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INDIA ADR WEEK 2026 – 08 SEP 2026

SESSION 1

DISPUTES IN A FRAGMENTING WORLD: SANCTIONS, TRADE WARS AND THE NEUTRAL SEAT

SPEAKERS:

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ALISHA SHARMA: Good morning everyone. May I please request everyone to please have their seat. We will begin the session now. I also request everyone to put your phones on silent for the conference.

Good morning, ladies and gentlemen. A very warm welcome to all of you to the 6th edition of India ADR Week- 2026 as MCIA celebrates its 10th year since its inception. It is wonderful to have you all with us here as we come together to exchange ideas, perspectives and experiences that continue to shape the future of dispute resolution. India ADR Week has always been about bringing together some of the finest minds from across the arbitration and dispute resolution community; practitioners, Arbitrators, In-house Counsels, academics and professionals from India and around the world. Day- 1 alone brings a round of thought provoking panel discussions, a lively debate, and one of its kind, Singapore India Corridor event, closing the day with an interactive Fireside Chat with Honourable Justice B.H. Dangre alongside Mr. Vikram Nankani, followed by drinks and dinner.

Before we begin with the session, I would request... I'm very delighted to share that MCIA is also organising the 4th edition of its Tribunal Secretary course in both Mumbai and Delhi. And I would request the Tribunal Secretary participants to kindly reach the designated venue, which is the board room, Business Centre, Room no. 4.

On that note, let us just dive straight into the first session for the day, hosted by Cyril Amarchand Mangaldas (CAM). As we all can see, the international business environment is becoming increasingly complex. Geopolitical tensions, some... sanctions, changing trade relationships and shifting economic alliances are inevitably finding their way into commercial relationships, and consequently, into disputes. At the heart of these development lies an interesting question. When the world becomes more fragmented, how do we preserve neutrality in dispute resolution? So, our first session for the day takes up precisely this issue, aptly titled "Disputes in Fragmenting World Sanctions: Trade Wars and the Neutral Seat."

The session will be moderated by Abhileen Chaturvedi, Partner, Cyril Amarchand Mangaldas. He will be joined by Ms. Rashna Mistry, General Counsel, Tata Projects. Dr. Salman Al Tuweel, Managing Partner, M&CO Legal. Mr. Sharad Bansal, Advocate, High Court of Bombay High Court and Ms. Tarini Srivastava, Associate General Counsel, Worley. I would now request everyone to welcome our panellists on this stage.

ABHILEEN CHATURVEDI: Good morning everyone. I hope we are loud and clear. Okay, so, I'll quickly begin with a round of introductions for everyone on the panel over here. I'll begin with the far left from Tarini. Tarini is an Associate General Counsel at Worley where she provides legal advisory support across Worley's businesses including the energy, chemicals and resources sectors, with a primary focus on shaping global litigation strategy. She previously served as Legal Counsel at Worley, supporting infrastructure projects and contract negotiations. Tarini holds a Masters of Law from QMUL and a BA LLB from SIU.

Next we have on the panel is Sharad Bansal, who is an independent advocate practicing before the Bombay High Court where he, besides practicing on the commercial side, also does a lot of representative work before other judicial forums and Tribunals. He's a graduate of the NLS and holds a Masters in International Dispute Settlement from the Graduate Institute, Geneva and University of Geneva. He regularly authors various articles in various online journals, and something that everyone must note over here that he's also been cited by Prof. Gary Born in his commentary in international commercial arbitration.

Next we have on the panel is Dr. Salman Al-Tuweel, who is the Managing Partner of M&CO Legal, a law firm based in the DIFC. An Emirati lawyer, who holds a Law in Economics Bachelor's degree from Al Jazeera University Dubai, a Master's degree in Sports Law from the American University in the Emirates and a Ph.D. in sports law obtained in Egypt in 2024. His practice covers full cycle transactions and he has advised entities including Nakheel and the Dubai Customs Authority on safety policies and regulatory frameworks for UAE construction sites.

Last panellist is Ms. Rashna Mistry, who is the General Counsel and Chief Ethics Counselor at Tata Projects based in Mumbai. She serves on the company's managing committee and leads the legal, contract, secretarial ethics, compliance and investigation functions, playing a pivotal role in shaping the company's legal, governance and risk management frameworks. She brings on experience in excess of 30 years and has advised on litigation, arbitration, regulatory and government investigations and criminal and civil actions across multiple jurisdictions in India and abroad.

So, as you can see that we have a panel full of people who will bring with them an experience from different facets of legal practice. I'll begin with just a little bit of context setting. Sanctions have gone from background noise to a boardroom reality. The number of sanctions programs globally has increased about in three times from about 200 sanctioned to... tripled from a decade ago where it was certain countries which had imposed sanctions on a handful of rogue nations, as they might have called it, to a more aggressive regime in today's day and age. On the individual entity count LSEG's Global Sanctions Index shows nearly 80,000 sanctioned individuals and entities worldwide as of early 2025.

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This isn't an abstract compliance issue for Arbitration Council. In the year 2025 QMUL International Arbitration Survey, when asked how sanctions affect arbitration in practice, 30% of the Respondents said that they had chosen a different seat because of sanctions, 27% hit administrative payment friction and 25% struggled to find good Counsel out of sanctions regime. Given the fact that this was the context that played out in the in the past few years, in fact, seats like London and Singapore have also been questioned on their neutrality or their larger relevance in this sanctioned world.

With that context having been set out, I'll first move to my panellist on my immediate left. Given this background Rashna, and you know, for a large infrastructure project, how would you manage or walk away if you have to, a project relationship due to a *force majeure* or a trade war driven disruption?

