 **GREGORY A. LITT:** Oh, great. Thank you and we'll round it out with Akhil, do you have
23 thoughts on appointment of Arbitrators? How you pick them?

24 **AKHIL PRASAD:** Yes. So, as I said in my opening thing, that in India, still the retired judges
25 seems to be the most preferred as a choice for Arbitrator, but the development area is that I
26 want to see more professionals coming into Arbitration, because people who have experience,
27 let's talk about In-House Counsel, the kind of experience In-House Counsel would have on the
28 business commercial aspects makes that person the ideal fit to be an Arbitrator especially for
29 that industry. Three industries are on this panel, so, if each one of us get that certification,
30 what Amber has, and then we are appointed as an Arbitrator, I think, we can do fairly good
31 justice. But the problem is, it's about the game of chess. So Arbitration is a game of chess, and
32 you have to see what kind of game the other person is playing. If the person is putting on a
33 very senior retired judge, perhaps the risk appetite for the company to have a General Counsel
34 as an Arbitrator, perhaps the risk appetite is very low, and then you have to match a heavy

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1 weight with a heavy weight and that's how it tends to be. You have to see what the other party
2 is proposing as an Arbitrator, and then your organization will ask the GC, what do you think?
3 So obviously, that risk becomes too great to digest.

4 **AMBER GUPTA:** Just to add that now, after *Parkinson* judgment in India, which has
5 now... Earlier what used to happen that especially in government contracts and Akhil would
6 have more experience on that when you deal with some government or PSUs who have their
7 own panel of Arbitrator and within that you have to appoint, and this has been actually taken
8 a very severe beating from the courts, and they have said that any such mechanism where one
9 party is appointing an Arbitrator from its own panel of Arbitrators, this is something which is
10 not seen as a fair process. It is seen as somebody that is not a proper way of appointment of an
11 Arbitrator. So that happened more importantly, in one of the important judgment in
12 *Parkinsons* where the entire issue of unilateral appointment of Arbitrator by certain banks
13 and NBFCs who used to appoint their own set of empanelled Arbitrator, and the other party
14 has to accept it, that is something which has become challenged when it comes to enforcement,
15 and courts have ruled in favour of that.

16 And recently in Bombay High Court, two weeks last month a very important judgment was
17 delivered by Mr. Somasekharan. He was earlier Counsel and he's elevated to the judge last
18 year, and even he has pointed out, even the manner in which the ODR institutes are appointing
19 Arbitrator from their own panel. That he has also expressed unhappiness and not in
20 compliance with the Arbitration Act and the direction has been issued to them to explain how
21 their process works to ensure that there is fairness in the appointment of Arbitrator. There's
22 no conflict of interest which are involved. So some of these elements has to be keep into mind
23 and especially, for example, in financial services sector after these two judgment have come
24 after especially *Parkinson* judgment, all the banks and NBFC's, they have changed their
25 Arbitration clause to ensure that there's no such challenge when the appointment of Arbitrator
26 happens, especially after the award has been passed. As an In-House, you have to also keep
27 that in mind and recent a couple of years back, there was another NBFC company. So what
28 used to happen that NBFC companies used to have lot of recovery proceedings, and they used
29 to appoint the same Arbitrator in 250-300 cases and the matter went into Bombay High Court.
30 The Bombay High Court called the GC of that particular NBFC company. I don't want to name
31 that company, very reputed company, NBFC Company, and he was reprimanded that how you
32 are appointing the same Arbitrator in so many cases and the usual argument was that it is with
33 the consent of the Parties. But the other side of the Parties were retail individuals who may not
34 have much say on the appointment of Arbitrator and that become very important...the case
35 law. Also so some of this development which is happening are also creating a good precedent

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1 and bringing more neutrality in the manner in which the Arbitrators are appointed. Apart
2 from, of course, other aspect of qualification, experience, domain expertise and all.

3 **GREGORY A. LITT:** Very interesting. Thank you. Okay, we have about seven minutes left,
4 so I want to take a pause and see if there are any questions from the room. We'll take one or
5 two questions.

6 **AMBER GUPTA:** Do we have the option to skip very difficult questions?

7 **GREGORY A. LITT:** Yes, well, they'll come to me first and I can reject or accept them. So,
8 behave. Yes, tell everyone who you are and where you're from before you ask your question.

9 **MANTUL BAJPAI:** My name is Mantul Bajpai. I am working in the disputes resolution team
10 of the law firm Crawford, Bailey and Co. My question any one of the speakers can take. Now,
11 as In- House Counsels, I often wonder what is that deciding factor which plays in your mind
12 when it comes to settling the dispute or fight it out in court? I mean, as External Counsel, we
13 can obviously give you an advice, but what really goes on in your mind when you actually
14 decide to settle it out or fight it out in court?

15 **GREGORY A. LITT:** This is a big issue for Akhil.

