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SESSION 2

THE INDIA–MENA ARBITRATION CORRIDOR: CHALLENGES AND OPPORTUNITIES

SPEAKERS:

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ALISHA SHARMA: Ladies and gentlemen, we now come to one of the key highlights of today's program a one of a kind "India-MENA corridor session, a jurisdiction focused session dedicated to the Middle East region hosted by MCIA this year along with Al Tamimi and Co-Gateway Middle East Hammurabi and Solomon Partners and SK law offices, India's commercial and institutional ties with Middle East continue to deepen as trade and investment flows between the two regions and the two regions expand, so does the need for a robust and well understood framework for resolving disputes that arise from them. This growing inter interconnection raises important questions around jurisdictional preferences, enforcement and institutional cooperation across the corridor. This session examines that relationship through the lens of "India-MENA arbitration corridor: Challenges and opportunities". The discussion will be moderated by Ms. Lara Hammoud joined by Alim Khamis, Khushboo Shahdadpuri, Priya Dhankhar and Shweta Bharti. If I may now invite our Moderator and panellists to join us on this stage, please.

LARA HAMMOUD: All right. Maybe, we should start so that we don't delay the schedule too long. Good morning, everyone. I'm Lara Hammoud and I'm moderating this session on the India- MENA arbitration corridor, what are the challenges and the opportunities. I'm very, very delighted to be here today celebrating the 10th anniversary of the Mumbai Centre of International Arbitration and it's my first time in town actually. I'm very excited. So, I look forward to explore more and meeting you all. The Corridor. We use the word "corridor" increasingly often, and commercially, there's little doubt that something significant is happening between India and the Middle East. Trade and investment flows have grown considerably. Indian companies have established themselves and they are active in the Gulf, particularly in the construction infrastructure and energy. And investment is actually increasing, moving in the other direction as the Gulf countries are looking at India for investment.

But the focus today is not really to look at the "corridor" from a commercial perspective. The focus is really to look at what those transactions are giving in terms of disputes. So, we're going to be talking about the India-MENA arbitration corridor, where are these disputes being resolved, which seats and institutions are Parties choosing, and how effectively do courts on both sides of the corridor support arbitration and enforce awards? These are the questions or some of the questions that we will be exploring today. And I'm delighted to do so with four excellent speakers, each of whom brings a different perspective to this discussion. We have Ms. Shweta Bharti, Managing Partner at Hammurabi & Solomon Partners based in Delhi. We have Ms. Priya Dhankar who is an Associate Partner at SKV Law offices based in Delhi as well. We have Ms. Khushboo Shahdadpuri, and Khushboo is based in Dubai with Al-Tamimi & Company. And last but not least the only gentleman on the on the panel today is Mr. Alim

Khamis who is a Partner and Head of Disputes of Gately, Middle East, and he is based in Dubai. So, we have two practitioners from the Middle East and two practitioners from India. So, maybe the best place to start is with the corridor itself. And as I said earlier, we increasingly speak about the corridor and its disputes, but maybe Alim, you can explain to us what is... what is it really that we mean by corridor?

ALIM KHAMIS: Good morning, everybody, and thank you Lara. I'll start off by doing the lawyerly thing of actually questioning the premise of the actual topic rather than providing an answer right away. I think when we talk about this particular corridor, MENA, as we all know, is Middle East and North Africa. Now if we look at the definition itself, it's a very broad one, and I think in terms of what we need to be looking at is some of the nuance. What I mean by that is that looking at Middle East and India or India and the UAE, is one relationship. If you look at India and KSA, Saudi Arabia, that's a very different relationship. So, I think what we need to be mindful of is that MENA is not a term of art; it's something that's quite fluid and changes over time, but also it can't really encompass the complexities of each different relationship with each different Gulf nation.

LARA HAMMOUD: Can I ask Khushboo, because you mentioned Alim, that it's you know, the corridor is different depending on which jurisdiction we're talking about MENA is a very broad region. So, maybe, Khushboo, you can tell us a bit more about the relationship between KSA, Oman and India.

KHUSHBOO SHAHDADPURI: Yeah, sure. So, hello everyone, and it's really great to be here in ADR Week to celebrate MCIA's 10th year anniversary. And I think Alim sort of hit the nail on right at his head. MENA is a huge, huge jurisdiction by itself. So, it's very difficult when people say MENA, it does irritate some of our us who are based there because there's no one sort of consensus on what MENA really is it's not Africa, it's a completely different continent actually. But if you drill down on it, I think India has got a special relationship with the Middle East, with Africa separately, but within Middle East like for instance, I mean, India and UAE have had this collaboration for generations really. If you look at the demographics of the UAE, there's generations of Indian families that have been based in the UAE; they've set up family businesses and they're thriving, you know. Some of the top businessmen in UAE are Indian-origin family businesses. So, when we talk about the Indian diaspora in UAE, it's very difficult to say now which ones are actually local and which ones are Indian. But if you drill down... So, Oman, I think it's a really special focus for me because the steel industry is dominated by the big names of the Indian organisations here that are really set up shop in Oman, again, years ago, thriving and they've got really good government support. The UAE is an obvious one. The government of the UAE gives lots of grants to these Indian family businesses to set up their factories, now set up production ships in different Emirates of Dubai. So, Ras Al Khaimah, Fujairah and that's really going quite well because of the tax concessions the government is giving.

The KSA and India dynamics is a really interesting one for me because traditionally the way the relationship worked was that KSA was just exporting labourers to use for their massive mega projects in the KSA that were… they're still going on. But in the last few years the relationship has shifted a little bit and that has come about for two main reasons. The first one is the transition to reduce the reliance on hydrocarbons, which means they're now looking at different economies, diverse economies to invest in. And then the second reason is India's ascent itself as a global powerhouse where they are really building relationships as an equal to a lot of these Arab countries. And because of these two sort of, reasons, KSA is now looking at India also for… as a food security. So, for the agriculture, for the crops that for obvious reasons the KSA climate is not suitable to grow, and they're looking at India as a collaboration to secure the food industry in the country. So, I think that's a huge shift we should think about where now these two countries transacting with each other as equal partners and giving and taking with each other. So, that's really going to change, I think the way the disputes are going to be situated between these two countries.