RASHNA MISTRY: Sure. Thanks. Good morning everyone. So, we've seen the recent geopolitical disruptions in the Middle East has had a significant impact on various projects, including the infrastructure projects which have a fixed price contract. Due to the current environment of heightened volatility, it has become increasingly challenging to accurately assess the market fluctuations during the life cycle of a project, especially linear-infra projects like roads, railway, bridges which run for a number of years, especially in India. So, to assess during the life cycle of that project, all the market fluctuation, the risks becomes very onerous onto the business. The Government of India this year in April came out with a memorandum invoking the *force majeure* clause due to the Middle East war. However, the problem faced by many infra companies were not solved due to this memo. Let me just take you through what the *force majeure* clause basically, entitles you to. So, when you invoke it, it entitles you for extension of time, but not additional claim. So if you need additional claim or a cost for increased fluctuation, market, like price of cement has gone up X, Y, Z, you cannot invoke, because if you invoke, you will only get the time extension, not the cost increase. However, if your project is delayed then you may explore invoking the *force majeure* clause; however, please take necessary legal advice and consult them before you invoke this *force majeure* clause.

Now let's move on to termination, as you just said. In an infra company we take up many projects in the region of Africa. Now, as everyone knows, Africa is very volatile, in the sense, there are wars, there are coups, there's militia takeover, there's kidnapping, threat to life of the world. Sometimes, the Indian embassy comes up with a mandate, evacuate all your employees. Such situations you have to consider whether it's viable to continue with the project. If you are unable to continue, then obviously you have to terminate. Termination clauses need to be very

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carefully checked, because sometimes the Employer puts very, very onerous termination clauses in the contract. Also, be careful that when you terminate, there would be Performance Guarantee, Bank Guarantees given; those also likely to be invoked. Hence, whenever you have to invoke the *force majeure* or the termination clause, please evaluate all the risks, discuss carefully with your lawyers before you take any critical decisions. Thanks.

ABHILEEN CHATURVEDI: Thank you, Rashna. With that sort of in-house commercial perspective, let me pivot to Sharad and get the court perspective as well. Sharad from what you've seen before Indian courts, what is the judicial appetite and track record for enforcement of, or rather challenge towards touching sanctions tainted contracts or trade-related disputes?

SHARAD BANSAL: Thank you. Good morning, everyone. I'll first deal with awards and then I will come to judgments. So as far as awards are concerned, well there is no instance of any Indian court having rejected or refused enforcement of an award on the ground that it violates a sanction of a foreign country. But assuming such a situation were to arise, the question is, is that a ground to resist enforcement? In my view the answer would be, no. The position of the Indian Supreme Court is clear that even if an award violates a statutory norm, that itself is not a ground to refuse enforcement under Section 48, which replicates the New York Convention. So, if we extend that reasoning, violation of an Indian statutory norm is not a ground to refuse enforcement, then in my view, surely, violation of a possibly an EU regulation or a US-sanctioned norm also should not be a ground to refuse enforcement by itself. So, that is as far as awards are concerned.

What we have more interesting development on in India is the context of enforcement of a judgment which had to deal with sanctions, which is a recent judgment, in fact, of our court, of the Bombay High Court in the ***EuroChem vs. Tecnimont*** case where EuroChem had obtained a judgment from a Russian court against Tecnimont of some $1.7 billion. They came to India, they sought to enforce that judgment and one of the grounds which was taken to resist that enforcement was that the Russian court never had jurisdiction to try this matter at all. So, as we're aware, there's a Russian legislation which has come in the wake of these European sanctions, which is conferring jurisdiction on Russian courts notwithstanding any arbitration agreement, which was exactly the situation here. The Parties had an arbitration clause despite that, the Russian entity went to the Russian court and said that it wants damages against the European entity. They got a judgment; they wanted to enforce in India. And the ground for resisting enforcement was that because there's an arbitration clause, the Russian court never had jurisdiction. So, in our regime, the issue of whether the judgment is enforceable, as we all know, is determined by Section 13 of CPC, where one of the grounds is that whether the foreign court could try the matter at all. And that is precisely the defence which was taken by the Indian Defendant to resist the enforcement of the judgment. The Defendant said there's an Arbitration Agreement. The Plaintiff in this case had in fact, participated in the arbitration agreement for three years. So there is no question of the judgment of the Russian court exercising jurisdiction, and this contention was accepted.

But this does not go into the second aspect that can enforcement be refused because the contract itself is tainted by sanctions? That is an issue which is yet to be decided by an Indian court, and it will be interesting to know... to see if this issue is decided in appeal, perhaps in in against this decision. In my view, the answer would have to be no because what are the grounds to resist enforcement of a judgment in India? The grounds are if the judgment violates international law principle or if it violates a principle of Indian law, not if it violates a principle of an EU regulation or a US sanction. So, merely because of foreign law, principle is violated that is not a ground to refuse enforcement of a judgment under Indian law. Therefore, violation of a sanction norm, in my view, will not be a reason to refuse enforcement of a judgment.

Now coming to the aspect of trade wars, well, the position under Indian law is very clear: mere economic hardship is not a ground to tell a Party that look, I cannot perform my contract. So... because I have to pay more import duty and export duty or because more tariffs have been imposed upon me. That is not an excuse for a Party to not perform the contract. If Parties want to account for that then they have to provide for it in the contract. So, that's the only way out of not performing a contract in the wake of these tariffs which are being imposed now in countries.

ABHILEEN CHATURVEDI: Thank you, Sharad. In fact, while that judgment is reserved for orders, there is an award now in the very arbitration proceedings. So I don't know how will that affect these litigation proceedings over here. Well, good luck to all the lawyers and the decision makers over there. But, okay, coming now to Tarini, see we've dealt with the court aspects, we've dealt with the initial shock of sanctions and how corporations will deal with those. Pivoting to you, Tarini, your Worley sits across a much wider international supply chain. How does that same risk show up contractually before it gets near a courtroom? Your views on that.

