

INDIA ADR WEEK 2026 – 08 SEP 2026**SESSION 5****THE INDIA–SINGAPORE ARBITRATION CORRIDOR: CHALLENGES AND
OPPORTUNITIES****SPEAKERS:****MODERATOR: KARTHIK SOMASUNDRAM, PARTNER, SPICE ROUTE LEGAL****DAWN TAN LY-RU, FOUNDING AND MANAGING DIRECTOR, ADTLAW LLC****KINGSHUK BANERJEE, PARTNER, KHAITAN & CO.****RAMESH KUMAR, PARTNER, ALLEN & GLEDHILL LLP****SNEHA JAISINGH, PARTNER, BHARUCHA & PARTNERS**

ANUSHKA MANSHARAMANI: We request everyone to kindly take your seats, we will begin in the next two minutes. Thank you. We now come to a key highlight of today's program, which is the India-Singapore Corridor event hosted by MCIA and supported by ADTLaw LLC, Allen & Gledhill LLP, Bharucha & Partners, and Khaitan & Co. A new feature of the India ADR 2026 has been a series of jurisdictional focused events designed to foster dialogue between India's arbitration community and leading international arbitration jurisdictions. And this evening session is a flagship example of that initiative. India and Singapore sharing enduring commercial, economic and institutional ties and their collaboration within the cross-border dispute resolution ecosystem continues to flourish. This session examines the relationship through the lens of the "India-Singapore Arbitration corridor challenges and opportunities." The discussion will be moderated by Karthik Somasundaram and the speakers are Dawn Tan, Kingshuk Banerjee, Ramesh Kumar and Sneha Jaisingh. This promises to be an insightful exploration into the two deeply interconnected jurisdictions and the opportunities that lie on the horizon. I would now request everyone to come on stage. Over to you, Karthik.

KARTHIK SOMASUNDRAM: Good afternoon. The topic that we have today is "India-Singapore Arbitration Corridor: Challenges and Opportunities". And of course, the topic correctly assumes that there's an India-Singapore arbitration corridor in the first place. But I think as most of us would wonder is this traffic really moving both ways or does it mostly consist of India related disputes taking a short flight into Singapore and getting adjudicated there? Both jurisdictions do of course inspire confidence. But of late and recently, there have been some hesitations in these Indian shores. I know this has nothing to do with the fee notes that jump out of the Maxwell building in Singapore. This is to do with something more, something deeper and we'll explore those options and those issues just now. How much of what we perceive as a corridor is based on present day experience and how much on perceptions that may no longer be accurate are matters that we'll cover in on this panel. We will explore where perception departs from reality and what each jurisdiction does particularly well and what each might sensibly borrow from the other, hopefully without causing a diplomatic incident. At a time when both arbitration systems continue to evolve, the real question is not simply which jurisdiction is better, it is whether India and Singapore can complement each other and build a corridor that is genuinely two-way commercially useful and can be trusted by Parties on both sides. So, let's start first by getting the panellists to look inwards and hopefully reveal some of the weaknesses of their systems before examining the corridor itself. Dawn, we'll start with you, you're closest to me. What's the single biggest difference between the perception and the present day reality of arbitration in your jurisdiction?

2 **DAWN TAN LY-RU:** Well, thank you for that question. You said weakness, so I think that's
3 my cue to go for the jugular, right? And I think that's a consideration that has been spoken
4 about quite often, and that is the speed and cost of arbitration. I think sometimes we can be
5 the victim of our own success and by cost, you know arbitration is supposed to be faster, it's
6 supposed to be less costly, but the reality is that costs have been escalating for some time and
7 that has been a matter of concern within the arbitration circles for some time. And I think part
8 of that the response to that in Singapore at least has been to try and rein in those costs and to
9 set up a sort of litigation and arbitration model by way of the Singapore International
10 Commercial Court. And these speed and cost considerations really come down to
11 considerations that all of you already know, like due process paranoia and the gentleman's
12 club in arbitration, which sometimes leads to leading Arbitrators not being available for
13 stretches of time. I mean, six months to come up with PO-1 is a bit much sometimes. So, I
14 think these things do plague arbitration in Singapore and as much as Singapore has been
15 tremendously successful.

16 So, the second thing I would say is that there is still, I think, a premium placed on a brand and
17 what does Singapore stand for: its perceived neutrality. Perceived because I don't want to
18 cause any diplomatic incidents, perceived transparency, trust, there's a brand name. The
19 reality is Singapore is not often a Party to the big arbitrations involving infrastructure projects
20 or what have you, right? And so we invite everyone to come and we are a convenient venue for
21 people to come and resolve the disputes, so I think that is the reality.

22 **KARTHIK SOMASUNDRAM:** No, of course. I think being busy in on these shores at least
23 is not considered as negative but we'll take your point. Sneha, now over to you. What about
24 what do you think are the perceptions and the differences here on the Indian side of things?

