

INDIA ADR WEEK DAY 5: DELHI

19th SEPTEMBER 2025

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

2:30 PM To 4:00 PM IST

MODERATOR

**Ms. Sharmistha Chakrabarti, Partner, Skadden, Arps, Slate, Meagher & Flom
LLP and Affiliates**

SPEAKERS

Mr. Kanishk K, Director Legal- India & South Asia, Uber

Mr. Vardaan Ahluwalia, General Counsel, Premji Invest

Ms. Medha Srivastava, General Counsel, Hashed

Mr. Vikash Jain, Global General Counsel, ReNew Power

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1 **HOST:** The next session is hosted by Skadden. The topic of the session is Focus on the Client:
2 In-House Counsel's Role and Expectations from the Arbitral Process. The session is
3 moderated by Sharmistha Chakrabarti. The panellists include Kanishk, Medha Srivastava and
4 Vikash Jain. I request the speakers to kindly come on stage. Thank you.

5 **SHARMISTHA CHAKRABARTI:** Good afternoon, everyone. I hope everyone had a nice
6 lunch. I will try... rather, we will try not to put you to sleep. I expect a very lively debate
7 amongst our panellists. But before we start, it would be remiss of me not to say a huge thank
8 you to the MCIA for their untiring efforts to put on this conference year on year. The
9 conference really brings together arbitration practitioners from all over the world to my home
10 country. And in the global economy it is really an understatement to say that India is a key
11 player. Tariffs, sanctions, all of that notwithstanding. Cross-border trade continues to flourish,
12 and domestic growth really is reaching a peak, and that growth spans industries. It is sector
13 agnostic across both traditional and non-traditional sectors.

14 So here with me today are three General Counsels representing India's growth story across
15 these varied sectors. Starting from the far end, we have Mr. Vikash Jain, who's the Group
16 President and Global General Counsel of ReNew Inc., which is one of India's leading renewable
17 energy companies. Right next to him is Ms. Medha Srivastava. She's General Counsel at
18 Hashed Ventures. It's a South Korea headquartered venture capital fund, investing in
19 blockchain and emerging tech. And right next to me is Kanishk, a dear friend. He is the head
20 of Uber's legal affairs in India and South Asia. As they the GCs are really the end users of
21 arbitration and ADR, it is really my privilege to hear from them their insights about their
22 experiences with arbitration with thanks to each of you. Thank you so much for coming and
23 sharing your valuable time with us. I'd like each of you to tell us and the audience a little bit
24 about your experience with arbitration. So perhaps if I can start with the Vikash. Sir, over to
25 you.

26 **VIKASH JAIN:** Thank you and good afternoon to one and all. My name is Vikash Jain. And
27 as Sharmistha said, I am the Global GC for ReNew Energy Global PLC. It's a NASDAQ listed
28 organization with major operations in India. It's the largest IPP in the renewable sector in
29 India. In my previous versions, I have worked for multiple organization across multiple roles.
30 My experience in arbitration stems from the various matters that I've handled for my
31 Employers and some of them against the sovereign as well. Commercial arbitrations, Global
32 arbitrations, Cross-jurisdiction arbitrations. So really speaking the nuances of each one of
33 them are very different. There are multiple factors at play, and we can talk about those
34 experiences as we detail it out in the next few minutes, if I may call it. But we'll get to interact,

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1 and I would request all of you to participate in it. It would be a good interactive session. Thank
2 you.

3 **MEDHA SRIVASTAVA:** Thank you. Good afternoon, everyone. I'm Medha Srivastava. I'm
4 General Counsel for Hashed. We are a South Korea headquartered venture capital fund, one
5 of Asia's largest in the blockchain and emerging tech space. My interaction with arbitration in
6 this role at least has been varied and spans jurisdiction. So that's something that we can speak
7 about. So far, it has not actually happened in India and we can also talk about whether that's
8 a good thing or not. So, a lot of it is... It's interesting to see how different jurisdictions deal
9 with arbitration, what is the kind of forums that they prefer to use, given that we invest
10 globally, we see a lot of differences between when we invest in the US as opposed to when we
11 are investing in APAC. So that's some very jurisdiction specific differences. And of course,
12 because we work in the blockchain, Web3 industry, which is really fast-moving, new age. There
13 are a lot of other considerations that play which assume a lot of significance when we want to
14 get into either arbitration or when we want to settle a potential dispute. So happy to speak
15 about it and look forward to an engaging discussion here.

16 **SHARMISTHA CHAKRABARTI:** Thanks, Medha. Kanishk.

17 **KANISHK K:** Thanks, Sharmistha, and thank you for having me on the panel. I am Kanishk.
18 I lead the legal team for Uber in India and a few other countries in the region. I would love to
19 say that I know nothing about disputes or arbitrations or litigations, but unfortunately, that's
20 not the case. We have had a fair share and in my previous role... in my previous life I was also
21 on the other side of the table was when I was in private practice. Again, there also we have
22 seen lot of disputes and have supported Clients there. But in the current role, of course, there
23 are a lot of regulatory litigations. There are a lot of other challenges, but most of our contracts,
24 whether with local counterparties or global counterparties do end up having Arbitration
25 Clauses, right? And unfortunately, some of those do from time to time go into dispute. And
26 that's where we get exposed to arbitrations, whether seated in India, SIAC arbitrations, or
27 LCIA or elsewhere. So, we have had a fair share of challenges and issues and that gives us
28 unique insight and somewhat slightly different take on how arbitrations have been working or
29 not working in some parts of the world and how they can be improved.