LARA HAMMOUD: Khushboo, very interesting. Have you, in your experience, seen an increase of the disputes between those specific to jurisdiction, KSA and Oman and India?

KHUSHBOO SHAHDADPURI: For sure, we've seen an increase for, definitely for sure. I mean, if you look at the caseload, the latest statistics are from 2024, you'll see India has always been the top five sort of disputing Parties. And that percentage of the Indian disputes in particular have increased. I know we'll come to that in a little bit, but I think that's an interesting dynamic to sort of pause and look at because it shows that now… So, disputing Parties are more comfortable to base their disputes in jurisdictions where the projects are located, whether that's in Mumbai, whether that's in DIAC in Dubai, in Abu Dhabi. So, wherever the dispute the project is, they want to go there as a neutral arbitration forum to decide the dispute

LARA HAMMOUD: We'll talk about this actually a bit later. But maybe on the sectors and the type of transactions that are causing disputes. And maybe I'll ask Priya about that. Are construction infrastructure and energy still the sectors that are, you know, producing disputes or are we seeing a shift?

PRIYA DHANKHAR: Hi, everyone. So, India's relationship with the MENA region has been underpinned by construction and infrastructure for decades now, and I think that's here to remain for at least the while. The economy is evolving rapidly with the renewables taking centre stage now with the climate change and climate transition that we're all talking about, but when it comes to renewables, the demarcation in terms of dispute and arbitration is slightly different. See, a solar EPC dispute would be categorised as a construction dispute. So, you wouldn't really see it in terms of a renewable dispute. In terms of investments into India in the renewable sector, it's heavily regulated. So, you wouldn't see any arbitration coming across in the renewable sector in India; it'll go to the regulator for regulatory dispute. Technology and joint venture is something that I see increasing in absolute numbers, but it's too soon to see any meaningful departure from construction and infrastructure in terms of numbers of disputes.

LARA HAMMOUD: Very interesting, Priya. If that's the commercial and disputes landscape, the next question is, what Parties are doing or should be doing when they design the Dispute Resolution mechanism for those transactions. And I'll ask generally the question that if you're advising Parties negotiating a major transaction between India and MENA transaction, what would you tell them to put in their Arbitration clause or Dispute Resolution clause? And I'm thinking about seat, I'm thinking about institution, and I'm thinking about governing law. But maybe let's start with the choice of the seat. And Shweta, could you please elaborate on that?

SHWETA BHARTI: Sure. So, good morning, everyone. And I'm really delighted to be here on the 10th anniversary of MCIA. I've been associated with MCIA for some time now and also a part of the Host Committee; so, really delighted to welcome all of you as well to the event. Now on the question of seat, I think this is something which is getting more and more complex over the years. I remember having written an article on this complexity around 2009, and since then I think the complexity has only increased. So, probably, we are not ready to accept the... you know, the... or rather not ready to settle this issue and probably, that is why there are still questions around which should be the seat that we should decide on. But when it comes to India and MENA region as you know, two jurisdictions in dispute, again as MENA is as complex as possible, what are the things that we would, as a lawyer advise a client in terms of, you know, the seat would be, look at where the assets... Of course, that's the most important element that goes into, you know, deciding on which seat is the, the assets, where are the assets lying for both the Parties. The second is also, and which is very important is, is the interim reliefs that we are likely to get, whether it is interim relief by way of going to the courts like in India, we go under Section 9 or if there is an Emergency Arbitration to be invoked, where is it that it's likely to get enforced in that sense? So, I think that is something which is very important. And that is the role that institution also plays. Which are the institutions which provide for Emergency Arbitration reliefs in the today's circumstance, are the kind of institutions that we would be looking at and, you know, deciding on would be the best. I think, in today's time so far as MCIA is concerned, I know that they have an emergency arbitration relief and similarly for DIAC. But there are many institutions which are still, you know, thinking through the whole process of whether to have and how to have it. In India, we still have a certain complexity around Emergency Arbitration because we do not have a legislative backing to it. While there are judgments to this effect in the ***Amazon's*** case, we do not have a legislative backing this is something which was which is there in the proposal in the 2024 Draft Amendment, we did see, the proposal with respect to enforcement of the Emergency Arbitration, but we still have to see that amendment coming through. And the last bit is about the enforcement of the award. I think that is the most critical piece. If we have to look at the enforcement, where is it possible to get the award enforced in the shortest possible time? I think those are some of the situations and circumstances that we would gauge in order to advise our client on which is the right jurisdiction and the right seat to, you know, decide on.

LARA HAMMOUD: Shweta, can I ask a further follow up question? Singapore, obviously, has been the, regarded as a neutral seat for arbitration in those transactions. Do you think that it's still the natural seat that Parties are looking, or are choosing in those transactions or you think that Abu Dhabi, Dubai offshore and onshore are kind of now becoming sufficiently established to be a seat for those transactions?