25 **SNEHA JAISINGH:** Sir, I think for a long time the perception has been that India is an
26 interventionist country and I don't think that perception has been entirely misplaced. But I
27 think we've moved from judicial intervention to perhaps what I would call judicial enthusiasm.
28 And so, we have a number of judgments that are established that we're pro-arbitration, we
29 enforce awards. But I think it's a little bit of a paradox still because that perception still lies in
30 user experience and I think India needs to perhaps talk less about becoming an arbitration
31 hub and actually, just being one. So, we don't need to convince the world that we are pro-
32 arbitration, what we need to convince users is that we are predictable, we are efficient and that
33 we are commercially sensible.

2 **KARTHIK SOMASUNDRAM:** Yeah, the day we are predictable, the drama stops. But,
3 Kingshuk, all of us on this panel, please, have dispute have litigated on both jurisdictions and
4 both jurisdictions, but in your experience, do Indian and Singapore lawyers approach
5 arbitration differently, not merely as a matter of law but an advocacy style evidence procedure
6 and the expectations of the Tribunal itself, do you see a difference?

7 **KINGSHUK BANERJEE:** Just before I answer your question, thank you, MCIA organizers
8 for having us, and I'll jump straight to your question now, Karthik. I would think the gap is
9 narrower now. There is still a difference, perhaps more so in style of advocacy than anything
10 else. Maybe 15 years back things were different as Indian lawyers. For those of you familiar
11 with the Indian arbitration system, we were part of a system which pretty much mirrored civil
12 litigation. We had retired judges as Arbitrators, we had advocates, senior advocates appointed
13 by the court, so, our entire arbitration practice was really mirroring a civil litigation. Now, that
14 meant long pleadings, lengthy arguments, lots of adjournments and that was all fine 15 years
15 back, but things have changed. Two, three reasons. First was in 2015 we had an amendment
16 which amongst other things required arbitrations to be completed in 18 months odd and that
17 meant no more adjournments, no more Saturday, Sunday evening arbitrations; that meant
18 shorter pleadings, more discipline. So, that was I think change one, which is to some extent
19 we aligned ourselves to the international way of practicing and of course, many of us over the
20 years we've been fortunate, we've done several international arbitrations, we've learned from
21 our friends, some who are in this room, we've learned from them on how to conduct
22 international arbitrations. And the fact is we've learned so much and we've tried to adopt and
23 bring that system, introduce that those practices, best practices into our system.

24 In an international arbitration, Karthik, if you're referring to an international arbitration, if
25 your question is alluding to that, there isn't too much scope for divergence anymore.
26 International arbitrations are largely institutional you will have Arbitrators who are very
27 experienced. So, you will have institutions applying the discipline, you will have arbitration
28 setting the tone and as Counsels whether you're Indian, whether you're Singaporean, it doesn't
29 matter, you just have to adapt. So, that that's my response.

30 **KARTHIK SOMASUNDRAM:** Yeah, yeah. No, Ramesh given what you're saying and it sort
31 of appears to be that we are converging on both sides of the jurisdiction, I don't know if you
32 see it that way, but if a General Counsel were to ask you, you know, why should he or she
33 choose Singapore, you know, in India, Singapore dispute is...

34 **RAMESH KUMAR:** Is this after or before the dispute has started?

2 **KARTHIK SOMASUNDRAM:** Let's say before.

3 **RAMESH KUMAR:** Okay, right.

4 **KARTHIK SOMASUNDRAM:** What would be your take, what would you suggest?

5 **RAMESH KUMAR:** Thank you, Karthik and thank you for having me. And I think the
6 question here requires me to be honest. So, I'll try. I agree with Kingshuk. I think that the way
7 things have developed and it's very natural the world is going to converge as you know we
8 interact with each other and its international commercial arbitration. You're going to have
9 different types of Parties, litigation arbitrate their disputes, you're going to have different
10 lawyers get together and you'll learn from each other. So, the way I look at it is and I'll focus
11 on three points that I could sell and I want to make it very clear that I think that they all sort
12 of converge into one real point, whereas I think the additional two points are more perception
13 rather than reality. I think the first and I'll start with what I think is the real substantive point,
14 it has to do with the judiciary. I think Singapore's judiciary has taken to arbitration more
15 naturally than I, and I think, I have to be candid here in the Indian judiciary has and I don't
16 see that necessarily as a criticism. India is a very proud country with a long history. Singapore,
17 on the other hand, still laud our colonial masters, so we're a different species. But what that
18 means is we've had to be more adaptable and I think the judiciary has been more adaptable in
19 sort of trying to shape itself as, and I should also include the legislature. And the main point
20 here is and I'll give you a couple of examples is things like confidentiality. In a setting aside
21 application in Singapore, you would file the application and you would quickly file an
22 application in court to have the names redacted. And confidentiality being one of the biggest
23 selling points for arbitration, I think it has to be protected. But as I understand it and I'm quite
24 happy to be corrected if I'm wrong. In India, if you file a setting aside application, the general
25 position unless you can show some trait knowledge, sensitivity or something like that, it's
26 going to be public. So, one of the cornerstones for why people would choose arbitration is gone,
27 and I think that happens because there's a tension between what our entrenched ideas which
28 India has and maybe Singapore has been a little bit more flexible. So, I just put confidentiality
29 as an example another is possibly views about what's arbitrable and not. So, that's the first
30 point; the way judiciary has tried to support arbitration.