30 **SHARMISTHA CHAKRABARTI:** Well, thank you. What's unfortunate for Kanishk is
31 fortunate for me. I like hearing a GC saying sometimes these Arbitration Clauses bring about
32 disputes because that's really where we come in, my role comes in. But that said, even before
33 we get to a dispute, let's start at the very beginning. When you are negotiating as General
34 Counsel on agreement, you have a choice in front of you, you don't necessarily have to go for

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1 arbitration. You could go for litigation in your domestic courts or another court. And what I'd
2 like to hear from you is the thought process that goes behind the decision to choose arbitration
3 over litigation. Perhaps, Vikash, you may want to comment on this?

4 **VIKASH JAIN:** Sure. Thank you. So, it's a very fundamental question, and I'm sure many of
5 you sitting here would have faced it and overcome that. To me, the single biggest question
6 when it comes to whether to have an Arbitration Clause in the agreement or not is
7 fundamentally, I would say centred around first, the issue whether the Parties are locals and
8 is it India based or can it be based overseas? If it is a Contract between domestic Parties and
9 we really do not have any I would say practical answers around having it outside India, then
10 the fundamental question is a choice between a Civil Court and an Arbitration. And as most of
11 you would know Civil Courts in India take forever. I would, with all due respect to the judiciary,
12 it's like, not in my life term kind of a situation. And that for all effective purposes, leaves us
13 with very little choice but to go for arbitrations. The Commercial Courts have started stepping
14 in and coming into fray but we really need to see how effective they are so far.

15 **SHARMISTHA CHAKRABARTI:** Thank you. That's very helpful. Kanishk, would you like
16 to?

17 **KANISHK K:** So, I would echo everything that Vikash has said. I think that's the fundamental
18 choice that you have and probably teaching to the choir, everyone's aware of the challenges
19 that a lot of Municipal Courts have. Right? And especially if you look at it from a perspective
20 of a player who has global footprint and is not vetted to any local jurisdiction or Courts. It is
21 an obvious choice, right? Because very often, if not always, you are dealing with the counter
22 Parties from various different jurisdictions. Obviously, selecting local Courts does not appear
23 to be neutral and on top of all the challenges that Courts bring about to say that "Oh, you might
24 be a Party from some other country, but you have to select my local Courts" is always a
25 challenging conversation, and that's where arbitration becomes a natural choice on top of all
26 the other benefits, whether it's speed, efficiency, sometimes even cost. Right? Because with
27 speed and clear timelines come in cost. In our traditional Court systems, even though going
28 in, cost may be relatively low. But if it stretches over a long period of time, all the cost benefit
29 analysis would tell you that it's arbitration that one should be going for.

30 **SHARMISTHA CHAKRABARTI:** Yeah, on costs, I'll put a plug in there. Costs for going to
31 Court. The Court fees might be lower, but Senior Counsel costs as everyone in this room is
32 aware are very high and much higher than foreign firm fees. So, with that plug in there, Medha,
33 would you like to comment on this question as well?

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1 **MEDHA SRIVASTAVA:** Yeah, I do not have similar challenges as my co-panellists in terms
 2 of wanting to go to Courts in India *per se* till now, but from speaking from a perspective of a
 3 company which has its global footprint, given the number of jurisdictions we invest in, I think
 4 Arbitration is obviously the choice of dispute resolution. As an investor, which is coming in
 5 from outside, it provides a lot more structure and familiarity to us than Courts would. And
 6 specifically from the point of view of the kind of industry that we operate in. I think it is
 7 important that the persons who are adjudicating your matter are somewhat familiar with the
 8 way the technology operates, to be able to provide a judgement, which might work for at least
 9 one Party, right? Not to say that Courts will not have that and judges do familiarize themselves
 10 across jurisdiction globally. But obviously, Arbitration provides a much easier route to us to
 11 be able to deal with disputes then.

12 **SHARMISTHA CHAKRABARTI:** Well, thank you. All right, so now we're at this other fork
 13 in the road. You've decided that you want to have an Arbitration Clause in your agreements,
 14 but the decision point now that has to be made is, do you want to go for institutional
 15 arbitration, or would you like *ad hoc* arbitration? And in India, I know there are many *ad hoc*
 16 arbitrations that take place, much more so than in the jurisdictions where I practice. I'd like
 17 to hear from you. Perhaps, Kanishk, you'd like to go first. What's your preference? Institutional
 18 or *ad hoc*?

19 **KANISHK K:** I think that's a great question and even though a lot of folks might believe that
 20 institutional arbitration is the way to go. I think that's a decision that one has to take every
 21 time you are drafting an agreement. There are a number of nuances to it, but I think the biggest
 22 one is, are you going for familiarity? Are you going for certainty for a rule-bound decision-
 23 making, or are you looking at other considerations, like cost, like where you want to seat it,
 24 etc.? So, nine times out of ten when you're drafting developed contracts and generally, you
 25 would know that these are extremely developed, complicated contracts. You're not talking
 26 about simple trade contracts which used to be common in the previous century. You would
 27 obviously go for *ad hoc* arbitration just because of familiarity, certainty and a more rule-bound
 28 nature of the framework. As opposed to *ad hoc*, where, of course, local Courts may, at times
 29 have a role to play. The rules of the game may not be as certain as an institution might offer
 30 you. So, these are the two choices but to be honest, *ad hoc* does come into play sometimes
 31 when you are looking at contracts, which may not be extremely high value contracts. You want
 32 to restrict yourself within a certain geography. You want to take the benefit of local courts and
 33 you want to have that ability to go to them, whether it's for appointment of Arbitrator or at any
 34 other stage of the arbitration. *Ad hoc* also makes sense sometimes because unfortunately, very
 35 often, institutional arbitrations come with a price tag, which is higher than some *ad hoc*
 36 arbitrations.