SHWETA BHARTI: So, I think so far as India is concerned, Singapore has been a natural choice for a long time. I think even now if you look at the data and statistics, it's almost about 180 matters which have gone from India to SIAC and that is only about SIAC; I'm not talking about the numbers which would have gone to ICC arbitrations. So, definitely, neutrality plays its important role in that sense, and therefore, Singapore has an edge in that context. But having said that, I think in the in the last few years we have seen that shift also starting to happen. The roadblock that we still are seeing and we have been talking about it, but not doing anything really is about the reciprocating territory issue. I think that's where the whole dynamics gets stuck. I think where Dubai is still to, you know, become, or rather overcome that hurdle that we are facing. But if we are able to overcome that hurdle, I think Dubai definitely will be a, you know, a natural choice for the disputes which arise between India and MENA region, particularly because of a lot of factors. Of course, you... if you would want me to elaborate on that, but there are a lot of factors which really play a role in giving Dubai an edge over any other jurisdiction in that sense. I'm talking particularly about Dubai is because I think Oman and Riyadh, I think they still are in the fray but not really reached there. A lot more arbitrations besides Singapore is going to Dubai at the in the present times. And therefore, it becomes a natural choice of seat for us after Singapore.

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LARA HAMMOUD: Yeah. Thank you, Shweta. So, maybe Alim, since you're based in Dubai, you can tell us what would persuade a Gulf investor to accept an Indian seat in your views?

ALIM KHAMIS: I that's a very interesting question because previously, we haven't seen much of an uptake in those sorts of areas. I think one matter that we do have to take into account is commercial leverage. If you've got a Gulf investor investing in an Indian project where the nexus of the project is in India or there is an overlap between the two jurisdictions and they are in the weaker bargaining position, there's a good chance that you may well negotiate India as the seat, especially as Shweta says, keeping in mind where the assets lie. So, that's always a critical concern. I think in terms of other sort of, avenues where I've seen it is on very high value sort of, mega contracts between governmental entities acting indirectly through different Parties. So, there's usually a political relationship there, one that's very close in nature, and this is a business transaction arising out of that political relationship. And in that case there may well be reason or scope to have India as a seat of the arbitration.

LARA HAMMOUD: Thank you. I'm now thinking about the choice in... going back to that Arbitration clause that we're drafting with the clients, the seat and then the choice of the institution, and there's a growth of DIAC obviously, arbitrate AD, those two in the UAE, the SCCIA, the MCIA all those are regional institutions. So, do you think that, and maybe I'll start with Khushboo, do you think that with the growth of these institutions, the Parties will change their choices and, rather than going to an ICC and LCIA or a SIAC, they will choose those regional institutions?

KHUSHBOO SHAHDADPURI: So, I mean, I really like this question a lot because, you know, our corporate colleagues, and this is the perennial question they always are faced with when we look at cross-border transactions, choice of law, choice of seat and arbitral institutions, which one does each side pick? And I think for most of us, we all agree that the seat's probably the most important because the courts backing that seat obviously, has a lot of stake in terms of enforcement, setting aside interim measures. But sometimes I, I tend to ask the clients what are they actually really looking for when it comes to this sort of tussle between who keeps what aspect of these three. And if you really think about it, if you want to keep the revenue within that country, then arbitral institutions, the obvious fact that you keep in that clause. And you know your question, Lara, when you think about regional and arbitral institutions, it sort of presupposes there's a rite of passage that an institution needs to cross to get from a regional to an international arbitral institution, right. But in reality, every arbitral institution has sort of, pinned to one home jurisdiction, whether it's ICC, whether it's SIAC, DIAC. So, there is still that one home body they're all pinned to. What then changes is that from that sort of one focal point, they grow their influence based on a few things, and it's to do

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with the case management team, the speed, the quality, to do with the obviously, the judiciary backing that country, whether it's quick, whether it's international, it's English-speaking, all of those make a difference. Good rules as well. And I think most known arbitral institutions have good rules, right. Then it comes back to the committee or the court. So, every institution has a court, has a committee which looks at, oversees how these rules are decided, whether something that falls through the crack in the sense that the rules haven't thought about or just, you know, deciding on stuff like consolidation joined a committee needs to decide how international is those the members of those committee. So, there's so many considerations to think about. And I think in the UAE, you know, we've seen the growth of the Abu Dhabi International Arbitration Centre very recently, which you are a part of as well, you know. They're new but they're so robust and they've done such a good job. They won the award as well for being the most one of the most promising arbitral institutions. And if you take that as case study for us, all of us, you'll see that a new arbitral institution has made headways because they got all these things right. They got good case managers. I mean, there's still a few things they're fixing, but they have got such an international court. People from all over the world deciding how their rules should be decided. So, I think when it comes to an arbitral institution, there's a lot they have in their control, apart from obviously things like the judiciary, the government backing which are not in their control. So, if these conditions are sort of, taken to its optimal, there's nothing really different from these institutions, DIAC, Arbitral AD, MCIA that, that they don't have, which the ICC, LCIA has really is just about sort of growing their influence, getting these conditions, right. And I've looked at rules of all of these arbitral institutions very closely in all my cases, and they're practically the same. There's very little difference in terms of how the case moves. It's really about how good the team, the case management team is and the Court of the arbitration is.

ALIM KHAMIS: Just to add to that, as well; Khushboo makes a good point I would say that increasingly though, clients are also becoming aware of the costs of the arbitral authority, aren't they so oftentimes what happens is someone will say, well, ICC it's sort of the Rolls-Royce of arbitration. So, it is very expensive in terms of your administrative fees, whereas DIAC or AD Arbitrate may well be a better alternative given that the rules and the regime are the structural regime of rules is quite similar. So, you're not really losing out as such. That's a consideration that increasingly I see at play with clients. Also because ICC has a longer track record than sort of DIAC and AD arbitrate in their newer iterations, that also means there's more scope for error, and clients have long memories when it comes to these things. So, they might say, well look, I did an ICC arbitration or I was a Party to one several years ago; I wasn't happy with the cost structure, but I also wasn't happy for whatever reason with the administration of that arbitration. So, do you know what? I'm going to try this. The DIAC rules have been revised, ADR arbitrate is now in its new formation. And I'm quite happy to use that.

So, they are mindful of that whereas previously that was probably a lower priority for everybody.