31 The other two are just perceptions. One is procedural flexibility. I think Kinshuk touched upon
32 it in the sense that when it was at a time in India where it was just civil litigation plus civil
33 litigation crime, I think that flexibility wasn't there, but Singapore has had the advantage of
34 20 years. So, we've solved this very well to the world that it's flexible, but if I had to sell this to

2 a GC, that's how I would do it, but I want to be clear. That's perception rather than real because
3 as you have more and more institutional arbitrations in India. That flexibility can be worked
4 in and as practitioners buy into that idea you will have it.

5 And the third again, is perception. I think Singapore has done very well and this is one has to
6 thank the government in Singapore for it. We've sold ourselves as a very reliable jurisdiction.
7 If you do business there, you're going to get enforcement done fairly easily. I think in fact it's
8 quite easy to get enforcement in India, you have to put up your funds if you're looking to set
9 aside an arbitral award, but Singapore has sold it so well. Now, I'm not saying that because it
10 has sold well that is a strong point, but to a GC, the sell would be this. You could get financing
11 for your arbitration fairly easily. Lenders who are maybe from the western shores, they might
12 take to that more easily if you're looking to sell a claim, for example. So, those are the three
13 points. I suppose the caveat and I think this is just a pragmatic point is ultimately, you need
14 to follow where the assets are.

15 **KARTHIK SOMASUNDRAM:** Yeah.

16 **RAMESH KUMAR:** It's no point having all these great ideas you have this arbitration that
17 is not set aside in Singapore, then you come to India and you can't enforce it that would be a
18 complete waste of time. So, those are those are my views. I hope I've addressed your question.

19 **KARTHIK SOMASUNDRAM:** Thank you. I think that's helpful in terms of setting the
20 context as to why Singapore is attractive from your perspective for Indians and why Indians
21 should sort of...

22 **SNEHA JAISINGH:** Yeah, yes.

23 **KARTHIK SOMASUNDRAM:** Yeah. Now you are... So, let's get to exploring the
24 opportunities in this corridor now obviously the corridor exists because there is a much larger
25 operational arrangement between India and Singapore. That has to do with substantial trade,
26 investment finance and corporate connection going back many decades and Singapore entities
27 invest in India, Indian businesses use Singapore as regional headquarters, holding company
28 jurisdiction, financing centres and contracting hubs. Therefore, the arbitration corridor is but
29 a consequence of the larger commercial corridor that has been in play for a long time. So, let's
30 explore some of the benefits that Indian Parties view Singapore seated arbitrations to have
31 and how best to maximize those advantages. Sneha, let's start with you. Singapore, as you
32 mentioned, has an established framework for third Party funding for of international
33 arbitration while we are to experience this in a larger scale here. I see this framework as one

2 of the many things in Singapore has to offer to Indian businesses uniquely perhaps for the
3 present, but in that context of what Singapore offers, do you see any legal and practical issues
4 that have to be navigated before Counsel recommend tapping into third-Party funding in
5 Singapore seated arbitrations?

6 **SNEHA JAISINGH:** So, I think what Singapore has done really well is, as Ramesh said,
7 they've packaged it really well, right. And what they've effectively done is recognized that what
8 is the commercial claim at the end of the day for business. It's really another asset. Unlike any
9 other asset, it can be transferred and risk can be allocated, capital can be allocated. And I think
10 that's how every business, irrespective of their jurisdiction really looks at a commercial theme
11 at the end of the day because their job is doing business and not dealing with the commercial
12 team. So, they're seeing how can they monetize it and how quickly they can get money. So, I
13 think third-Party funding is certainly very attractive for Indian businesses, not just in
14 Singapore but also in India because it's not that it's not permitted in India. And it is
15 increasingly gaining a lot of traction. Yes, of course, you do have to be careful and conscious
16 because I think one is just the way India views disclosures given the recent judgments. You
17 need to ensure that there's enough transparency that disclosures are being given, you're not in
18 contravention of any of the potential conflicts that may arise, while ensuring you also protect
19 that confidentiality that businesses want.