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1 **SHARMISTHA CHAKRABARTI:** I'd like to add one thing over there that you mentioned
 2 Kanishk is about costs and value of disputes. And sometimes I've heard this many times in my
 3 practice that it's a lower value. Let's go for *ad hoc*. The one thing to keep in mind, and it's worth
 4 looking at every institution's rules is, rules will have provisions which will say that if the value
 5 of the claim is underneath a certain amount, let's say it's less than \$1 million, then you can
 6 actually have a much more efficient arbitration process within the arbitration framework and
 7 you also have the benefit of the framework of the institutional rules. The costs in that case, as
 8 well are much lower than the costs of let's say what a \$1 billion arbitration would entail. So,
 9 just worth keeping in mind that even within the institutional framework, there is the space for
 10 low value disputes to be heard and done at a much more efficient and economical way than
 11 what you would expect let's say \$100 million arbitration.

12 **KANISHK K:** And that's great but I honestly feel I don't think we have explored that enough,
 13 and that needs to be explored more by everyone, by, of course, corporations like ours, but even
 14 other disputes can probably eventually find their way into the institutional framework, and
 15 this could be a good way to get that in.

16 **SHARMISTHA CHAKRABARTI:** Vikash, go ahead.

17 **VIKASH JAIN:** Just to add an element to that same question. As a matter of, I would say
 18 more practice for lower value claims. And first of all, I agree with what Kanishk said earlier,
 19 that there is no cookie cutter approach for whether it's a large value or a small value, but
 20 generally where the contracts are less likely to be significant from an overall perspective. There
 21 is a growing trend of moving from *ad hoc* towards institutional, and I would say when I say
 22 institutional, I mean domestic institutional more. Because again, domestic institutions offer a
 23 better value proposition. Taking a step back, we talked about the cost element. I wanted to
 24 bring one more dimension to it which, at least in my experience to the legal fraternity, doesn't
 25 come out very evidently. It's the question of speed. We look at speed only from a dimension of
 26 time. It's not actually only time. In most of the high value claims, especially in the Indian
 27 jurisdiction, where cost and carrying values are typically not allowed. There, the time value of
 28 money, the interest costs so-called, becomes a big variable and that's a big cost. I can give
 29 examples of that, but I assume most of you understand that. So, if an arbitration process is
 30 likely to take, say, two years, versus a litigation which is likely to take five years, even if the
 31 probability of a risk in the arbitration is slightly higher, my preference would be to go towards
 32 arbitration than towards the litigation, for the simple reason that the probability of realizing
 33 value three years earlier becomes higher, and hence earlier the NPV or the Net Present Value
 34 of that litigation or that dispute to me is higher.

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1 **SHARMISTHA CHAKRABARTI:** Very interesting. Medha?

2 **MEDHA SRIVASTAVA:** We've had some experience with *ad hoc* Arbitration Clauses, and
 3 they have not been the best. So I think apart from that, I feel that in the blockchain industry
 4 specifically, and I'm speaking from the perspective of where I'm currently working. The
 5 company may be incorporated somewhere, your founders would be located somewhere. We
 6 come in as an investor from somewhere else, and therefore Institutional Arbitration makes a
 7 lot of sense for us in terms of governing set of rules that are there, the procedure that is there,
 8 we can decide which... We are very clear about what procedural law will govern the arbitration.
 9 There is a little more conviction of the enforcement of the Arbitral Awards at the end of it. And
 10 as an investor in this industry, I feel that we would anyways prefer not to litigate with any of
 11 our portfolio companies, right? But if it really comes to that, I have seen that most portfolio
 12 companies also prefer to go for institutional arbitration when they are fundraising from VCs.
 13 When they are in the US, they have a certain set of institutions that they go for. Singapore,
 14 Hong Kong again go for a certain set of like SIAC, Hong Kong International Arbitration Centre,
 15 very popular institutions. In US American Arbitration Association, the judicial arbitration and
 16 mediation services is coming up in a big way in this industry at least, because I think they are
 17 claiming some sort of... they at least advertise that they have the knowledge to deal with this
 18 industry yet to be seen in practice and hopefully never. But I think that it's better for an
 19 industry which is so dispersed to actually go for Institutional Arbitration. *Ad hoc* creates other
 20 issues of what are the rules that you're going to agree to, whether the Arbitrator that you are
 21 getting genuinely has knowledge of the sector or not, and therefore in my limited experience,
 22 I feel that institution is a better way forward.

23 **SHARMISTHA CHAKRABARTI:** And Medha, you've already touched upon the question
 24 that I was going to come to next which is really like, once you've made the choice... the binary
 25 choice between *ad hoc* and institutional, you then have a menu of options of which institutes
 26 to go to. And Medha, you mentioned a few which were international. One more institution
 27 that's coming up in your space in a big way again, untested is the SVAMC. So the Silicon Valley
 28 Institute. They're coming up with lots of rules and policies around blockchain, AI and the like.
 29 But let's talk a little bit more about that. So you've mentioned some institutes. Do you ever go
 30 to the domestic institutes, Medha?

31 **MEDHA SRIVASTAVA:** So, I mean, we haven't had the chance to actually go for arbitration
 32 here in India, but when we work with Indian companies, we eventually do go for... We keep
 33 the seat outside and we try and draft the Arbitration Clause in that manner. I think the time
 34 that Indian Courts take to resolve a dispute is a big deterrent in coming to India from that

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1 perspective. So yeah, we have not really explored so far here a lot of domestic institutional
2 arbitration, but I'm happy to hear experience from others.

3 **SHARMISTHA CHAKRABARTI:** So, Kanishk, perhaps you first?

4 **KANISHK K:** Yeah. See, to be honest, I don't think we have explored enough, something
5 similar to what Medha said and when we are going for familiarity, when we are going for rules
6 that we understand, and we know how they will operate. Unfortunately, the bias is in favour
7 of some of the larger global organizations and that's probably because we have not tried that.
8 But as we hear of good experiences coming out of more domestic institutes, I think eventually
9 we will go in that direction. But that has not been tested enough. And we would love to hear
10 more stories and more firsthand accounts of how that played out. Because when you are going
11 for certainty, unfortunately, untested organizations will not get a thumbs up very, very easily.