TARINI SRIVASTAVA: So, thank you for that question. Good morning, everybody. I think the best case scenario when you're hit with sanctions, is that your contract itself has a dedicated sanctions, you know, has dedicated sanctions terms in place. So, at least you have some sort of framework under which you can then either negotiate or suspend or, you know, vary the contract, and however you can, you know, you can allocate who absorbs the shock, all of those kind of things could be taken into account in a dedicated sanctions or a, you know, a trade control sort of clause. But in the absence of such a clause which will be the case, I think all the way up till now, now is when we're realising that this is the new reality that we live in; we live... like the panel is rightly named, in a fragmented world. We'll be seeing more and more of these; the jump in sanctions has been so much. So, here on out, we might see more and more sanctions specific clauses But up until now, that's not been the case. So, the way that you'd manoeuvre it is, for you to be going back to your boilerplates, essentially. We will be looking at change of law clauses, *force majeure* clauses you see what your suspension rights are, you see what your termination rights are, you understand what your liability cap is, and with those kind of... you know, it becomes an interpretive exercise, it becomes something that you are then playing around with the contract to find your best way out.

But what's essential, I think, to remember and what we look into first hand as a company when we're hit with something that was unexpected, is who is imposing the sanctions and who it's applicable to, what is it restricting? You go down to the absolute grassroots of it and then you try to figure out just because my company or the counterparty that I'm dealing with is based in a certain jurisdiction that's been hit with sanctions, does that mean I'm just hands up immediately? No, you go in, you analyse what the sanctions is, what it's restricting. If it's just an increase in cost, then you figure out who's absorbing that cost and you work around it in that sort of manner. So, you can't have like a... you can't have an extreme reaction that sanctions is there and then you just put your hands up and you stop; obviously, not.

The main thing that in my experience comes into play in these kind of situations is the relationship that you have with Parties, with your counterparty, be it a subcontractor, an employer, whoever. And I mean this is a slight segue way, but I think in-house or even lawyers in general, you know, are considered to be the roadblocks for business. All of your clients will look down upon you and be like, "This is not something we can do." The change in perception that I've had when I moved from external Counsel to in-house is that, that is your ultimate goal. You need to be mindful of the fact that supporting the project and ensuring that business can continue to operate, is the goal. So, your, you know, your notion of, 'I will get justice and I will enforce this contract the way that it has to', doesn't always necessarily work. So, the relationship that the business has built with their counterparties, the way that these people work on the ground is what ultimately comes to your rescue in a situation where you suddenly have a government that's imposed a major restriction. So, you go down to those relationships, you find ways to amicably speak about it and find a solution to the problem that you're facing.

ABHILEEN CHATURVEDI: Thank you, Tarini. That's... It's refreshing to hear the in-house perspective and the difficulties that they that both, you and Rashna may carry within the organization.

RASHNA MISTRY: Yeah.

ABHILEEN CHATURVEDI: Yeah, coming to Dr. Salman now. Now we've heard the Indian commercial judicial and the MNC contractual angles. In the past 10 to 15 years at least, UAE as the... or Dubai as the arbitral seat has gained a lot of prominence, so much so that in this fragmented and sanctioned world, Dubai has the seat has become more prominent, both in terms of judicial as well as arbitral processes. What has the UAE built institutionally and judicially over the last decade that jurisdictions like India could learn from?

DR. SALMAN AL TUWEEL: Thank you for the question. Before going to answer these questions, I think we need to know about how UAE operating and what is the system of law in UAE, because UAE operating under a Federal Court system with the Common Law in the international area, but the Civil Law is applicable law in all the UAE onshore court systems. I will give only the example of Dubai because Dubai, it's... it's always, you know, the focal point of most of the investors, I think from this region. So, the Dubai court system, it's a local system and UAE which is always with own procedure; so, it's under the Federal Law. But the procedure of Dubai court it's different than the other Emirates. So, that's mean each Emirates in UAE can have their own procedures, I mean, court procedures, based on speed, quality, friendly system.

So, two Emirates in UAE, I will start with Abu Dhabi, they have an international system as well court which is in ADGM. In Dubai there is DIFC International Court as well. So what make, let's say, special things when you coming back to the legal system because there is a very solid legal system and ecosystem between the both jurisdiction, because UAE system is different than India, I think because we are... we are dealing with Civil Law and Common Law in the same city. So, that will make little bit confusing if you are not knowing how to deal with this system. So, it's a little bit difficult if you are not from the region itself.

So, we'll go back with how to the enforcement procedures... That is the most important thing, because to deal with two systems on the same city, it's a little bit... will give you like weird, you know, procedures to do it. But if you are aware about how to convert that two ecosystems or two jurisdiction system to enforce the judgment, which is on a very friendly and easy way that will make let's say that hub of the investors. Why they are coming to Dubai? They are coming because they know that to win the case, it's not a part of how you need to see really the colour of the money, it's not about all right, I have the judgment in my hand so how to enforce that judgment? That is the main questions which we need to get in and to know how to give the right advice for our clients. So, what the UAE built and what they questioned themselves, I will not going to say 10 years or 15 years, I think 20 years ago, that, what kind of system we need to provide and we need to create to make a very easy enforcement procedures while you are getting a judgment in the international courts. So, that procedures is really very friendly in Dubai, because the there is an enforcement court, especially, for these kind of judgments. So, what you need only, is to ratify the judgment and go directly to Dubai court to enforce the judgment.

And these things it's keeping you know, the investors... I mean, when they are choosing the DIFC court, they are thinking about how can I do the attachment and enforce that judgment easily on the same jurisdiction, on the same city, because choosing that court system, I mean, in Dubai, it's not like a hard work to do or you need like a local lawyers to do it. What you need, you need like special lawyer to give you like a right advice to do it. So, what we are saying now, what India need to do, India doesn't need a DIFC; India need to ask themselves the same questions which Dubai asked 20 years ago. All right? Where does our system make winning Party wait longer to execute that judgment, and then to fix that bottleneck here in this jurisdiction.