20 Control is another factor. How much of the funder is controlling the litigation may perhaps
21 render a court taking a view in India that contract may be voidable in some way because there's
22 just too much control and it takes away the litigants rights in that sense. So, I think from the
23 Indian perspective, what they're really looking for is enforcement and costs and I think if they
24 meet that and as long as you're compliant with the rest, it's certainly attractive. The other thing
25 is, of course, is making sure you're compliant with foreign exchange laws if you're getting
26 funding from abroad. I think that's something that's very often overlooked, and you know, it's
27 I often see it as a as a late risk flag, but you didn't I mean, that's something that does need to
28 be considered.

29 **KARTHIK SOMASUNDRAM:** Yeah, thank you. Dawn, coming to you and we'll use your
30 words against you about what you consider the weaknesses, but we'll pitch it to you as the
31 strengths. One of the principal attractions for India related disputes in Singapore is the ability
32 to offer flexible and time bound arbitration procedure. Now, this is because Indian seated
33 arbitrations are for the most part still *ad hoc* while the institutions are growing and necessarily
34 therefore, are procedurally complex and time consuming. So, from an Indian perspective, are
35 there disputes that are typical to the India-Singapore Corridor that you see which could

2 realistically be resolved, let's say in a very short period of time, six months, eight months
3 through documents only arbitration? And what are the tools you perceive as your jurisdiction
4 strength which are perhaps now available in India but just not perhaps as much in practice?

5 **DAWN TAN LY-RU:** Thank you, Karthik. May I first say something that is slightly naughty
6 and perhaps devil's advocate, which is that perhaps from Indian perspective, maybe more
7 process is better rather than less. And maybe some of the tools that we have such as
8 streamlined procedure, expedited procedure. I mean, they're good obviously. But maybe there
9 might be some cultural resistance to them. But nevertheless there are various categories of
10 dispute which would be suitable for adjudication via these tracks. Typically these would be
11 cases which turn on the construction of contractual terms and documentation and they do not
12 involve contested factual issues such as straightforward debt recovery or invoicing disputes,
13 high volume, mid-value, international trade and commodity contract related disputes. We see
14 a lot of those. Post M&A escrow valuation adjustments. So basically, M&A related disputes
15 relatedly also Shareholder and Joint Venture disputes involving discrete issues which can be
16 easily determined. Technical or SLA driven IT disputes involving technology services and IT
17 outsourcing. I think these are the things that we expect to see and have seen in the corridor.

18 **KARTHIK SOMASUNDRAM:** In the corridor. So just coming back to the point that you
19 made at the start about perhaps experiencing cultural resistance to streamlining, is that is that
20 something that you've seen firsthand, you've experienced?

21 **DAWN TAN LY-RU:** We have experienced it firsthand and a member of the audience might
22 smile at me, not particularly in relation to expedited or streamlined, but it was in relation to
23 an arbitration that we did where there was a jurisdictional objection. And two of the three
24 Parties which were Indian, basically went and got an arbitration injunction in India.

25 **KARTHIK SOMASUNDRAM:** In India, of course.

26 **DAWN TAN LY-RU:** And I see that person is now putting his finger up and I think to them
27 this is fine, right? Because this remedy is available. So, why shouldn't I try it it's available to
28 me I don't see anything wrong. But from Singapore perspective and certainly that was the
29 perspective of the Tribunal that is a breach of the arbitration agreement and that kind of
30 conduct is just frowned upon.

31 **KARTHIK SOMASUNDRAM:** Yeah, yeah. And this is from a cultural aspect where you
32 believe that arbitration itself is a valuable right, which Parties will seek to enforce and you're
33 not looking at it purely as a mechanism to resolve.

DAWN TAN LY-RU: Yes, and I'm going to milk it for everything I can yeah, yeah, exactly.

KARTHIK SOMASUNDRAM: Yeah, absolutely. Perfect. So, from there, let's just jump to exploring some of the challenges that we see with this two way corridor. Both jurisdictions of course, and I'll take the liberty Ramesh, you'll have to excuse me. But I'll take the liberty of saying that both jurisdictions begin with a strong presumption in favour of arbitration, but Singapore is generally more willing to separate an arbitrable commercial dispute from remedies reserved to courts that will concede. India more readily treats disputes involving statutory Tribunals, third-Party rights or preference to centralized arbitration process as wholly non-arbitrability. So, that's something that we've seen time and again. And for the purposes of this segment of the discussion, when we say arbitrability, we'll discuss on whether the subject matter is legally capable of being arbitrated on and not whether a particular claim falls within that arbitration stipulation. Kingshuk, the Indian Supreme Court, in *Vidhya Drolia*, the very popular one provided for overlapping grounds for non-arbitrability right *in rem*, third Party effects, centralized adjudication, sovereign functions and statutory exclusion. So that that was one that came up for a lot of discussion as a test made this outcome more predictable on what is arbitrable and what is not from an Indian context?