KHUSHBOO SHAHDADPURI: Just maybe one point to add to that. I mean, the cost is a... It's a big consideration and as Alim says, it's about the track record versus paying that premium cost. I think all of these centres or most of the centres, the costs are based on a percentage of the value of the dispute apart from the LCIA. So, that sometimes clients are happy to pay the amount, they just need the certainty at the outset because of various reasons. Sometimes it's the funders that need the cost component from the outset, or sometimes it's their sort of subsidiary company or the primary sister companies that are going to be footing the bill for the arbitration. So, that certainty sometimes they just need; so, it sorts of makes sense then to go for some an institution like the ICC where even though they're paying a little bit more, they know how much they will have to fork out as opposed to the LCIA which, to be honest, hourly rates it could be... I mean, we all know the complexity of a case and the value of dispute have sometimes very little bearing to each other.

LARA HAMMOUD: I think you're absolutely right, and I think all those institutions now have everything they need to succeed. I think there's a perception. First of all, a track record like you said, but also a perception. When I was negotiating contracts when I was in-house and negotiating for a national company with foreign Parties, they had the impression that going to DIAC or Arbitrate AD was kind of, you know, get a very close, you know, being too close to the jurisdiction of the company. So, for some reasons they would prefer going to those international like the ICC or the LCIA which are perceived as being more international and neutral to the jurisdiction of those two Parties, which I... we can discuss this further, but I don't always agree with. But that's something that also sometimes may play in the role in the choice of institution's perception.

SHWETA BHARTI: I'll just add to what you said, Lara, and just two lines to it that in India, if you look at most of the high value PSE or the Public Sector Entities Arbitration Clause, you will see ICC as the, you know, institution which has been chosen by them. So, I think that is what you mentioned is something which is playing in the minds of the government as well, when all the PSEs as well, when they are choosing their institution, they are preferring ICC and sometimes with all kinds of complexity like you will have the seat of arbitration as Singapore an ICC institution and the governing law will be India. So, it can get as complex as this. And therefore, then you know it becomes a tussle between the Indian courts and the Singapore courts and which one will prevail. So, there are live examples of that.

LARA HAMMOUD: It's all about compromising but in the end it makes things more difficult. Absolutely. Now moving to then the governing law, and that's also usually a discussion that can be compromised by the Parties negotiating the contract. Alim, what about the governing law? Are Parties increasingly choosing jurisdiction the law of a jurisdiction in the MENA or India or is English law perceived as, you know, kind of the neutral one? And... Yeah.

ALIM KHAMIS: That's a topic where there's been an interesting shift, I think when I first came to a Dubai in 2014, 90% of the contracts were the laws of England and Wales governing law. And with very few exceptions you would sometimes see the laws of the UAE. Recently, what's happening is that there is less scope in some circumstances for negotiation. So, if you're dealing with a governmental entity in the UAE, chances are their template contracts will provide for UAE or Abu Dhabi or Dubai seat and governing law of that of the UAE, and that's really quite a non-negotiable in some circumstances. There is more flexibility now I would say. I certainly see England and Wales, the laws of England and Wales being very prevalent, but not so much as it was previously. I've got a dispute right now which concerns distribution of certain products in the UAE and in Oman, but the governing law is Swiss law, because the counterparty is in Switzerland. And so, in those circumstances you do see Parties negotiating quite heavily. In other circumstances, what I've seen is that the contract provides for a particular governing law, but the Arbitration Agreement has a different governing law.

LARA HAMMOUD: Oh, you've seen this in the MENA region?

ALIM KHAMIS: I have seen that in the MENA region; I think it's North Americans over complicating things if you ask me.

LARA HAMMOUD: Influence of some of the... Yeah.

ALIM KHAMIS: Exactly. But that's a debate for another day. I think also we should be we should be aware of the fact that when it comes to a nice compromise or a halfway house, what you also see now is the laws of the DIFC.

LARA HAMMOUD: Yes.

ALIM KHAMIS: Which is very increasingly common I would say. For those of you who aren't familiar DIFC stands for the Dubai International Financial Centre it is an offshore zone in Dubai but its rules court rules are almost identical or at least mirror the English Civil Procedure rules and DIFC Law as such is very similar to English law in terms of, if you look at formation of contract, breach of contract, termination and those sorts of things. So, people like what they know and if they're familiar with a particular regime, it's quite attractive to have that benefit and say, well, it's not going to be Dubai law, it may not be another law but it will be DIFC law as a compromise position.

LARA HAMMOUD: Yeah.

KHUSHBOO SHAHDADPURI: But it's also in English I mean, even if you're not familiar with English laws, the fact that it's in English, it doesn't need to be translated how we would have to do for the local UAE laws. I think that's also another benefit.

LARA HAMMOUD: Yeah, I think those offshore jurisdictions in the UAE have played a big role in the in making the UAE an arbitration hub, being in English, being based on Common Law. So, giving basically an another option to users, investors. And just to mention Indian law, I found in the statistics of SIAC 2025, was the third chosen law which I found very interesting in SIAC. So, it's quite popular.

PRIYA DHANKHAR: It's quite similar to the English law.

LARA HAMMOUD: True, yes.

PRIYA DHANKHAR: That's where it comes from.

LARA HAMMOUD: Yeah, yeah. All right. So, we've negotiated and agreed on the Arbitration Agreement so that's done but arbitration does not operate in isolation from national courts. And what we wanted to explore together is, once we have an award, how straightforward is it in practice to take an Indian award into the Middle East and enforce it against assets in the UAE, Saudi Arabia or elsewhere in the in the region? And Kushboo, you can tell us.