ABHILEEN CHATURVEDI: Thank you very much, sir. Thank you. That's a great overview of the practice over there in a very, very short period of time. So, that's quite helpful. But moving on with our theme of finding the neutral seat and arbitrating in this fragmented world and taking a step back, rather, looking at the in-house perspective and looking at what happens at the inception of the transaction. Tarini my question to you is, how have legal teams screened sanctions risk at the inception of a transaction? Is this still being taken at the inception or this is more of a reactive exercise that happens once things have gone south?

TARINI SRIVASTAVA: I mean, it's a bit of both. I think we're getting wiser now. We are learning keeping up. But it'll always be more of a reactive exercise, won't it? Because sanctions don't come with warnings. You can keep your hand on the pulse of the geopolitical situation across the globe, but when the sanctions hit, you'll not... you'll seldom see it coming. So, yes, there is a certain amount of screening that can happen as well. I'll start there. The best state that, as a company, you can have in your pocket is a sound, well instructed, well guided

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Compliance Team. You get your Compliance Team, you know the wherewithal that they need to be able to track everything that's going around the globe. I've seen Compliance Teams that are able to have a certain amount of predictable... you know, they're able to predict what might/may not happen, and then therefore, have the DOA holders, the people who have the authority in the company to make decisions, keep them informed, keep them one step ahead of what's happening. But there's also very basic things that you can do for screening, which is when you're when you're tendering for a contract or when you are onboarding a subcontractor, you do your due diligence, you understand the people that are involved. Sanctions, obviously, it's not just a blanket country thing; you can sanction people, you can sanction companies. So, you track the people, you understand who you're getting into the contract with. And compliance, your Compliance Team basically becomes, I think that much more important because of the kind of world that we live in right now. So, you know, you give them instructions to have a broad outlook, you get them to constantly keep updating themselves, you keep a live document in place so that your preferred subcontractors or your suppliers, vendors are... you know, you are mapping them out, you make sure that no contracts are entered into without screening for what sort of restrictions or sanctions are applicable to them. But you can do all of this; however, the way that we are, the world that we are in right now, I mean, I don't think anybody was anticipating the sanctions on Canada. You know, that was we... I mean, I wasn't expecting it at all. I did not think that was like, the way that it came in and all of that. So, in that situation, every sanctions will have a certain amount of reactive legwork to be done.

And again, coming back to what I said previously, that case, you just dig down you understand the nature of the sanctions, you figure out who has put the sanctions into place and why, who's impacted, what is the... what's the actual practical application of the restrictions that have been put in, you know, you understand if it's just a cost issue or if services have to be terminated entirely and that's how you kind of have, you know, more of... It'll always have to be a reactive sort of exercise, is my opinion. That's how I've seen it.

But you may or may not actually... you may or may not even want to, you know, consider sanctions to be something that applies to you. So, I've seen when the Russia sanctions... when the Ukraine war started and all of that, you know, kind of tumbled down. I've also seen companies continue relationships in the background because of the way that they were structured. So, you obviously have, you know, restrictions in place, if you are a publicly traded company, which changes your outlook completely or if you are if you are not a multinational, or if you are a multinational, that is not entirely but there's a lot of factors that go into that reactive exercise. But I digress. Coming back to your question, it can be a bit of both. You can screen, you can definitely keep... stay ahead of being hit by something that will topple your contract completely, and it will also have to be a reactive exercise. I think it's a bit of both.

ABHILEEN CHATURVEDI: Yeah, I would somehow I would somewhere take the middle path approach. as you've actually highlighted. And while we were in an era where when you open your phone early in the morning, you'll see a new sanctions list every day. Thankfully while that has subsided, it's still not it's still not something that has completely gone, and that it will keep developing. But with that backdrop, I'll come to Dr. Salman, to you once again. Now, if this screening happens late, Parties will often try to hedge on the dispute resolution side instead. So, in this fragmented multi-jurisdictional strategy, where do you see Parties, I mean, where do you see that is neutral seat becoming a more fragmented multi-jurisdictional strategy rather than a single clean choice? Because you will have neutral seat in the form of Dubai, but you will have your antifreeze or anti-suit battles going on in London and elsewhere. So, my question to you is that, is that neutral seat becoming more fragmented and how does that complicate draft dispute resolution clauses today?

DR. SALMAN AL TUWEEL: Again, I will go with the same answer, but in different way, yeah, right? Because I'm a Litigator, local Litigator, right? But I'm doing a lot of arbitration as well as an Arbitrator. And always selection the seat, it's not like a big decision to be disputes. First of all, if I will choice the seat, I need to know the position of my client, I need to know the need of my client, right? And I need to know that if my client is willing to... really to... And sorry, before going to that level, I need to get some information from my clients about the debtor. He need to give me the informations what is the assets of the Debtors, where is the nationality and what's the nationality of the Debtors did. The Debtors has an asset has an a bank accounts has an let's see properties in some jurisdiction, and is that jurisdiction giving me that, let's say, that facilities to attach that assets during that arbitration procedures. This is what I mean. When always going to choosing the seat, you need to choose the right place to get your money from, okay?

So, going back to flip that questions, I will start with choosing the seat where is the debtor asset is, to make my life more easier and to know how to enforce that arbitration award easily. Yeah, and on the fast way before the Debtors will go and to flip his assets to other jurisdiction before you are getting the judgments, because it's always a Creditor will be maybe more faster, more smarter by his lawyer advice just to flip the Debtors because when they will know that they will going to lose the case, they will flip it out of jurisdiction, then you will end up like having a judgment yeah, without seeing and touching the money always we are going back with the same myself. Myself because I'm thinking always to put the strategy how to get the money. This is my first questions to my client: do you want to punish or do you want to get your money? They start with punishing you, "No, no, go and file a case, I need... ", you know, it's like a personal part. But after coming down and thinking about, "No really, I need to get my money." Get away from punishing that other Party and let's go and get the money from the other Party. So, choosing the seat it's... let's keep it before doing our due diligence and doing our exercise to know where the asset is, and in which jurisdiction to choose that seat? And to know about the system of that jurisdiction. Is it friendly system or no, as well. So, we need to think overall, not just to go with the Step-1, choose the seat. Let's say no okay that jurisdiction that court will give me more facilities, will give me more, let's say, more power to get the judgment, but then after the judgment, what you will going to do with that piece of paper, yeah, if you don't have a solid system to do the attachment and to get your money in your hand. So choosing the seat it's it should be with figuring out how to get your money before the judgment, because you can do like Freezing Orders by convincing the courts that the other Party maybe will run away, he's not with the same nationality, with the same jurisdiction.