KINGSHUK BANERJEE: It is a difficult one but I'll try and keep it as non-controversial as possible. Sorry, am I audible? So, just to just to for the uninitiated, I'm sure everybody's read the *Vidya Drolia* decision but it is a landmark judgment which discusses what is arbitrable what is not. It sets out four tests that Karthik just briefly and accurately summarized. It's largely Karthik, been very helpful. I think it's in short, there is now clarity where there was lack of clarity and what the judgment also did is, it reinforced the overarching principle that one must presume in favour of arbitration as opposed to going down the path of non-arbitrability. With that said, like with every Supreme Court decision on arbitration, there are points that are debated heavily over and over and over again. And the one piece that I see personally very often coming up in the context of our corridor and there is some degree of stress is in the context of exclusion by virtue of mandatory statutory provisions, which is the fourth test that you mentioned.

Now, there are two parts to that test. One is express exclusion no controversy. If there's a statute the language is express, there's no room for any litigation. It's simply not arbitrable. But there's a second part to that test which is exclusion by 'necessary implication'. Now the expression 'necessary implication' naturally means that one must imply exclusion. So, it's not express, it's not stated in so many words, but one must then try and interpret and argue one way or the other. And therefore, that provides an opportunity to Counsel to courts, to

Arbitrators great degree of latitude in arguing what is arbitrable and what is not. And this is a live issue, we know most of us in this room would know about the ***Westbridge and Anupam Mittal*** saga. One dispute but a very, very divergent views on how that dispute is treated. So, that dealt with an oppression mismanagement issue. Now an oppression mismanagement issue in India is not arbitrable, in Singapore it is arbitrable, clear conflict, right? So, that's a live issue and this is this is one judgment, one case that's made news, but there are so many others that we are dealing with on a day in and day out basis. So, all in all I think the judgment is helpful Karthik, it does it does make outcomes predictable in the sense that there are tests that you can lean on when you're making submissions on these points. But I would think more clarity in the law, not judge made law but law written by our legislators would be very, very useful, Karthik.

KARTHIK SOMASUNDRAM: To the point about, you know, many, many judgments now covering the field, even after ***Vidya Drolia*** and all of them carry a lot of weight. I was just wondering do you see do you also agree that both of you agree that it does appear that there is a lot of judgment law, but the most portions of it are reproductions of earlier judgments and essentially the substance is still the same, what have you seen an evolution beyond ***Vidya Drolia***?

SNEHA JAISINGH: No, I think I actually think the test goes back to the 2011 ***Booz Allen*** test, which I think really laid down the fundamentals and has only been expanded. And I think as lawyers we tend to, I tend to at least go back to first principles. So for me, I always go back to that that very limited Booz Allen test, which is what is the relief that I am seeking and is that a right *in rem* is that a right *in personam* and is that like Kinshuk said, is it expressly or impliedly barred or excluded? Of course, what is Impliedly excluded ends up being a series of and a catena of judgments that come our way. But I think it does... I don't think there can be a straightjacket formula, right? Especially, just given the realities of the jurisdiction we practice in... India is very diverse. We do have a large demographic, we do have other considerations, such as geographical considerations that we do need to take into consideration when we are deciding what is arbitrable, what is not. And I think it would be unfair for any court to lay down a straitjacket formula. But I do agree with Kinshuk, that there must be I think the law is...

KARTHIK SOMASUNDRAM: The legislature...

SNEHA JAISINGH: The legislature does need to take a stand. I mean... I'm just picking up on shareholder disputes. I mean, it's not that... I mean, there's a misnomer that shareholder

disputes can't be arbitrated I mean, our own very own commercial courts actually says that a dispute arising from a joint venture or a shareholder contract can be referred to a civil court and we all know what can be referred to a civil court can also be referred to arbitration. So, I think there needs to be some clarity in the law and you know, when we're when we're drafting some of our statutes, we do need to consider what is it that businesses want at the end of the day. Because as a Shareholder, I would not want my dispute to be, you know, perhaps wash my dirty linen in public. I don't want to do that, I do want that confidentiality.

KINGSHUK BANERJEE: But if I could just add one so what *Vidhya Drolia* and it's a good point that you make that you go back and perhaps develop and evolve from previous decisions but what *Vidya Drolia* did was actually did that very well because the underlying test in India is premised on a on a very well-known case called *Dhulabhai*. And the test really is that is the jurisdiction of a civil court ousted because if you can reach the conclusion that a that a jurisdiction of a civil court is ousted, then you can apply that principle to arbitration as well. Because the underlying principle is what can be adjudicated by a civil court can be taken to arbitration. So, that's the underlying very simple point that *Vidya Drolia* is premised on and that is based on a judgment which is many, many years old yeah, yeah correct.

KARTHIK SOMASUNDRAM: Ramesh, you would have heard these discussions I think many times over and then these continue for us for many years now. But coming to you with Singapore beginning, you know, with the presumption of arbitrability unless the legislation or public policy requires otherwise what degree of public interest is sufficient to displace that presumption within your jurisdiction?