KHUSHBOO SHAHDADPURI: Yeah, it's relatively straightforward. I wouldn't have much to add, to be honest. I think the UAE... well in the MENA as a whole jurisdiction all of them are very pro-arbitration pro-enforcement. There's very rare that cases get set aside or where the arbitration doesn't go through in terms of after an award has been rendered. I think the DIFC courts sort of had issued its first decision very recently where they set aside an arbitral award. But before that I don't think it has ever happened in the DIFC jurisdiction. I mean, the one caveat I would add is, not in... not about after an award has been issued, but there have been cases in the Dubai Court of Cassation which has looked at Arbitration Agreements. This is during the pendency of the arbitration itself. And we did a study in the firm. We looked at the most recent 30 or 40 cases being issued by all of the MENA courts. How are the courts looking at Arbitration Agreements where they are related litigation clauses? And the Dubai courts in particular increasingly have been asked to consider agreements... related agreements where a component of them have Arbitration Clause and a component have a Litigation Clause. And the risk obviously is that if the arbitration is extended for the whole... all of the awards, to keep all of the related disputes in one forum, then we are overextending the Arbitration Agreement to non-signatory. The converse of that is then we're not respecting the

Parties' bargain to arbitration. And it looks like the courts have actually are making a sensible distinction between how they're deciding these cases. So, there are some cases where Arbitration Agreements have been extended beyond, and there are some cases where the Arbitration Agreements are not being respected. And I think the criteria the courts are looking at is that which is sort of the focal or the main agreement that is the subject of the dispute, which is completely essential to the whole deciding all of the related issues across the dispute. They will look at that contract and if that has an Arbitration Clause then everything goes to arbitration and if that has a litigation clause and everything goes to litigation. And it might sort of go against our consensus of what we think courts should do. But that's actually, if you think about it, there's actually a clear, sort of logic to it because the overlapping decisions or having conflicting decisions in different forums is even more detrimental to an arbitration landscape I think for any country. So, they have maybe, perhaps extended their jurisdiction a little bit by doing that. But in... from our study, what we found is there was a sensible criterion that's being identified. And I think that's what makes a key difference that there is a criterion it's not that they're just doing it willy-nilly. There's some sort of factors that are taken into account in all of the cases across the board that we looked at. And so, it's very interesting dynamic to really think about because a lot of criticism that have been levied of these cases is that, well, this is not a pro-arbitration jurisdiction, but the converse to that would be then, you would have cases, arbitration awards that would then be set aside potentially and they're trying to avoid that issue because of the overlapping and conflicting decisions across different forums.

ALIM KHAMIS: Particularly, where you have an Arbitration clause in a contract, but then it has a carve out for any urgent or interim relief for which the courts have jurisdiction, there's quite a grey area there.

LARA HAMMOUD: But this is very interesting Khushboo because... Is it the Dubai courts or UAE courts generally?

KHUSHBOO SHAHDADPURI: So, in the UAE it's mainly Dubai but there was one Abu Dhabi cases but we also looked at and there was one Egyptian case, a Bahrain case and two Qatari cases. And they all sort of showed very similar trends. So, this is an article actually I did with my colleague Dr. Hassan at Jus Mundi. And we looked at all of these cases and we explored whenever there was a problematic aspect of jurisdiction how the courts actually resolved it. And it looks like there was a sort of a very logical way of doing it. So, I think we like that. And this is this sort of was a response to the criticism that have been levied by some of the international arbitration academics for... on these decisions.

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LARA HAMMOUD: But I think the UAE, you know, courts, with which I'm more familiar, you know, have completely changed their position in the recent years. Before they would look at arbitration as an exceptional means of Dispute Resolution, and throughout the years, 2017 and 2022, I think those like, my like, big decisions that changed the court's perception of arbitration. Today you see in decisions from the Court of Cassation saying that arbitration is legitimate and as valid as litigation mechanism. And I think this is... this plays a big role in how courts are now interpreting Arbitration Agreements. It's not as is construed as strictly as it used to be because of that exceptional perception. I think that's an important point to make to, you know, emphasise the fact that the UAE courts have, you know, increasingly, a change in their positions and are now what we can say in arbitration friendly jurisdictions. I just wanted to mention, speaking about enforcement, a statistic from Saudi Arabia that I came across, and it's published by the SECA in July, so very recent, and across more than 3300 appellate judgments between 2017 and 2025. So, we're talking about 3300, there were 565 applications to set aside an award, 518 were refused and there were only 47 were succeeded in whole or in parts, and 8... So, 8.3% of all of them, and only 13 of those were set aside on Sharia or public policy grounds. So, I think it's important also to refer to those statistics because of the perception that, you know, awards are not being enforced, are based on public policy, Sharia, etc. and it's good to have those statistics out there, I think.

SHWETA BHARTI: Do you also have similar statistics about the Indian courts?

LARA HAMMOUD: No.

SHWETA BHARTI: Thank God.

LARA HAMMOUD: Do you have them, perfect; so, that's what we wanted to discuss precisely now is what difficulties can arise when in Middle East seated award needs to be enforced in India. Priya do you...

PRIYA DHANKHAR: So, this is where, I mean, the whole thing lies, basically. We talk a lot about DIAC, DIFC and Arbitrate AD, and they are exceptional institutes. But India's ratified the New York Convention with a conditional acceptance on the basis of reciprocity. Now reciprocity finds its basis in Section 44 of our Indian Arbitration Act, which lays down the qualifying factors for the foreign awards to be executed in India while, for foreign awards, India has been remarkable in pro-enforcement stance, but that does not extend to a lot of the MENA countries so to speak. India's only notified about 50-odd territories where reciprocation lies in terms of foreign awards. Interestingly, there's Kuwait, there's Morocco, there's Tunisia, there's even Syria, but UAE is missing from that list.

LARA HAMMOUD: So, what in practice is the challenge then?