So, I will give the example of Dubai Court. It's a real example. So, the seat was DIFC. Then when we start the procedures of the arbitration case, so we know that the other Party will do his tic-tac and will run away from... with his assets. So, we have an International Dispute Department and I'm doing the local things. So, I just like, you know, had a big discussion with that team, just give me these kind of informations and prove me that the other Party will run away with his assets during the arbitration procedures... and the things. They provide me with my need. I went directly to the enforcement judgment and Dubai Court, I convinced the court, they did the attachment and they freeze it during the procedure of the arbitrations. So, I've been saved to get the judgment and to get the money at the same time. So, that is what I'm always saying that, before choosing the seat, choosing the right place, right system, and you need to do your due diligence to know if there is an asset or no. What is the point to get the judgment if you know that the Creditors is it's running away with his worthy assets?

ABHILEEN CHATURVEDI: That's ... that's an interesting approach, and I must say that we'll go a long way with our respective clients if we genuinely adopt that, that you see where is the final result going to land you in. And as you rightly said, when will you see the colour of money and where will you see it from. If we have that sort of a foresight, of course the dispute resolution process may become more legitimate, in that sense. Sharad, that takes me to you, where you see these... I mean, all these Parties coming from different jurisdictions, and they may be in set ups where you either don't recognise each other's judgments or you don't recognise each other's awards; India-UAE being one example, India-US being one example, where judgments from one country to another country are enforceable, whereas arbitral awards are not. The situation changes with US. Now given this is the reality of certain jurisdictions, coupled with the fact that you have these competing sanctions regimes, how does that shape the choice between litigation and arbitration at the outset? And is New York Convention award still the safer bet or is it enforcement resistance creeping into arbitration too?

SHARAD BANSAL: Thank you. Well, it is true that sanctions have added one more layer of uncertainty as far as enforcement is concerned, but I would still pick arbitration over litigation as far as international contracts are concerned, and that's for two reasons. The first and the foremost reason, which is always been the case for Parties choosing arbitration, is enforceability, which is because of the New York Convention. So, there are more than 170 countries which are Parties to the Convention, which automatically guarantees enforcement of an award in those countries. Of course, in some limited situations like India, there is one more layer of difficulty which comes in, which is the reciprocity requirement. But barring that, once you have an award in a New York Convention country, you can go and enforce it anywhere in any of those 170 countries. And that's important in the context of what Dr. Tuweel mentioned, that you may not know where the assets of the judgment debtor are or the award debtor are at the time of the inception of the contract. During the performance of the contract or after the award has come, you may realise that the assets are in a different country altogether. So, if that country is a Party to the New York Convention, which invariably it will be given that it has 170 countries-plus, enforceability becomes much easier, right? So, that's the number one reason why I would still prefer New York Convention and arbitration as opposed to litigation clause in international contracts.

The second reason is that the New York Convention gives more certainty to predict as to what will be the ground for refusing enforcement, because the standards are uniform across those 170 countries. There is a public policy exception and there are other exceptions on procedure. So, if sanctions form a part of public policy of that country, you know that enforcement will be refused, and therefore, you have a greater level of certainty as to enforcement despite the sanctions regime. Whereas, if you come to litigation, that may not be the case, because each country will have its own domestic law on what is the ground for allowing enforcement or for refusing enforcement. Some countries may consider sanctions as relevant, some countries may not. So, the level of uncertainty in case of litigation and enforcement of judgments is much higher, because there is no uniform convention which crystallises that in what situations you can refuse enforcement. So, for these two reasons, I would still prefer arbitration, and in

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international contracts as opposed to litigation despite the uncertain regime that we are in today.

ABHILEEN CHATURVEDI: Thank you, Sharad. Rashna, I'll come to you now. Now we've heard these different perspectives of how would you look at a sanctions risk at the inception of the transaction. We've touched upon how neutral seats might function, and we've just heard from Sharad that arbitration may still be a safer bet. Where do we... how and coming now to the whole drafting of the dispute resolution clause or the boilerplate principles in these cross-border contracts, do you see *force majeure* hardships or sanctions clauses in these larger Indian infrastructure or EPC contracts keeping pace with these risks, or it's still a largely a boilerplate that hasn't caught up to the realities of the world?

RASHNA MISTRY: Yeah, sure. As soon as an organisation gets a 300-page contractual document in, immediately it's dumped onto the Legal Department. You look at it, you provide us the edits, you check the risks that's to cover their... Why is it given to legal? It's to evaluate risks in the contract. Before 2019 or 2020 who ever heard the word "COVID"? Would lawyers know have heard the word COVID put the COVID clause? No. It's very difficult. Whoever thought the Middle East war would happen; nobody foresaw that. So, these are risks which are very difficult to assess and the burden and the onus of evaluating risk generally comes on to the Legal Department. In India, like any other business, the infra projects got impacted, one, due to COVID; two due to the Middle East war which just happened. However, I would say from my personal experience, in India, the law hasn't kept up to... for the recovery of these costs related to these two events.