16 **AMBER GUPTA:** Let's hijack that question, because it was anyway perfect question.

17 **AKHIL PRASAD:** I can give you my thoughts. It's unreasonable. But if the other Party is
18 very unreasonable you are not able to break the ice, so you know the steps are several before
19 you decide to take them to Arbitration, I think there's a lot of work that needs to be done as an
20 In-House Counsel. The first thing is get the right people on table. So often... more often than
21 not, it's an ego issue between the heads of the commercial set or the business set of two
22 different organizations and that ego issue gets passed on to the lawyers. So the first thing that
23 you have to do is to try and kill that ego and try to bring them on table, then you need to have
24 a good connect with the other Parties General Counsel, and that General Counsel should
25 understand the point of view, whether you have to then try and break the ice, and then you see
26 how you can negotiate further to bring down or come to a reasonable settlement. If it is not
27 happening, then the only option is to go to Arbitration. That's how I see it.

28 **GREGORY A. LITT:** Do you want to give an example?

29 **AKHIL PRASAD:** There are several, in fact. In my twelve years with Boeing, we have not
30 even let one Arbitration go forward, and we have been able to settle a lot of these kinds of

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1 issues. One example I can give you. So, this was... we purchase lot of component parts from
 2 India as a part of our offset commitment and one of the offset commitment was to purchase
 3 aluminium from Hindalco and then Hindalco unfortunately got sanctioned. They were issued
 4 CBI warrants for the coal scam, and the warrants were issued against the former Prime
 5 Minister, the CEO of Hindalco, the Hindalco Company because of coal scam. And then we had
 6 a big contract with them so it did have those FCPA provisions and things like those. We were
 7 on an offsite in Japan. Our global GC was there, and he called me and he asked me what should
 8 we do? So it's clear FCPA issue and it should we terminate the contract and it will result into
 9 Arbitration. So he asked for my view as an In-House Counsel, what should we do? And the
 10 entire legal team who was trying to put pressure that, yes, it's FCPA... things like those CBI
 11 involvement and all that, but my view was that we should not terminate the contract. And my
 12 rationale for that was, number one, we are not buying coal, we are buying aluminium and the
 13 coal scam has not been decided, it's just at the very preliminary stage, only the summons have
 14 been issued. Hindalco is a very respected organization and there has been no directive from
 15 any court not to buy aluminium. So how can you just on the basis of a summon by a CBI court
 16 terminate a contractual relationship at the pretext of FCPA? Nothing has been grouped, and
 17 that is how we avoided Arbitration.

18 And the other thing, there are several examples. I can give you one more. So, Akasha
 19 helicopters come with a warranty of 10,000 ft. and the highest battleground, it's a global
 20 warranty, 10,000 ft. and the highest battle ground is Siachen and the minimum height is
 21 13,000 ft. Leh is at 13,000ft and above. So, the question was whether the warranty is void?
 22 The answer was no, and we had to find a way because our contract said the Warranty is void
 23 and we cannot guarantee that the helicopter would be in an operational stage at Siachen. So
 24 we found a way, we installed another starter unit. That was a simple fix. And that solution, a
 25 dumb question for me came that why can't we have an additional starter switch and everybody
 26 says, yes, that can be done and that's how we resolve the conflict. And the phones are coming
 27 from PMO that how can you say that Warranty is expired? So, almost on a daily basis, we face
 28 situations like these and the question is, talk to other person's Counsel, talk, have a dialogue
 29 with them, break the ice, avoid egos. If you avoid egos, I think you can simplify a lot of legal
 30 work. That's how we have done in the past.

31 **RAVI MAHTO:** If I may add to that. So, merits of the case aside like what Akhil was saying.
 32 One could differentiate an In-House Lawyer's view on when to settle is probably the
 33 reputational risk which might come out of the ongoing proceeding. I appreciate that
 34 Arbitration might be confidential, but there is always a risk of what may come out and
 35 eventually it may go into courts. So, that's an additional factor beyond the merits, beyond the

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1 dynamics which we need to keep in mind, particularly in organization like ours, where
2 reputation is of paramount importance.

3 **GREGORY A. LITT:** Okay, I think we have time for one more question. Maybe over here.
4 Going to get the... microphone is coming.

5 **AUDIENCE:** I'm Pinky Bhansali. I'm an Arbitrator, and I'm also a cybersecurity expert. So,
6 my question to the panel, including the Moderator, is, in light of these hyper judgments, what
7 do you think as we, as Team India are available and are, in that sense, capable of coming to
8 the situation where we finish the Arbitration in a time bound process and as a General
9 Counsels, what are the difficulties that you see is coming and getting this thing accomplished?

10 **AMBER GUPTA:** I couldn't hear properly as an In-House Counsel... Sorry?