12 **SHARMISTHA CHAKRABARTI:** Vikash, what about your experience?

13 **VIKASH JAIN:** The right points made by my co-panellists. One distinction which I would
14 like to carve out here from the pre-decision-making perspective is also who's the counterparty.
15 And there, if it's a private Party, the decision is different and if we have, say a government
16 company or a government institution on the other side, or for that matter, the sovereign on
17 the other side, the decision becomes very, very different.

18 **KANISHK K:** Is it a decision still, or are you just bound by the rules that they've laid out?

19 **VIKASH JAIN:** I'll come to that. I'll come to that. In case of government counterparties
20 agreeing to what Kanishk said. Typically, the expectation is that you sign on the dotted line.
21 It's a take it or leave it kind of a decision. We often face that. There is very little scope of
22 negotiations there. But as a matter of choice, where in some contracts where I have seen some
23 industries, for example, oil and gas industry, exception and deviations are still a norm, even
24 with the government entities. So to that extent there is some flexibility. Coming to the
25 government or the government entities on the other side, based on I would say I, on the other
26 side would always prefer either overseas institutional framework or alternatively *ad hoc*
27 framework but based overseas seated outside. Because enforcement of an award in India
28 becomes and especially against a government entity or a government institution, becomes a
29 huge challenge, huge, huge challenge, and we can talk about those in further details, but it's
30 not a fair game. Let's put it that way. It doesn't remain a fair game. Private Parties, I would say
31 we still evaluate it based on the non-cookie cutter approach where we, I would say straight
32 jacketed Contracts typically not likely to exceed a big threshold. There is a growing tendency
33 of using the domestic arbitration routes, the domestic institutional route. But still, even in the

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1 private Parties where the value and the subject matter expertise required in relation to the
2 domain and in relation to the problems and the disputes that may arise is very peculiar. There
3 is still a preference more towards the *ad hoc*.

4 **SHARMISTHA CHAKRABARTI:** One thing that each of you have touched upon briefly,
5 and this is really a topic that we can spend an hour debating on is the seat. Now, the seat brings
6 with it the supervisory jurisdiction of the Courts at the seat. So perhaps staying with you,
7 Vikash, could you tell me a little bit more about the seats that you choose? And also, I'll make
8 it a compound question, your experience when litigating against the sovereign?

9 **VIKASH JAIN:** So, as I said earlier, the choice of seat is more different, I would say by the
10 prejudgement around the enforceability. That's the single biggest driver and the speed of it, of
11 course, which is a key determinant. The more the chances of the opposite party being able to
12 influence the system, the lower are the chances of choosing that system. I am sure all of you
13 understand that. Having said that, the aspect around it is going overseas is a costly affair from
14 a seat perspective, it's a balance, it's a fine balance between cost and results and enforceability.
15 Results here effectively mean enforceability. Question really is it's more about the facts of the
16 case and more about the context of the case. How you anticipate? Is there a likelihood of the
17 dispute coming in? What is the size of the dispute that would come in? How would the costs
18 operate? What is the availability of the subject matter experts in that area, in that jurisdiction,
19 or in that framework? So, all those play a big role. Talking about my experience in the... I would
20 say an arbitration against the sovereign or sovereign institutions, indirect sovereign
21 institutions. I have had several such cases. There the choice is very simple as I mentioned it
22 earlier. It's binary choice. We simply move abroad for obvious reasons. *Ad hoc* and
23 institutions. When we move abroad, our general preference is to go towards a reputed
24 institutional organization and again, there's no cookie cutter here. Having said that, then it's
25 a question of how do we enforce it. And ultimately, when it comes to India in some form or the
26 other, it's all about the efficacy of that remedy. I hope I answered the question.

27 **SHARMISTHA CHAKRABARTI:** Oh, yes, very much so. Go on, Medha.

28 **MEDHA SRIVASTAVA:** I agree with everything Vikash said. I think in terms of the pre-
29 arbitration decision-making, even when we enter into an agreement which institution we will
30 select depends a lot on who's your counterparty. I mean, unlike him, we don't deal with the
31 sovereign. We do a lot of private contracts. Right? So, who's the counterparty? Where are they
32 based? What is the nature of our contract is? Usually it's all like investment agreements. So
33 what am I hoping to achieve out of it? We have seen in the last few years actually, SIAC come
34 up in a big way in trying to also have a panel of Arbitrators who are very tech-focused, very

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familiar with the sector that we work in. Similar experience we've noticed with JMS and USA also. American Arbitration Association. Even London has a good panel of tech Arbitrators. So depending on the company that we are investing in, the kind of again the value of the investment. Then we go accordingly. We try and select arbitration panels. It's not that we would not select Singapore if the company is in Singapore, just out of... because they seem to may be more familiar, but we would still select SAIC because we feel that we have that kind of faith in the institution itself to provide the efficient arbitration process. So I think that when we go for which arbitration institution to select, a lot of it depends not just on the counter Parties, but also the familiarity of that institution with the sector that we operate in, the efficiency cost-wise, obviously. I do not want to make a \$2 million investment and then spend \$2 million on counsel fees and arbitrating or for arbitration fees. So, all of that cost obviously makes a difference but I feel sector familiarity is one area that we give a lot of focus to when we go for selecting the institution.

KANISHK K: And if I could just add a couple of things to that. See, for us, the biggest factor is the local Court system. Right? So traditionally, we have also had a bias in favour of Singapore, at least for this part of the world. We, of course, being a global cooperation, have footprint all across. So the choice may be different in LATAM, choice may be different in the US, but at least in this part of the world, it has historically been Singapore. But now, if a counterparty says, oh, I would want it to be Delhi seated, I would retain the right to approach the Delhi High Court under the various provisions. I would not shy away from that. Right? But there could be Courts in India, or there are a number of states which are not moving at the same pace as probably the Delhi High Court, which are not as familiar with arbitration as now Delhi High Court is. And I would not choose those states. So, it's really the local Court system, our comfort with that. Yes, the going in position historically has always been in this part of the world, Singapore. But that is changing because at least some Courts are moving things at a pace and with the level of knowledge that we haven't seen earlier, at least here.