Now as I said, the role of the Legal and the Contract Team becomes very important at the stage of bidding or tendering; that is when you're going to enter into that contract. You have to highlight all the risks and provide the edits of all the contractual terms which go against you. Now, particularly in linear projects like road, railway, highways, bridges, as I said earlier, the projects take a long time to complete i.e. the duration of the projects is long. Now assessing the risks on for a highway or a railway project which is going to take 10 years, if not more, becomes a very difficult to evaluate at this point of time what's going to happen ten years later. Now few risk mitigation techniques are available, where the risks cannot be managed in-house, we outsource it either to a contractor or to a third-Party who is in a better position to bear these commercial risks. Those risks which cannot be transferred and have to be borne by us. Then your price... the bidding price changes. So, your bidding or the tendering price you incorporate that amount of risk, or the cost that you will be bearing.

Now coming to the contract, whether the government contracts are boilerplate contracts? Whether you can negotiate? Of course not, you cannot negotiate. They are boilerplate contracts, you just have to sign the dotted line. You have to evaluate the risks, tell your business look, X, Y, Z clauses are a problem, you know, I'm just highlighting, it's up to you to decide whether you want to still bid, no. On the other hand, the private Party contracts you can negotiate. It is more amenable; two Parties sit down, you can fairly equalise the risk bearing capacity, "You take this one, I take this one". So, it's more of a negotiation and a private Party. However, having said that, I cannot say that the government contracts absolutely rubbish, no, not at all. They're becoming very savvy, they're becoming very smart, they're updating their clauses so they are keeping up with the pace.

Lastly, I would end by saying that the five critical clauses that any lawyer should have a look in a contractual, relate to Damage clause, LD, that is Liquidated Damages versus Penalty clause, Time Barring clauses for issuing notices, Interest clause and Delayed Payment clauses and lastly, Exclusion of Limited Liability clauses. Thanks.

ABHILEEN CHATURVEDI: Thank you, Rashna. That was helpful direction on drafting skills which may then help address these fragmented issues that we keep talking about. I must share an interesting statistic, that the EU and UK sanctions lists. They alone grew by 46% and 170% in the first half of 2025. And that has... I mean, that's in fact at a moderate pace compared to what the US is doing. But of course, that divergence, in itself, drives a lot of these seat selections these days. And given what Dr. Salman touched upon a few minutes ago where he said that you have to see what the ultimate result of that award might be and you may be better off seeking that interim relief or the injunctive relief at the inception. Coming to you, Sharad, trade war and these sanctions disputes often need urgent reliefs. Freezing assets, restraining guarantee call, the court annexed interim measures work better than Emergency Arbitrator provisions in these high stakes scenarios, and does that change when the counterparty is a state-owned entity with a potential sovereign immunity defence?

SHARAD BANSAL: Well, the most important element while taking that decision as to whether to go to a court or whether to go for emergency arbitration, is seat. Because under Indian law, if the seat is India, only then your Emergency Arbitrator's decision will be recognised, whereas if the seat is outside India, then an order of the Emergency Arbitrator will not be automatically recognized. You will have to come to the court anyway and file a Section 9 petition as they say under the Arbitration Act. So the first thing that has to be considered is seat. If the seat is India then perhaps yes, one can go for emergency arbitration. If not, then there's no question. Then one has to go to the court.

The second element is that what is the nature of urgency? Do I need a decision within 48 hours, within 24 hours or can I wait for 10 days for seven days? If it's the former, if it is a case of an absolute urgency, then in my view, it's advisable to go to a court because that's where you can make out a case for genuine urgency, and perhaps get a decision within 24 hours, 48 hours. If you do have a case, because even if you look at Emergency Arbitrator provisions, in most institutional rules, the decision will take 10 days to 14 days. The Tribunal will have to be appointed, you will have to file your pleadings and then hearings will have to happen, and by the time the decision comes it may be 14 days. So, if you can't wait for 14 days, then it's better to go to a court under the Indian regime.

The one exception to that now, which has come last year in the Singapore Rules, is that they have provided for what is called a "protective preliminary order", where you can get a decision within 48 hours also. So, you apply for a what may be called an "ad interim decision" in our context and the Tribunal is constituted within 24 hours and they will have to render a decision within 24 hours, and that may be *ex parte*. So, that is an exception. But other than that, if you want a decision within 48 hours, it's advisable to go to an Indian court where you may get a hearing, and perhaps get a decision. If you can wait for a while, then my suggestion would be to go to an Emergency Arbitrator provision mechanism, because there, you will have certainty of an outcome within, let's say, two weeks or three weeks, as I said. So, the choice really depends on two factors: One is whether the seat is India. If yes, go to an Emergency Arbitrator provision mechanism; if not then you have to go to the Indian courts. And if you can wait for a while then avail the mechanism under Emergency Arbitrator rules.

ABHILEEN CHATURVEDI: Thank you, Sharad. This PPO from SIAC rules has been the topic of much discussions. There have been conferences and seminars only restricting only on this particular topic, and I'm waiting for the day when that is... that sort of an order is brought to India for enforcement.

DR. SALMAN AL TUWEEL: Can I...?

ABHILEEN CHATURVEDI: Please.

DR. SALMAN AL TUWEEL: Can I just...

ABHILEEN CHATURVEDI: Yes, yes, please, please, yeah.

DR. SALMAN AL TUWEEL: Because it came to me one case with the same situation. So, it was like we just wanted because it was an arbitration going in one of the cases, but we wanted to get like emergency order from the court. So, we decide as a team that the possibility of the

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court to accept that application, it's like 50-50. But to go with the emergency arbitration within 48 hours, he will get an award; the order, it's more costly will be. So, we put the two options in front of the client. The client, he mentioned that based on the cost effective, I will go with the court. So, we tried with the court three times; they rejected, unfortunately, because they said it's not an emergency case to do that attachment. And it was a long and big case; so, always we give the option to the client and we give them the cost because it's huge gap between the cost, I mean, the Dubai court cost and the emergency arbitration cost. So, sometimes we need to figure out about the cost as well. But the client decide finally that let me go with the risk of the Dubai court. If they accept it, good, because it's really... then we realise that it really is not that emergency case was. Otherwise, you will go with the high cost and to get I mean the order from the Emergency arbitrations or sorry Arbitrator. So, sometimes you know the client need to decide as well with us and to take the decision.