RAMESH KUMAR: Yeah, I mean, looking at the Indian position now as most recently articulated, I don't think there's a huge difference. I think there's a perception that there's a difference because of the previous case law. So, everyone may have certain interpretations and views, but I mean I think the Singapore position is quite clear and easy to understand and coming to where that line is. But I think it's important to put things in context. And I say this frankly as a point of pride being Indian myself in that, I do think the Indian lawyers are more keen and quite brave in trying to push certain boundaries. Whereas you ask a Singaporean lawyer, and I see some of them here and the thought of going before our Court of Appeal and saying, oh look, this is not arbitrable for these reasons. I mean we would quake in our boots. And my personal experience has been if I say this to an Indian client, they would look at me like I'm a very terrible lawyer. So, I think there is something to be said about Indian ingenuity that has caused this.

But coming to the Singapore position, I tend to agree with Kingshuk, that you there's a broad idea of, are you going to be ousting what might otherwise be the court's civil jurisdiction? But in Singapore the bright line is very clear. While the test has said is does legislation make it so or does it become unarbitrable by reason of some public policy. The two are very linked whether or not public policy says no, very often has to do with what the legislation says. And so once we have that idea, there's a clear sort of template for you to go back to and I think that helps. I would just share one example without breaching any confidentiality, and I think this kind of issue doesn't come up very often, at least in Singapore. I'm doing an arbitration where the argument raised by the other side, US ingenuity here, where it was argued that my client conspired with another entity to, this is where I struggle, to breach Competition Act provisions in Singapore by giving rise to what they said was unfair competition. I struggled, I thought quite hard about it and then eventually we took out the application to say that the Tribunal has no jurisdiction because under the Singapore Competition Act, the interpretation that we took was that only the Competition Commission can decide these things. Which is very similar to your NCLT type of position. The Arbitrator in English Arbitrator agreed with us now I thought the other side might appeal it they did it. So maybe, there could be these confusions, but I suspect maybe they went to a Singapore lawyer and got advice. The Singapore lawyer, true to his or her traditions would have said I don't think this is a good argument. So, we never know, but I think that clarity comes primarily from the point of that public policy is not too divorced from legislation and a very clear interpretation is adopted to the legislation. So, we look at whether the legislation is intended to prohibit arbitration *per se*, so that's the position. I hope that addresses it maybe not as directly, but I think it's quite clear.

KINGSHUK BANERJEE: No, no, of course it is an unruly horse in Singapore

KARTHIK SOMASUNDRAM: I know a ruly horse, a very ruly horse. Sneha now Kingshuk mentioned the *Anupam Mittal* case how do you decide with and he mentioned the rulings on both sides which are very, very different, right? How do you reconcile with the rulings of the Indian and Singapore courts, are you of the view that there are two arbitrability gateways as per the law governing the arbitration agreement and the Singapore law as a law of the seat? And to add to all of this, if an Indian client were to come to you, how would you explain this and what advice would you give this poor person?

SNEHA JAISINGH: That's a difficult question, but I think there's a third perhaps gateway that we often tend to miss and I think that's what happened in the *Anupam Mittal* saga is that what is the law that governs the substantive relationship between the Parties. And that's exactly I mean, that to me demonstrates the practical limitations of what Party Autonomy is.

Because while Parties are autonomous in their choice than not... They don't have autonomy and how legal systems will respond to that choice. So, I think for me that's really critical, right? So, one is when I'm looking at I would advise on two aspects, one is if I was advising at the time of the contract when the contract was being drafted. One of the things I would look at is, what are the kinds of disputes that may come up if this goes into litigation.

The second is who is more likely to initiate that dispute and where is that dispute going to be ultimately enforced? And I think when I'm advising at the stage of a dispute, I think it's really important to see which is the court that is first seized of the matter. And I think that was really critical in the *Anupam Mittal* saga because the oppression and mismanagement proceedings commenced first in India, the arbitration commenced thereafter and then, we had a catena of judgments. And like I said, it's not that Shareholder disputes are not arbitrable but it's in India, but it is what is the relief that is sought. Which is the court that is seized with the dispute first and what are the positions that Parties take in these courts? And I think that's those are considerations that you do need to take when you're drafting, when you're deciding which forum to apply to. And it's not it's not a straightforward like, I wish I had a straightforward answer to for you and for the audience, but unfortunately there isn't one, but I think it's I think that's what makes it fun for lawyers, unfortunately, not so fun for the clients.

KARTHIK SOMASUNDRAM: Absolutely not, yeah.

SNEHA JAISINGH: But just coming back to what Ramesh said, it's like every absurd proposition I every you said every absurd proposition was I mean, it ends up being precedent at some point, at least in India. So, that's always exciting.