SHARMISTHA CHAKRABARTI: That's interesting, Kanishk. I'm curious to hear if you can share what kind of counterparties are coming to you and asking for a Delhi Court as opposed to an arbitration seated in Singapore.

KANISHK K: So all domestic. So, of course, we contract internationally, but there are a lot of contracts, whether they're Investment Contracts, whether they are just simple Procurement Contracts. They could be of different types. But if there's a domestic Party, especially if it's an Indian Party and not just a subsidiary of a global entity, then they do prefer India-seated arbitrations. There are three or four large cities which are generally seen in standard contracts that we get, but I would not choose a state or a High Court which is not moving well, which is

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1 not reacting to arbitration in the same manner as some of the more developed jurisdictions
2 might be. So, I think it's still evolving but just looking at everyone here, I'm sure a lot of us are
3 practitioners. I think things are changing for the better in a lot of different pockets.

4 **SHARMISTHA CHAKRABARTI:** That's very refreshing to hear. So I think what I'm
5 hearing is that for domestic Contracts, you are seeing a trend now of having, let's say, Delhi-
6 seated Arbitration Clauses.

7 **KANISHK K:** Absolutely.

8 **SHARMISTHA CHAKRABARTI:** Right? And the other trend that each of you mentioned
9 is use of SIAC and Singapore seat and on that I'll share, and I've recently moved to Singapore
10 and one of the reasons behind that move is really this trend that you all are observing of how
11 Indian Parties arbitrating in Singapore. In fact, SIAC came out with a report recently where it
12 was noted that 66% of SIAC users are all Indian Parties. And of that 66%, the SIAC has also
13 studied that most of those contracts have been entered into the last five years. So even when
14 we are advising our Clients where it's not a pure domestic Indian contract, which where
15 frankly, we don't come into, where it's a cross-border contract with an Indian Party, on the
16 one hand, or an Asian Party for that matter, and a European or US Party on the other hand.
17 We are also seeing and giving that advice that you should really consider outside of India, for
18 the obvious reasons that we've discussed, and Singapore is being very popular and SIAC is
19 predictable. And so that has also been coming. ICC is another choice that we see and Medha
20 to your point, LCIA also has a very good panel of Arbitrators. Sticking with this point about
21 Arbitrators, I'm curious to hear from each of you, who are the kind of people that you appoint
22 as Arbitrators? So perhaps Vikash, would you like to go first?

23 **VIKASH JAIN:** So the principal choice of Arbitrators, whether it's from the panel of the
24 institution concerned or the *ad hoc*, more hovers around the fact, I would say is the
25 understanding of the subject matter. That, at least historically, in most of the cases, has been
26 the fundamental driver and the familiarity with the industry, the familiarity with the subject
27 matter of the dispute and understanding which is the most important, I would say,
28 understanding of the business context of it, not only the pure law part of it. It's not about being
29 the best jurist, it's about being the person with the best business understanding who can
30 understand and decipher the real problem areas, and I assume Medha would throw more light
31 on that, than knowing the law is the best. So...

32 **MEDHA SRIVASTAVA:** I completely agree with you, and I think that goes for both
33 Arbitrators and the external Counsel advising us. The commercial savviness of both the

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1 Arbitrator as well as the Counsel is extremely important because at the end of the day, a lot of
 2 our disputes are about money. It's what is owed to us, which is why we have gone into this
 3 whole process. So in our case also, it's all about how money has transacted, where it has gone,
 4 how important it is to issue a certain kind of injunctive relief to be able to get it back, stop it
 5 from moving around within seconds from one wallet to the other. So yeah, so our choice of
 6 Arbitrator is not just based on who's just a good lawyer, who understands the law, but also
 7 who understands the business that we do, the business that the company is engaged in. And I
 8 would say that a lot of times, Institutional Arbitrations obviously provide that comfort that
 9 they have on their panel Arbitrators who have this kind of experience. For *ad hoc*, we need to
 10 do a lot of research. Not always believe what is written in the CV also, so there's a lot of industry
 11 knowledge that is exchanged amongst investors who are active in this space and which is where
 12 we, in one of something that we actually ended up settling ultimately with the counterparty,
 13 but we did a lot of research when we proposed the name of the Arbitrator, whether he was
 14 actually the subject matter expert that he proclaimed to be or not.

15 **KANISHK K:** And if I could just add a couple of points to that. So if we zoom out, one of the
 16 reasons why in the last many years, a lot of tech companies have gone in favour of arbitration
 17 as opposed to the Court system is because a lot of us have felt that traditional judges or Courts
 18 have not really appreciated or don't have the same appreciation for nuanced tech challenges.
 19 Right? Whether it's a new technology being introduced, it's a new product being introduced.
 20 It could be across tech sectors, but all of us have felt that at some stage, and that's why we have
 21 gone for arbitration and extending that logic when you're choosing Arbitrators or as Medha
 22 said, outside Counsels, the same logic works, right? Someone who understands the industry,
 23 someone who understands the products, whether it's in the blockchain field that Medha looks
 24 at or more traditional tech fields that we work in. Unfortunate reality is that a lot of traditional
 25 Courts do not appreciate those. And that's why you're looking for that expertise. You're looking
 26 for that value add, which you'll only get in those experts. And so you're looking for not just
 27 expertise in the law, but something more than that.