ABHILEEN CHATURVEDI: Certainly. I quite agree with that. But having said that, there is also this constant threat of getting some urgent injunctive reliefs, and Emergency Arbitrator is certainly one way of going about things. But having said that, personally speaking, if you are in India, maybe you're better off going to the court first and then going to the Emergency Arbitrator, because as you rightly said, costs can be a big factor. And certainly, I mean, between the two, if there is things in India, then of course, you may be better off because...

DR. SALMAN AL TUWEEL: Based on our experience, we know that the percentage of getting that, you know that order from the court. Because when you are coming to the construction disputes, it's we are... you know, myself, I have my experience and my niche is construction and real estate disputes. So, I give him my percentage. I told him it's like a 50% maybe you will going to be success on Dubai court, but I'm not sure about it. So...

RASHNA MISTRY: Just to add what he's saying, exactly, sometimes the two Parties are not fighting; it could be a third Party like a Bank Guarantee which is getting invoked by having an Emergency Arbitrator, it's just him and me fighting but that order is not applicable on a bank, so maybe I have to go to a court, make them a Party, make sure that the court passes an injunction that the bank may not you know, though the guarantee is confirmed invocation, etc. don't do it so...

DR. SALMAN AL TUWEEL: Absolutely, absolutely.

RASHNA MISTRY: So you know, the courts may be preferred. So as he says, you have to see the circumstances, the Parties involved, what you need, what relief is there and then sort of decide.

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DR. SALMAN AL TUWEEL: Absolutely.

ABHILEEN CHATURVEDI: Maybe confidentiality concerns also, maybe. But okay, coming to our discussion and coming right now over to you, Rashna, I mean this is we've heard of these seat selection matters and... you are there at the helm where you not only decided at the dispute as... once the dispute arises, you are involved at the negotiation and the drafting stage as well. When you are weighing seat selection for a new contract today, how does India feature in the shortlist for a sanction for a sanction-sensitive seat, as well as in these cross-border contracts?

RASHNA MISTRY: Forget sanction, forget everything, I prefer India-seated arbitration, sorry.

ABHILEEN CHATURVEDI: That's the bottom line for this conference. I prefer it.

RASHNA MISTRY: I mean India has a wonderful excellent set of Arbitrators, we have a good Counsels, we have good institutions. Infra projects are basically in India, I'm building the stuff in India, why do I go foreign arbitration; actually no use to me. However, some projects are funded by World Bank or JICA. Now they put in the clause because they are funding from wherever and they don't want India-seated. So, their seat gets... you know, their ask gets put in the contract that I want to go to Singapore-seated or something. Such contracts, then you have to sort of bite the bullet and go ahead with it. I'm not saying that it's bad or anything but it's just preferred. Then you go have your dispute in Singapore with a government Party because majority infra big infra projects are government; so, both government and Tata go Singapore, LCIA, wherever, and then you come back to India and enforce or do whatever. So, my preference, as I said earlier, India.

Now as I said, each contract has to be evaluated based on the contracting Party, where, what the product is, where you're going to enforce, think ahead, who's going to be disputing the Party, who's not going to pay, I may be disputing, I may be invoking, which jurisdiction will suit me because he is the opposite side, you know, think of this in advance before you write down which seat you're going to go for. As I said, one seat, like I say India, I prefer India, that doesn't fit all. What if the Party is some... Suppose I'm working in some region in Africa building there, what sense having it in India? Might as well go to DIFC or LCIA or take another jurisdiction. So, it is very case-specific or project specific, and you have to evaluate those circumstances before you decide which seat or what is your preference. So, even if I, Rashna Mistry prefers India, it doesn't mean you have to see the circumstances, see who the opposite Party is and then decide the seat. Hope that answers.

ABHILEEN CHATURVEDI: It does to a very large extent. I'll go to the second in-house Counsel on the panel and but I must add one interesting statistic from the QMUL survey. While there are these sanctions and while there are these seats in different jurisdictions now London and Singapore still remains the global preferred seat rankings in the 2025 survey. So, and we still have a long way to go, but with that backdrop, I'll come to you now, Tarini. Same question but now through Worley's lens on a fresh cross-border cross border contract with a sanctions adjacent counterparty, would you see it in India or look elsewhere and why?

TARINI SRIVASTAVA: I would 100% prefer India and vouch for...

ABHILEEN CHATURVEDI: Second vote of...

TARINI SRIVASTAVA: 100%. But I mean I don't know about Worley because you know, when you, like Rashna said, it entirely depends on the contract, the counterparties, the financiers and all of those factors. But my push for India would be, I mean, there's various factors that go into it. We are diplomatically neutral, we have the infrastructure, we are substantially cheaper to bring an arbitration here as opposed to anywhere else. I mean very, very arbitrary, but imagine the cost of a hotel for five days in Singapore as opposed to a Delhi or Bombay, it just, I mean, those are the very basic things that you can look at, but to me, the reason I would push for India is because, you know, the decade that I've been practicing arbitration. It's the brain power of this country, the kind of practitioners that we have here, it's mind boggling. I think the sheer talent in this country is off the charts. It's... I often make this comparison. Medicine is practiced; so, you can and the reason it's practiced, it's because the more you practice medicine, the better you get at it. You can go to the top cardiologist of this country and they will say we did ten heart surgeries today. After a certain point it becomes muscle memory to them. The only other profession that I can think of from the top of my head that's practiced is law. It's a legal practice. You have a legal practice and again, the reason is Sharad and I were just discussing this you live, breathe, eat sleep law when you know when you've been in the industry for 15, 20, 30 years. I think our judges, our practitioners, our advocates here have gone through so many various types of disputes, etc. you cannot surprise them.