PRIYA DHANKHAR: So, in practice is that you have a foreign award, but it wouldn't be valid in India. There is a workaround to it now, of course. Now in 2020 India has notified UAE as a reciprocating territory in terms of execution of foreign decrees. So, you could get a UAE award converted into a UAE decree and then get it enforced in India. But what you lose out on is, from the pro-enforcement stance in the Arbitration Act for the arbitral awards where there's two limited grounds, under the Civil law for execution of a civil decree, you gain four extra grounds. So, now you have to fight on six different fronts to get it to get an award executed in India. Just last week we had a case in the Supreme Court which was decided against one of the UAE sovereign funds. They've had a judgment in their favour from the UAE courts for the past four years, but they still haven't seen a penny. So, that's something that we need to work on. India possibly, the reciprocating territories possibly is a result of our decade ago or 80s or 90s diplomacy, but that should change now, especially since UAE is by far the biggest trade partner that India has in the MENA region.

LARA HAMMOUD: Yeah. So, what's the solution?

SHWETA BHARTI: I think the solution... this seems to be an oversight, because the intention was probably to also include UAE. So, it seems to be an oversight. And this was discussed at length at the you know, the negotiation which happened with respect to the BIT with UAE as well in 2024, and where it was agreed between both the countries that India will, you know, also notify UAE as a reciprocating territory. But it seems that we missed the bus there as well. So, I think it is now time for us to highlight this issue a little bit more at the government level where we can probably get some, you know, solution around this.

KHUSHBOO SHAHDADPURI: So, we have been lobbying the Indian Ambassador in the UAE on this issue. I mean, and he... I think the AG of India was also in Riyadh last year, same conversations were happening with him from the back channels. So, it's I think a lacuna that really needs to be fixed ASAP, but I just wanted to mention something. Priya said, quite nonchalantly, you just have to convert an award to a decree in UAE courts. I don't think it's that straightforward because what is a decree? We don't have such a concept of... A decree means nothing to us in the UAE court system. What practically you would have to do is convert an award to a UAE judgment. And again, there's no path for that. Procedurally, nobody converts an award to a judgment because the discretion lies with the court that's been assigned to the case. And he could rubber stamp on the award and he couldn't and he maybe, he would want to open up the whole award and we look at the merits, which means you're really litigating a case that's already been looked at by the Tribunal. So, there is no sure shot way. Having said that, usually the judges are pretty sensible about this. They would usually avoid looking at everything too closely and just rubber stamp, but there is no certainty. And the problem lies, if you're advising clients to tell them well, this could happen, but the opposite could also happen. And because there's no certainty there's going to be obviously risk averse to arbitrating with a UAE seat when you are dealing with Indian Parties.

SHWETA BHARTI: What we are also additionally doing is bringing the awards and reinitiating the entire process in India as well. I mean, it is then you know, I mean, that award is being treated as something which is the basis on which we are reinitiating the entire legal process under the Code of Civil Procedure in India. And that also is one way in which we have been able to see expedited orders. The courts of course, understand more than you know, the bureaucratic process of what exactly is behind; so, there are very limited grounds on which they also interfere so much. And therefore, we are probably able to expedite some of them in in this course that we have been able...

LARA HAMMOUD: When you say expedite, it's...?

SHWETA BHARTI: Expedited is in the sense when you file it in the Code of Civil Procedure as a civil suit for getting the, you know, the award enforced in that manner.

LARA HAMMOUD: And it will take how long if so? If its expedited.

SHWETA BHARTI: Because it has to pass certain principles, of course. And that is that the validity of the agreement, which is something which again becomes a question for the courts to look at. And then about the fundamental principles which are, you know, important for the public policy test that has to be met. I think these are two principles which you have to still pass in order to be able to get it expedited, but then the whole trial requirement is not there because the arbitration has already seen that, you know, that whole trial process. So, the courts here are also able to understand in some circumstances that you don't need to go through the entire trial process for, you know, getting the awards enforced. So, we are finding some ways and means to be able to get that done till we get the UAE also as a, you know, reciprocating territory.

LARA HAMMOUD: Inshallah, soon, as we say. But Shweta, you know, since we're speaking about courts in India, the enforcement being aside, what about the courts? How would you describe the courts basically look or involvement in arbitration, ongoing arbitration in their role as a supporting jurisdiction? So, for example, what about obtaining interim measures or preserving assets or evidence generally in India, Indian courts?

SHWETA BHARTI: I think it's very broad to say India, and this is something that I'm repeating for the last few months on this issue. It is about a city that we can talk about because India as a jurisdiction is huge. When we talk about UAE, we are particularly talking about

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Dubai in that context. So, similarly, if you're talking about India, talk about Mumbai, talk about Delhi. I think the courts in Delhi and Mumbai are both equipped to handle all your interim measure requirements, all your asset, you know, also enforcement and also for protection of asset. Whatever is the requirement in terms of the Parties is something that we are able to achieve when we approach the courts in Delhi and Mumbai. But if you go to courts outside of Delhi and Mumbai, say to any other courts in Uttar Pradesh or any other courts in Rajasthan, the exposure to the entire arbitration law is very less, and therefore, the understanding that the, nuanced understanding that is required to be able to appreciate the concerns the commercial concerns becomes a little, you know, difficult. So, I think what is required in this context is a lot of capacity building in order for the entire country to be able to align in the context. But for now, if I'm talking about jurisdictions like Delhi and Mumbai, we have been able to get expedited judgments and orders and, you know, that is required for the Parties.

LARA HAMMOUD: So, generally, you would say that these courts are arbitration friendly and supportive?

SHWETA BHARTI: Yes. The courts in Delhi and Mumbai are definitely arbitration friendly and that goes up to the Supreme Court. So, this is something that I can talk with some authority having practiced in both of these courts for an extensive period of time that these courts understand the commercial nuances, understand the challenges of the Parties, and also the legality involved, and are able to decide on these issues critical issues pretty faster as compared to the rest of the country.