28 **VIKASH JAIN:** Just an example. In one of the recent arbitrations that we have initiated or
 29 has been initiated against us, it was purely on a subject matter, simple subject, not very fact
 30 heavy around a very commercially dominated subject and the choice of an Arbitrator or the
 31 nominee Arbitrator in our case was, and I'll give you the example. He was an ex High Court
 32 judge, but on top of it, by qualification, he was a Chartered Accountant. So, the very fact that
 33 he understood the commercial side of it was a big needle mover in his favour.

34 **SHARMISTHA CHAKRABARTI:** I think that's an excellent example and a large part of
 35 what we do as arbitration counsel, as external counsel is really research the Tribunal members.

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1 And that means reading every decision that's public, written by that person. These days, media
 2 is so amazing that you can actually watch arguments done by that person either in his or her
 3 capacity as Counsel before. You read everything that they write. I have to say that I'm a little
 4 bit nosy, so this is one of my favourite things to do when looking at an arbitration. And the
 5 other thing, which is not written, and this is something that I'd encourage you all to call me,
 6 everyone in the audiences. There's a lot of know-how within the arbitration community, which
 7 is very small community, and we'll share notes with you about our experiences with that
 8 Arbitrator. And really, that informal dialogue is very, very helpful. All that said, I will now
 9 come to my favourite topic. I'm your service provider. I'm external Counsel. I want to peek into
 10 each of your brains and see and you've given me a little bit of insight already. What do you look
 11 at when you're looking to hire somebody like me in a beauty contest? What's the motivating
 12 factor? So, Vikash, perhaps I can start with you.

13 **VIKASH JAIN:** Difficult question to answer on the face of it. But being honest to myself, as
 14 I said earlier is the familiarity of the subject matter and the business that's on top of the list.
 15 The weightages of the criteria may differ from matter to matter. But understanding and
 16 familiarity is one factor. Cost definitely. And here we are talking about the direct cost. The past
 17 delivery experience, whether directly or indirectly, what you mentioned. Within the internal
 18 community when we exchange notes, the experiences of our counterparts or our colleagues in
 19 the industry as to how the delivery has happened and what was the experience and what was
 20 the depth of it, plays a big role. And last but not the least, it's about as I said putting that
 21 business experience into practice. That ultimately is the real deal clincher, if I may call it.
 22 Someone who knows the subject but really can't put that into application, it's a zero result. But
 23 if someone understands that subject and can apply that in the real life scenario and get the
 24 results, that's valuable. There the cost takes a little less dominance than other things, the result
 25 becomes more important.

26 **KANISHK K:** If I could jump the queue and go next? See, I'll slightly change the playing field
 27 here. Presuming that you are going to a set of practitioners or the pool that you are looking at
 28 has the basic skills. So, it's presumed that you have great experience in the field. It's presumed
 29 that you have the technical abilities and command over, whether it's a subject or law. Right?
 30 What is that differentiating factor that has moved the needle for us, right? It is that desperation
 31 that we would want to see in our outside counsel that unfortunately we have, right? So, as I
 32 said it's not a happy experience for any business entity notwithstanding the size. It's
 33 unfortunately the last resort, right, that you're in a dispute. In that scenario, very often we end
 34 up in a situation where you're just desperate, right? Sovereign could be on the other side. It
 35 could be a private entity, it could be anyone. But it's a desperate situation. So very often the
 36 first question I ask is, what do you know about us? What do you know about this dispute? How

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1 would you go about it? Right? And if it's... very often that is the deciding factor that what is the
2 knowledge that you are coming in with? Are you prepared or is it just another matter for you?
3 Right? I think that's what moves the needle for us, presuming all the basics are in place.

4 **MEDHA SRIVASTAVA:** I agree with what both of them said, but I'd also like to add that, I
5 think we also select Counsel based on a bit of word-of-mouth recommendations. Obviously,
6 the industry is small enough that we know which lawyer in which jurisdiction is working a lot
7 on these kind of matters. I think one of the factors that we have gone for when seeking advice
8 in this sector is also to look at which Counsels give you the most practical sort of advice. Like
9 Kanishk said, disputes is really a last resort that we would go for. And I'm not really looking
10 for a long run dispute resolution process also. Often, and we've discussed this Sharmistha
11 before that often settlements might be a better option for me. So, I can tell you that we all also
12 have a sort of, within the industry little pool of knowledge about which Counsel may just drag
13 your case on, which is likely to give you a little more practical advice on what is the most cost
14 efficient way of resolving this matter. I think that is also another angle that we give a lot of
15 weightage to. That we really don't want to drag this on and on for just the sake of winning,
16 because ultimately, you don't know where the dispute is going to turn, which way it is going to
17 go.

18 **VIKASH JAIN:** I'll probably convert what Medha said into a more direct answer. Naturally
19 the interests of an In-House Counsel versus an external Counsel are kind of not aligned. And
20 I say that with lot of humility. There is an inherent conflict. We want it to be over early as
21 possible and the fear of the Counsel in most of the cases is linked to the tenure. The number
22 of appearances, the number of hours. No offense to anyone. We all have been on either sides
23 in most of the cases but the Counsels which can cross this boundary and align their interests
24 more with the Client are the ones who are more successful in the long run and more likely to
25 be selected than the ones who prefer short term gains, which is a one-time assignment versus
26 a one-time fee for that time.

27 **KANISHK K:** Yeah, no, and I couldn't agree with you more, Vikash. And it might be music
28 to some of the younger folks sitting in the room that what I am witnessing and what we are
29 seeing in the industry and definitely what we are practicing is that we are not going for the
30 biggest name. We are not going for someone who has the maximum appearances or maximum
31 cases under the belt or is busiest. It is actually someone who comes in with that preparation,
32 whose interests are aligned with us, who can put himself or herself in our shoes and can look
33 at an issue from our perspective, and very often it may not be a long-drawn arbitration or a
34 litigation or any other dispute resolution process. It could be just that, "Oh, you should settle
35 this. There is no point of dragging it out for that many number of years." So, honestly now it's

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1 really about whose interests are aligned, who can put themselves in our shoes and think like
2 we think and how we would like someone to think on our behalf.