KARTHIK SOMASUNDRAM: Yeah, yeah, no, absolutely. And I think it's these arguments and these propositions that we keep working on eventually that forces the judges also to keep sort of developing the same, revisiting those positions in law. I think let's move on to another tricky issue and I was speaking to somebody who's here today, one of the attendees and about how disclosures by Arbitrators and the impact of independence and lack of bias is a critical element to how Indians at least perceive arbitration and the process and how that is so sacrosanct for us that culturally, as Dawn mentioned. It's a very important criteria for us. So, let's look at some of the issues that have cropped up on perhaps both sides and examine that.

In the *MSA Global ruling*, which is popular here, the ICC court concluded that prior appointment of an Arbitrator should have been disclosed by the Arbitrator, but despite that finding the ICC court made, it did not consider it sufficient that to establish justifiable doubts about the Arbitrators impartiality which was challenged by one of the Parties. The Singapore

High Court also rejected the apparent bias challenge. However, when matters came to India, the Delhi High Court placed great weight on the conscious non-disclosure by the Arbitrator because the Arbitrator actually made an observation, I think saying that he was aware but he didn't make the disclosure for certain reasons. And that the resulting loss of an opportunity of the challenge is something that he sort of mentioned and there was much discussion in the Delhi High Court and there was a great amount of weightage placed by the Delhi High Court on that to sort of uphold the challenge. Dawn, from a Singapore perspective, how should we in India understand these different conclusions? Because again you'll have lawyer clients walking up to Kingshuk, Sneha and me, asking us, you know, is this a concern because... and we've all experienced in India instances where our clients have seen us after the hearings, you know, chatting with our opposite side Counsel because they are in fact, friends and then the clients have wondered, well, is there something that I have to worry about and that's one of the first concerns that come up. So, from an Indian perspective, from a Singapore perspective, how would you know, how should people in India understand these different conclusions? Do we brush these aside merely as different functions of supervisory court and an execution or an enforcement court? Or do they reveal a more substantive difference between Singapore and India concerning the importance attached to disclosure itself? The first point that you alluded to culturally, is there a difference in the way we look at these matters?

DAWN TAN LY-RU: Oh, thank you for that, Karthik. I knew this was going to come up, right? **MSA Global**, we could not have a panel and not discuss this. But...

KARTHIK SOMASUNDRAM: Yeah, it says **MSA Global** and **Anupam Mittal**.

DAWN TAN LY-RU: Yes. That too and later I will say **Nagaraj** but you can save that for later. So, insofar as this is concerned I mean if you were to talk about coffee shop conversation and I've spoken to people on both sides of the fence and disclosure here, I used to work with the Arbitrator in question so I know who this individual is. And colloquially we say in Singapore nothing... what this is a storm in a teacup. And I don't think that this is really attributable to a difference between supervisory court versus an enforcement court. It is perhaps ideological and the Indian mindset and approach is different. I mean, as you all know, the test for apparent bias in Singapore is that of a reasonable suspicion that is to say, whether there are circumstances which give rise to a reasonable suspicion or a apprehension of bias in the mind of a fair-minded and informed observer. So, that's the test, right? And you have to bear in mind that this is an objective, not a subjective test. And it is a reasonable suspicion test as opposed to a real possibility test. So, it's that threshold is important to bear in mind and when we're talking about informed observer, context is important, right, per **Halliburton**

2 **and Chubb** and what that means is that in the arbitration context we assume that the
3 informed observer is well versed in the realities the customs and practice of international
4 arbitration where repeat appointments do happen. In fact, they're fairly commonplace where
5 they're overlapping mandates and it takes place against the context of a very small arbitration
6 community.

7 **KARTHIK SOMASUNDRAM:** Yes.

8 **DAWN TAN LY-RU:** And I think the arbitration community in Singapore and in India is, I
9 mean, they share similar traits and that everyone knows everyone else. So right against that
10 context, I think that single instance of a failure to disclose, it's not surprising that that analysis
11 does not lead one to the conclusion that there was thus bias. It may have been regrettable to
12 borrow that language, but it didn't cast any justifiable doubts on the fairness, impartiality and
13 independence of the Arbitrator.

14 But turning to the Indian perspective, my understanding is that this, the conscious non-
15 disclosure is elevated because it deprives the Parties of the opportunity to make an informed
16 challenge at the inception. I think that's what you were getting at, Karthik, and that is a
17 procedural safeguard which is elevated almost to a standalone constitutional right
18 contravention of which is fatal, right? It's a fundamental breach of natural justice and public
19 policy, irrespective of whether or not the underlying relationship would ultimately have
20 proven there to be actual bias, which of course, is almost impossible to show.

21 **KARTHIK SOMASUNDRAM:** To show.