11 **AUDIENCE:** Am I audible? Okay. Now in view of recent reforms, when the court has given a
12 thing that we should move more towards the time bound completion of the Arbitration
13 proceedings. As General Counsels, what do you think are the difficulties that we all face as
14 Arbitrators, as General Counsels, etc. to achieve at that time limit, today, we are seeing one
15 and a half year and going to a situation where we are able to accomplish this, maybe wrap it
16 up in a month or so, right?

17 **AMBER GUPTA:** Yes. So, my take is that most of the delays typically we see are in *ad hoc*
18 Arbitration. So, the solution definitely lies that if you move towards Institutional Arbitration,
19 where the process is well governed, there is secretary who manages. At the very first day itself,
20 the entire timelines are set. Somebody is monitoring, severe costs are also imposed if there are
21 delays, etc.. So, if those things are begin as more of an adaptable form, we would like to see
22 less delays compared to *ad hoc* because in India currently, most of these Arbitrations which
23 are delayed are majorly *ad hoc*, and most of the cases that you go, which are challenged and
24 all those things are mainly in *ad hoc* Arbitration. Even in the Arbitration Act, now, there's an
25 18-months timeline, which has been already given, which has further clarified that it will be
26 initially formed the filing of the Statement of Claim, and now it is after the conclusion of the
27 Pleading. So, there is a timeline which is given. Of course, it can be extended with the consent
28 of the Party, then with the court intervention after two subsequent extensions. So, if their
29 intention, if you compare to International Arbitration. I have never heard during my
30 conversation, in my own experience there are any delays, so these timelines are pretty much
31 set, and everybody adheres to that. In fact they sit for a complete ten days together and
32 complete the entire process of evidence, leading, witness cross examination, everything is
33 over. So, more towards move towards this Institution led Arbitration, I think this entire delays

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1 part can be curtailed. That's my take. I mean, the panellists can... and you can also add. Now
2 you have got a chance to speak.

3 **GREGORY A. LITT:** No, that's okay.

4 **AMBER GUPTA:** You can share your international experience.

5 **GREGORY A. LITT:** They're here to hear from you. I think from the international
6 perspective it really requires the good faith of everyone involved because there are processes
7 and there are tactics. And so I think we all know that when we're as, as outside Counsel, when
8 we're in a dispute, the most important thing is trying to help our client achieve their goals. And
9 if I'm honest sometimes helping our client achieve their goals means slowing things down. So,
10 your emphasis on Institutional Arbitration, I think is important because then you have a more
11 firm grasp on what the rules are and what the processes are and how it will be managed. And
12 so, I think if we want Arbitration to stay on track on a policy level, then I think we have to put
13 those structures in place because when we're in the dispute, if you're my client and you say I
14 need this to take six months longer, I will do everything I can to make sure that does.

15 **AMBER GUPTA:** Yes, just to add, and that's the beauty of the Arbitration, because party
16 autonomy is everything. And that's the people try to prefer an Arbitration to some extent, and
17 at least they are in the process to control some of the process... not control, at least they are in
18 a position to make that request and allow to show flexibility a lot and I've seen *ad hoc*, there's
19 more problematic in terms of unending timelines, delays or adjournments, which sometimes
20 may become irritating, if you have a good case. If you have a good case and there are guerilla
21 tactics, which definitely most of the Respondents also use it if they feel it's not a good case,
22 and I'm not talking about litigation funders at all. If they get involved, then the matters can go
23 in a totally a different way, if they have a serious take in the outcome from the Arbitration. I
24 am leaving aside that part, but what I feel is that over a period of time, when I was recently
25 talking to few people who are practitioner in Arbitration, and just to add one other aspect that
26 after these strict timelines have come under the Indian Arbitration Act, all those Arbitrations
27 which has started after this amendment, majority of them are getting closed within two years'
28 time, 18 months to two-year time, because there's a timeline. Courts also tend to give extension
29 after one or two. So they are very particular. So those Arbitration which were started prior to
30 this amendment and these timelines, they continue to still drag on because those timeline
31 requirements are applicable prospectively, not retrospectively, but those which have started
32 after that there has been a very positive move in terms of completing in timelines.

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1 **GREGORY A. LITT:** Yes. Okay, any final... Okay. Well, we're beyond time's up. So I want to
2 first of all, say a big thank you to our three panellists. It was a really great discussion. It's great
3 to have people with this level of experience and thoughtfulness, frankly, to discuss these issues.
4 And even though we're going to stop the panel because there's a big screen blaring, "times up"
5 at me that you can't see, I encourage you all to get to know them if you can and come up with
6 your further questions and to continue the conversation. So thank you again to my partner,
7 Sharmistha Chakraborty who put this together for us and also to the MCIA for holding such a
8 wonderful event. And thank you all for being here.

9 **AMBER GUPTA:** Thank you, Greg.

10 **GREGORY A. LITT:** Thank you.

11

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~~~END OF SESSION 2~~~

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