LARA HAMMOUD: So, we've been talking about commercial arbitration mainly, but as investment flows between the two regions, or India and the Middle East, there's another dimension for... to the corridor and it's the investment protection and investment, investor-state disputes. And Shweta, what does the current treaty architecture, if I may call it so, between India and the MENA region look like?

SHWETA BHARTI: So, if you look at India and MENA region, again, it becomes very broad in that context. So far as India and UAE is concerned, we have just entered into a BIT in 2024. We have also had a CEPA, the Comprehensive Economic Partnership Agreement with UAE in 2022. So, I think there is a very clear indication from the government in terms of the relationship, the economic corridor that we are building so far as Dubai is concerned. When it comes to Oman, we also have recent CEPA that we have entered into with Oman in 2025. So, that also is a jurisdiction which is evolving in the recent times and doing quite well. In fact, India has also signed India-Israel Bilateral Investment Agreement in 2025 and is in force since July 2026. And so, I think there is something that we are seeing as a shift which has happened,

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but then having said that, I think India has also terminated almost about 75 BITs in the past. And because of the termination of the 75 BITs, there are a lot of renegotiation on the bites which is happening at the moment. So, the India-Saudi Arabia BITs that we had since 2006 has been terminated in the process of the 2016 termination. And since then there is no new BIT that has been entered into between India and Saudi Arabia, and where the discussions are still happening in that sense. So, I think the renegotiation that has happened has opened a lot of doors in that sense. What is important is to now understand what is not covered. So, if you look at the India-UAE BIT 2024, it has narrowed down from the generation of BITs because we have you know, in the past we have had a very checkered history when it came to BIT arbitrations. Whether it is the ***White Industries*** case or the ***Vodafone*** case where there were a tussle between the Judiciary and the Legislature and the Government; so, I think it was a little ugly fight that had happened because of which we had decided then to terminate all the BITs. So, now that we are entering into the BITs we have now, you know, given a very I mean, given a clarity in terms of what is it that we want from these BITs. So, there are four design choices which have been given. One is that fair and equitable treatment is qualified and it has been exhaustively listed, what would be under the definition of "fair and equitable treatment". So, that has been confined to the denial of justice and fundamental breach of the due process with no free standing reference to customary international law, there is no open-ended legitimate expectation language which was being used in the earlier, you know, the disputes with respect to BITs. What we have also removed is no umbrella clause now. In ordinary breach of the PPAs or the EPC contracts or concessions by the Indian state counterparty, it does not automatically escalate into becoming a BIT dispute. And therefore, it has to be looked at independently as a commercial dispute. The third is about the taxation, the subsidies, grants and the government procurements; they have been excluded from the treaty scope in that sense. So, I think these are some of the changes that we have seen which has been brought about in the present BIT context. And I think largely when we go for the next round of BITs which will happen will have similar contours that that I foresee in order to protect the Indian interest as well in mind. And therefore, probably we are looking at things from a different lens now. One good thing that has happened is that we have reduced the timeline for the, you know, the... I mean, to look at your domestic arbitrations, I mean, if you have to dispute between India and UAE initially in the earlier BITs you had to compulsorily go to domestic courts for at least five years. Now that term has been reduced to three years. So, I think that is a substantial progress, I would say in terms of looking at how BIT is to be progressed.

LARA HAMMOUD: And Shweta, do you have relevant investment cases that are ongoing that you can refer to and tell us maybe about the types of dispute that may emerge in that field?

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SHWETA BHARTI: I think there is one context which has recently happened. There are two cases that I can talk about, but one that has recently happened and that is that ***Ras Al Khaimah Investment Authority vs. India***. In that case, the arbitral Tribunal had in fact decided against going ahead with the Investment Arbitration and said that they do not have the jurisdiction, and that is when the matter went to the London courts. And then the London courts ultimately decided that the Arbitral Tribunal had the jurisdiction. So I think that was one case where, you know, I mean, which was relevant in the context of BIT arbitrations in that sense. And then there is another one of ***Khadamat Integrated Solutions Private Limited vs. King of Saudi Arabia.*** This is also where an Indian investor had brought an UNCITRAL claim against a Gulf state under the India Saudi Arabia 2006 bid. And that also was dismissed for lack of jurisdiction. So, I think there are very far and few that we have just now. And so, it is a little complex at the moment. There is a... definite clarity still required but yeah, we will we are hoping that under the new BIT there will be disputes which will you know and because it is a new BIT that we have entered into so over a period of after three years probably we'll start to see some disputes happening and probably we'll have a better resolution than what we had earlier.

LARA HAMMOUD: I'll watch this space then. Thank you, Shweta. So, before we conclude our discussion, I thought, I would ask all of you what would be your views on... if we reconvene in five years, what do you think would have changed most about the way India and MENA region disputes are resolved? Or what do you think should be done to reach that point that you're thinking of? Whoever wants to interject.

SHWETA BHARTI: The first step of course, would be the reciprocating territory notification. I think that's the first step, which definitely we would want to happen. But five years is a long time honestly, Lara. I don't know I'm not able to foresee the next five years because the way the times are changing. It is really at a very different speed altogether. What kind of disputes, where are we aiming at, where are we heading at is going to be very, very different from what we are at the moment. And if, you know, the past is any context to look at from 2020 to '26, we have actually covered a lot of ground. But the next two years or three years are going to be very different from how it has been in the past. And with the... you know, certain concepts which are now being talked about a lot more Artificial Intelligence having a role to play in in the entire Dispute Resolution mechanism, Mediation becoming more and more relevant in that context of Dispute Resolution mechanism, I see there to be disputes between India and UAE, which will, or rather India and MENA region, which will have, you know, very different dynamics, and it will be more complex, it will of course be increasing because of the trade relation that has increased almost, I think we are doing almost 100 billion worth of work between India and UAE just now. So, I think that is a huge amount of, you know, economic exchange which is already happening. And therefore, we will see more and more disputes also arising in the process, and getting it resolved in India as a seat of those disputes at some point with the Indian judiciary and the legislative aligned along with the clients. And MCIA seeing more matters coming their way in the process.