3 **SHARMISTHA CHAKRABARTI:** Thank you both. And what I will say is, my biggest
4 victories are the ones you won't read about on my resume. They're the ones that are actually
5 settled. They're the ones where the Clients have been able to reach a commercial resolution.
6 And really, our interests are aligned with yours and sometimes when we get engaged, a part of
7 that mandate is also to do a check-in with you at different stages during the arbitration, when
8 settlement offers may be appropriate, and sometimes an arbitration is just brought because
9 that is the threat to bring the other side to the negotiating table and the arbitration may never
10 even go through the life of it. And that is really, again, the beauty of Arbitration versus Court
11 Litigation because you can commence something and withdrawing it is not public. So, it's not
12 a public humiliation to your company, which may not be the same thing if you file in Court.
13 But all that said, all the things that each of you have said, I have been feverishly writing in
14 notes in my head. But I want to explore this subject a little bit more, about settlement. At what
15 point in time do you consider settlement? Do you consider it after initiating an arbitration?
16 Do you consider it at the outset? So perhaps, Vikash, since you've started this topic, let's start
17 with you.

18 **VIKASH JAIN:** So again, there's no fixed rule to it. It differs based on the context of the
19 matter. Often I have seen, and this is a more generalistic answer that when the tempers cool
20 down. When we start the arbitration or a dispute, the tempers from both the sides or either
21 sides are at its peak. I don't want to see your face types. And no offense to it. We as lawyers,
22 whether in-house or external, try to stay away from those emotions. But there are emotions
23 involved. Ultimately, there are human beings on either side and what happens is, over the
24 period, as the process progresses, those tempers cool down or possibly, the people on those
25 assignment from either side move on, change. There are new people who start coming into
26 that decision chair, and that's where I would say, when there are lower tempers, lower egos
27 and a more balanced approach, that a negotiation or a proposal for negotiation becomes, I
28 would say, feasible. That feasibility can differ from matter to matter and context of it. At times
29 I have seen settlement discussion come in after even five years, seven years of the matter
30 running, 10 years of the matter running. And in some occasions, just with the filing of the
31 notice. Something as simple as that. You file a notice and the third day, the person is sitting in
32 front of you. Let's discuss. So, it would largely vary with the context of it and how it happens.
33 But we do have to keep the human angle, the psychological angle behind the decision-makers
34 into the context.

35 **SHARMISTHA CHAKRABARTI:** Medha?

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1 **MEDHA SRIVASTAVA:** I find it interesting that you said that arbitration is often a
 2 negotiation technique, because that is exactly one of our Counsels advised us. Not getting a
 3 response from the other side and I was like, let's send a notice, let's see what they come. I think
 4 settlement again is not something that would have a sort of a cookie cutter approach. You need
 5 to see on a case-to-case basis. In this particular instance, the initiation of that sort of notice
 6 was the way to get the Party to the negotiating table to reach a settlement. In other cases, I
 7 think we expect the Counsel to sort of, again, take a very practical approach, align their
 8 interests with ours to see. Sometimes a settlement discussion cannot start upfront. Like Vikash
 9 said, the tempers are frayed, you are irritated. You don't really want to see anyone's face there.
 10 So you need to find that right moment for it, and that is the sort of advice that we would expect
 11 from our external Counsel that this is the time when we can go for a settlement. Moving slightly
 12 away from arbitration, we've actually had a settlement that we had to do in US in a litigation
 13 that we were caught up in. And we really appreciated our Counsel's advice. It was right at the
 14 point where he thought the Court had given one preliminary order, and he thought, this is a
 15 good moment to actually go ahead and settle and his advice pretty much was, I think it's to
 16 settle this dispute today rather than you pay me all these dollars, just pay it to the other side
 17 finish it off. And that moment when the Court rendered that Preliminary Order was the correct
 18 one to go for it. Because the other side was more amenable to negotiating. So I think it is the
 19 timing of the settlement has to be a case-to-case basis and the advice needs to be very practical
 20 based on what that case demands.

21 **KANISHK K:** See, my response is going to be slightly different from both of my co-panellists.
 22 Settlement is always on the table. It's an option which is considered from the first day of any
 23 dispute till the last day, right? It's always there. We are not in the business or in the trade of
 24 disputes, right? Unlike some practitioners of law, this is not what we would want to devote our
 25 resources towards, right? So, it's always an option that we are exploring. As Vikash and Medha
 26 said, it works sometimes. It's a great strategic option, that one might choose and others you
 27 might want to initiate litigation or arbitration. You might want to explore how the other side
 28 is responding. So when you may choose is of course a strategic decision. But are you
 29 considering it? When do you consider it? I think, every day. That's something that we very
 30 seriously look at all the time, every time, in every dispute. Because we don't want to be in
 31 disputes in the long run.

32 **SHARMISTHA CHAKRABARTI:** No, very valuable. I can see someone from the MCIA
 33 motioning to me that we are running out of time. So, before I wrap up, I would like to invite
 34 perhaps two questions from the audience if anyone. Please sir. When you stand up, please state
 35 your name and just let us know who the question is directed to.

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1 **KENNETH WYNE:** Thank you very much to the panel. Professor Kenneth Wyne, CIArb
 2 Kenya... CIArb Kenya. Two quick questions. First, does the geopolitical context impact all that
 3 you're discussing? So there's a lot of geopolitical issues happening, wars in Ukraine, sanctions
 4 and so forth. Does it affect questions around how Counsel looks at seats, how Counsel looks at
 5 the Arbitrator and so forth? Second, have you ever done interviews when it comes to choosing
 6 an Arbitrator? I'd be very curious what your experience has been. It's a practice in some parts.
 7 I have sort of gone through something when it comes to selection, pitching, and there are all
 8 kinds of issues that pop up. Thank you.