And in an industry like mine, you know, you have to it's not just about understanding the commercials of it. You have to go down to there are disputes that are so complex, it's fraught with complexities. You have to understand the engineering, you have to understand the materials, you have to understand the logistics of putting that infrastructure project into play to be able to make a decision on whose liability ultimately the dispute is, you know, moving

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towards. And any dispute I feel you bring to an Indian arbitrator specifically, they would have seen it in at some scale, a larger scale, smaller scale, however, but they cannot surprise these people. I think that's the reason I would push for India, definitely because it's... you can't... you can't surprise people. We've seen it all, we've done it all. We've seen it all. It's that much easier, I think, to plead your case to somebody who's understanding it at a grassroot level.

ABHILEEN CHATURVEDI: That's quite a bombshell, and I'm it's very heartening as an Indian lawyer to see that India will be the preferred seat at least from two in-house Counsels who have a large global presence. Yeah, I just noticed the clock and it's showing 40 minutes. Are there any questions from the audience at this juncture? There is one. I don't know if we have a mic or... somewhat, yes. Because we started early.

ARPAN GUPTA: Yeah. Hi. Thank you so much to the panel. This is a wonderful discussion. I'm Arpan Gupta from HFW. My question is to the in-house Counsels. Obviously, post-2023 *force majeure* is something that contractors can hardly argue because you can't really say it's not foreseeable or not in control. So, has the shift been to more price escalation or other type of clauses in the contract so as to weigh in the supply chain risks and costs that have increased post the Middle East war?

RASHNA MISTRY: Do you want to take that? I'll take that. Thanks for your question. Yes, we have as a contractor who's building an infra got impacted by the recent Middle East disruption which has impacted all, more or less all the raw material like steel, cement, anything that has to be shipped, the routes are taking longer, the price for that route instead of taking the shorter cut, the Hormuz line is going all around. So, the price escalation is there. In projects where I have given a fixed price, I have to bear the cost. So, it's becoming practically dipping into my pocket to building you the project that you want. So, in short, I'm nation building but with terrible hole in my pocket. So, it's becoming extremely difficult to be able to sustain these costs and these are not marginal increases because while the tendering or bidding stage I said, you do put in a little risk factor but nobody force... I mean we couldn't foresee this tremendous increase in price. And as I said earlier in my talk, the *force majeure* clause just gives you an extension of time which we don't want; we want the additional cost. With private Parties we do negotiate, they do understand our pain and it gets set, but it's very difficult with government contract. Because the government guys, if they ever go outside the contract and pay us, there will be a see or an investigation on them. So, the poor guys also, I don't blame them. They also may want to help but they can't do, they are restricted because of these restrictions on them. I hope that answers your question.

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ABHILEEN CHATURVEDI: Do you want to add something?

TARINI SRIVASTAVA: No, I completely agree with... whole heartedly agree.

ABHILEEN CHATURVEDI: Okay. There's one question right at the last. Okay, one more or two more? One more, okay.

HARSHVARDHAN MELANTA: Myself, Harshvardhan Melanta. I am from the chambers of Mr. Dharam Jumani. My question is to Rashna ma'am. Ma'am, you said that in case of a Bank Guarantee like you know when a particular Party who is not a Party to an arbitration the agreement, and in such case for example, you give an example of a bank when both the Parties are not fighting, but the bank is invoking a guarantee, in such cases the court is an effective forum, but there have been cases and correct me if I'm wrong, where a an entity who is not a Party still gets a right to an arbitration, you can still seek relief. And as Dr. Salman has also pointed out, usually courts they tend to you know, there's a 50-50 chance of you know, court rejecting and accepting then in such case an Emergency Arbitrator, there's a the probability of getting some certain kind of reliefs is more. So, don't you think that, you know, in such situation even a Party, entity is not a Party in such situation instead of court Party should go for an Arbitrator?

RASHNA MISTRY: You're absolutely right. Let me give a further detailed answer to that. So, I will have a dual approach to this problem. Courts, you can file today mention tomorrow and get it listed, okay? So, I file, go today make the bank the Party because the bank gets only sort of 24 hours or something to, if the opposite Party has invoked the Bank Guarantee. So, I don't have that much time or leeway of ten days of having an arbitrator, so I have the risk of the court also rejecting but you have to make out a case. So, you go to court. If the court grants you well and good, you've succeeded, but have the fallback if the court hasn't accepted, you don't have any other option but to invoke the arbitral, join the Party and go through that and fingers crossed hope it doesn't get invoked. If it gets invoked then you have your normal arbitration, move Section 17, try and see in the interim, if that money can be returned, all the best. So, you I'm not saying one sort of route may work for everything, but you have to do your best. I cannot tell my management, no, you know it is very risky, we will not get the... They don't like to hear that. You lawyers are meant to win for me, I don't want to hear negative. They always want to hear yes, I'll win it for you leave it with us so that's the positive spin I have to give to my management. I hope that...

TARINI SRIVASTAVA: Yeah, no, I agree. It's...you can't give them a fluffy answer and not anything...

RASHNA MISTRY: You're a lawyer, you have to win my case that's the mandate for us, is that right.

ABHILEEN CHATURVEDI: Yeah okay, I think we are done. Thank you so much for your attention. Thank you. Thank you for listening in.

ANUSHKA MANSHARAMANI: Thank you, Mr. Chaturvedi and thank you to all the panellists for the engaging discussion. I'm sure the conversation has given us much to think about, particularly regarding the increasing complex relationship between geopolitics, commerce and international arbitration. I would request the panel to step forward for a group picture. I have a small request. You will notice a QR code on the screen behind. As part of the India ADR Week, BCPL and Shardul Amarchand Mangaldas, our Knowledge Partners for India ADR Week are conducting the India Arbitration Survey. We would request your views to take this scan the QR code and take the survey. I would request everyone in the room to please scan the QR code and take a few minutes to complete it. The findings will be unveiled by the Honourable Chief Justice Surya Kant on 11th September 2026 in Delhi and your responses will directly shape that conversation. So, please do take a moment and participate. Thank you. We will be starting our next session at 10:30; so, we can please have a short break. Thank you.