LARA HAMMOUD: But you mentioned Mediation. Do you think Mediation will kind of, pick up and become the first choice to go to? Or how do you feel the situation is now, and will it improve? Will they improve because I have my view on it.

SHWETA BHARTI: Actually it's a very complex situation that we are in. Mediation also we had a law which has come into play, but it has not yet been put into effect. So, the reason, I do not know why. But then what has happened is that the mediation orders cannot be enforced as a decree of the court, and therefore, we are waiting for the act to be implemented in that sense. But the first question which is more important is mediation is definitely going to play a very important role. In the past we have not had such success stories. But what we see going forward is that and I think in the earlier panel, Mr. Ratan Singh mentioned about it that the role between arbitration mediation, Arb-Med or Med-Arb is going to become more and more, you know, possible and imagine if he's talking about as complex as a construction dispute, commercial disputes definitely can see a lot of resolution through these processes. And some of the success stories that I have to share personally, I mean, we had also in fact approached court with a request for arbitration and in the process the court suggested us to apply for Mediation and try for Mediation. And we realised that actually through mediation we had been able to resolve, out of 10 disputes, 8 disputes. So, what was left was only two disputes to be resolved, and for which we ultimately went to arbitration. But then, you know, we reduced the amount of time that was required to be taken in arbitration. So, things like that are likely to evolve going forward and we will be able to find some headway in that sense.

ALIM KHAMIS: I think just to add to that is that when we look at mediation in the Middle East right now, it's interesting because whilst historically, obviously, mediation plays a huge role in Islamic history, but I think that in contrast now what we're seeing more and more is a permissive recourse to mediation rather than a mandatory one.

LARA HAMMOUD: Yes.

ALIM KHAMIS: So, if you have your Dispute Resolution stages in a contract, the first step might be executive negotiation followed by Mediation if both Parties agree. And if they don't agree then you have recourse to arbitration. I don't see that becoming a mandatory condition in the next couple of years. I do think we'll see more of those clauses where Parties can expressly agree to mediate if they so choose, but I don't necessarily see it becoming mandatory.

LARA HAMMOUD: Personally, I don't think it should.

SHWETA BHARTI: I agree. In fact, I also personally believe until it is not mandatory it is possible to resolve through mediation. But if you make it mandatory is where you know it just is a time that is to be passed by either of the Parties.

LARA HAMMOUD: Absolutely.

KHUSHBOO SHAHDADPURI: I mean, I would just want to add, I mean, I agree with Shweta about the Arb-Med or Med-Arb, you know, the SIAC has a protocol called Arb-Med-Arb and I think as the UAE, India and Singapore disputes corridor growth, I've done more and more cases which I've resolved through CR Arb-Med Arb not always mandated by the agreement, but the Parties end up agreeing to it and the good thing about Arb-Med-Arb is that the... in the first instance, because arbitration is already filed, the key pleadings are already exchanged between the Parties. If it's a very complex construction arbitration, we know each other's strengths and weaknesses through the expert reports already. So, it makes it so much easier to then leverage off that to resolve the case. And I just last year successfully resolved two cases through Arb-Med-Arb. So, I think as the corridor increases and there's also better relationships between the Counsel who know each other more frequently on these cases, it's easier to leverage off those relationships that the lawyers have to then get the Parties to agree to this sort of protocol. I mean, the other more tangible change, I think we'll see in the next five years is who we are pointing as Arbitrator. And you know, this is such a big topic and conversations we've been having happening in the UAE as to... for courses, are we appointing the right people who sit as our Arbitrators and what I think we'll see is more synergies between Indian Arbitrators being appointed in the Middle East disputes and vice versa. Because there's so much collaboration between these two jurisdictions; so, it makes sense then for the UAE to look at India as the as the place where they pick the Arbitrators from as opposed to America, for instance, or the UK, which is what's been happening now.

LARA HAMMOUD: Absolutely.

SHWETA BHARTI: Not just about vicinity, also about the culture, about the language, I think we have a lot in common in that sense. And I think in the earlier session we heard that almost about 44- 45% of the UAE is about Indian community or Indian diaspora, and therefore, it makes a lot of sense to have, you know, interchange of Arbitrators. And I think we have good quality Arbitrators at both jurisdictions to be able to, you know, leverage on and utilise in that sense to expedite the closures.

ALIM KHAMIS: I was at a conference recently where a practitioner suggested that maybe AI would take the role of a Tribunal in 5 to 10 years. I mean, that's shocking and unsettling at the same time.

LARA HAMMOUD: And just to finish on one statistics of SIAC 2025, there were 31 Indian Arbitrators appointed. So, that was the third nationality. Again very interesting to note.

SHWETA BHARTI: But which is still less. Look at the number of arbitrations *vis-a-vis* the number of Arbitrators appointed.

LARA HAMMOUD: You're absolutely right. Right. I'm looking at the time. Oh my God, we're finishing right on time. I don't know if there are questions from the audience. Maybe we can have one; otherwise, we'll close the discussion. I can't see anyone.

SHWETA BHARTI: Right panel people sitting on the...

LARA HAMMOUD: Look we're finishing, right... I've never done this before. It's like 3-2-1-0, and here we are. Thank you so much. Thank you very much. What a pleasure. Thank you

ALISHA SHARMA: Thank you to our distinguished panel for an illuminating exchange. The discussion underscored how much promise the India-MENA corridor holds and how much groundwork still lies ahead in releasing it fully. May I now request the panel to kindly join us for a group photograph. Thanks. I request everyone to kindly be seated the next session will start shortly.

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