9 **KANISHK K:** Sharmistha, why don't you start with the response, and then we can all chip
 10 in.

11 **SHARMISTHA CHAKRABARTI:** Okay, well, starting with your first question, geopolitical
 12 considerations. Yes, that is definitely influences, for example, where the seat of the arbitration
 13 will be. And I'll give you one real life example. We are currently in an arbitration against the
 14 Russian Federation, and needless to say, geopolitical considerations are top of mind there. If
 15 you are Russia where would you like to seat the arbitration? The choices are few. And I will tell
 16 you, Delhi is a seat that Russia is considering very seriously. And why is that? Because India
 17 has not sanctioned Russia. Does our counterparty the Client that I represent agree to India?
 18 We'll have to see about that. So that's the answer to your first question. But anyone else would
 19 like to chip in there?

20 **VIKASH JAIN:** Just taking the question a little more further, and it's in a slightly different
 21 context. Geopolitical considerations are there for everything, not only just arbitration, be it
 22 contracts, be it the contractual clauses and how you negotiate? What are the securities? What
 23 is the Performance Bank Guarantees? For example, without naming the country we often have
 24 contracts with a particular country, which is kind of the biggest supplier in the space, in the
 25 renewable energy space. And if we have to get a security from that country or the counterparty
 26 I would not agree to a bank from that country. I'm talking about a bank. I would not take a
 27 Bank Guarantee coming from a bank located in that country, because I know if I have to go for
 28 an enforcement, I will never get that money, that is a piece of paper. So all those considerations
 29 beyond just the geopolitical, the very fact, whether the institutions are impartial or not, they
 30 are independent. How far does that go? All those considerations play a big role.

31 **KANISHK K:** I think the short answer is that on most days we live in the real world, right?
 32 And we can't ignore what's happening around us. So, whether it's entering into contracts,
 33 whether it's dispute, whether it's selecting Arbitrators or a seat. I think everything that
 34 happens around us needs to be considered. Only yesterday I was seeing an update about Nepal.

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1 Now, that may not be our first choice for a seat or for looking for Arbitrators, but everything
2 that is happening around us does influence decision. And if there are certain jurisdictions
3 which are perpetually in turmoil, you would obviously not go around that.

4 **MEDHA SRIVASTAVA:** I mean 100%. I agree with what everyone here has said. I work for
5 a South Korean fund. We have North Korea related restrictions in all our contracts. We just
6 don't bring them into the picture at all. You have to stay off. So geopolitical considerations
7 would impact every part of your commercial dealings, not just where you're doing the
8 arbitration or what institution you're selecting, but also just to begin with the contract itself.

9 **SHARMISTHA CHAKRABARTI:** I see Neeti has a question.

10 **NEETI SACHDEVA:** Coming from an Arbitral institution, I've always wondered is that when
11 there's an arbitration dispute and you're selecting your Arbitrator, who has a final say? Is it
12 your Lawyers who are representing you, or is it the In-House Lawyers who'll say that no, we
13 want this Arbitrator? Where does it really, I would say the balance of the convenience lies and
14 who would really have the final say on the Arbitrator?

15 **SHARMISTHA CHAKRABARTI:** The Client. That's always the answer. But that said, we
16 try to guide our Clients to make an informed choice. And like we were discussing earlier, we
17 as arbitration practitioners may have inside knowledge about the Arbitrator, which may not
18 be in the public domain. So, we counsel our Clients. It's part of the services that we provide.
19 But ultimately, really, it is the Client that is deciding who to pick, and it's the Client's choice
20 because it's their dispute.

21 **VIKASH JAIN:** Totally. Ultimately, we get guided by our Counsels, external Counsels, who
22 do it day in, day out. Their experience of the Arbitrator is much more deeper. We do it, we do
23 arbitrations once in a while. For us, it's not a regular day-to-day business. For the external
24 Counsels who are advising us on that subject, for them, it's bread and butter. They deal with
25 the Arbitrator or one way or the other from either sides. So, they're dealing with that
26 Arbitrator, the chances of them having dealt with that person. And having firsthand experience
27 is much higher. So, we do rely on the good advice coming from the Counsels, but agreeing to
28 it, that ultimate decision is being taken among the choices which are on the table by the In-
29 House Counsel.

30 **KANISHK K:** I think that answers the question. So it's a bit of both. It's proposed by,
31 obviously, the outside Counsel, the options are put on the table, but then the final choice is of
32 the Client as Sharmistha rightly put it, but you would be surprised by the level of knowledge
33 that even the In-House Counsels now have, right? Because in lot of sectors, arbitrations are

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1 very common, right? And again, extend it. Why only arbitration? Whether it's arbitration, it's
2 litigation. So that knowledge or institutional knowledge has now, over time, developed. And
3 of course, the suggestions are very often coming from outside Counsels, you are actually
4 looking for a turnkey approach, right? Everything that once you go to an outside Counsel,
5 advice should not only be on the matter, but also on who you go to, how do you run the project,
6 everything. But you would be surprised with the level of in-house knowledge that might exist,
7 at least in some industries which get exposed to arbitrations very often.

8 **SHARMISTHA CHAKRABARTI:** Oh, that I see. You guys cannot see the timer here, but I
9 see 1 second and now it's marked zero and a big red "Time's up". So that says "Time's up". All
10 I can say is a very big thank you to each of the panellists. Thank you for coming. I know you
11 have very busy schedules and traffic in Delhi is something to be afraid about. So thank you for
12 coming, and thank you, everyone, for spending your Friday afternoon with us and please do
13 come outside and join us for some tea.

14 **VIKASH JAIN:** Thank you.

15 ~~~END OF SESSION 4~~~

16