22 **DAWN TAN LY-RU:** Yeah. So, I think that we have to understand it from that perspective
23 and I think there is a lot of cultural nuance that comes into play, right? And I think from Indian
24 perspective also my understanding and I'm happy to be corrected is, that an enforcement court
25 often regards itself as the gatekeeper for its own domestic legal order in India. And it doesn't
26 consider allegiance to finality, which is an important consideration in itself as important as
27 that. So, if it's thresholds are crossed then a result will follow. And I believe that's what the
28 Delhi High Court did in this particular case. So, I don't know, I think that Singapore just
29 regards disclosure as an aspect of procedural mechanism to verify neutrality.

30 **KARTHIK SOMASUNDRAM:** Right.

31 **DAWN TAN LY-RU:** Whereas India this views the disclosure as a core component of the
32 Parties right to choose, which is fundamental and breach of which then invalidates the
33 legitimacy of the entire process.

2 **KARTHIK SOMASUNDRAM:** Correct, and that's there. That's reflected in our statute.

3 **DAWN TAN LY-RU:** Yes.

4 **KARTHIK SOMASUNDRAM:** In the Indian structure, right? India has comprehensively
5 detailed schedule based disclosures framework under Section 12, 5th, 6th and 8,7 Schedule,
6 your... And as I understand the Singapore model of framework and institutional practice
7 employ more contextual inquiry and inquiry into justifiable doubts which you mentioned...

8 **DAWN TAN LY-RU:** Multifactorial and context sensitive inquiry.

9 **KARTHIK SOMASUNDRAM:** Inquiry is what you do.

10 **DAWN TAN LY-RU:** Yes.

11 **KARTHIK SOMASUNDRAM:** Kingshuk, why do you think there is that difference in the
12 first place? I mean of course, there's that cultural bit which you alluded to and we spoke about
13 it, referenced it a bit earlier. Is it because Indian clients need greater comfort and assurance
14 on matters of bias and independence? But while your response may be considered as
15 subjective, what is your recommendation and advice to Arbitrators in Singapore, if you are
16 willing to offer that to Arbitrators in Singapore, seated arbitration but involving Indian Parties
17 as to how to particularly manage and navigate this mind?

18 **KINGSHUK BANERJEE:** So, Karthik, as I understand it, there are two separate questions
19 there. One is do Indian clients require more comfort?

20 **KARTHIK SOMASUNDRAM:** Yes.

21 **KINGSHUK BANERJEE:** Let me respond to that first. I don't know if it's more or less but
22 we asked for I personally act for clients, not just Indian but from varied nationalities. In an
23 arbitration, I don't think there's a difference to be honest because every client who walks into
24 our room, when it comes to appointment of an Arbitrator expects some degree of comfort that
25 the Arbitrator who's going to be appointed or the Tribunal that's going to be constituted is
26 going to be impartial, it's going to be independent, is going to be free of bias. I don't think it's
27 an Indian problem. It's a common ask.

28 **KARTHIK SOMASUNDRAM:** Yes.

29 **KINGSHUK BANERJEE:** And it's not unusual because in arbitration the composition of
30 the Tribunal is a very important part of the process. And therefore to expect that there will be
31 independence and impartiality is the most basic requirement it's basic, right? So, I don't think

it's an Indian cultural issue, I think it's an expectation no matter who the user is. So, that's my first response. Should Arbitrators in Singapore do anything differently for the same reason? I think, no, but let me just add to that. There's no there's no real need to invent an Indian overlay to international arbitration because you mentioned Section 12 and our 5th and 7th Schedule that is really a reflection of what internationally is accepted as the guidelines for conflict of interest principles, right? So, your IBA guidelines form the basis of the 5th and 7th Schedule, and it is the IBA guidelines that pretty much determines how disclosures are to be made or should be made in any international arbitration. And therefore, I don't think there's any need for an Arbitrator to do anything differently. The need is for the Arbitrator to apply the same standards that they would apply in any international arbitration. But yes, applied rigorously and the principle, as I understand it, is when in doubt disclose.

KARTHIK SOMASUNDRAM: Yeah.

KINGSHUK BANERJEE: Disclosure doesn't mean a confession of bias. If anything, disclosure means you are perhaps independent and you are impartial. It's an indication of impartiality and independence. Movement there is hesitation in disclosing, doubts creep in.

KARTHIK SOMASUNDRAM: Yes, right.

KINGSHUK BANERJEE: So, that's my view of course, that ...

KARTHIK SOMASUNDRAM: The opportunity to challenge bit is gone.

KINGSHUK BANERJEE: Yes, I mean look there is no there is no need to create a new standard. The approach should be to apply the existing standard so as to ensure that the award in question can travel from Singapore to India without much difficulty.

KARTHIK SOMASUNDRAM: Right, right, absolutely. Ramesh, do you have any different view if you were an Arbitrator involving an Indian Party, would you agree with Kingshuk that you don't need to apply different standards? Or given what's happened and what's likely to happen, perhaps given that this has opened up that door, would you perhaps act differently, advise differently?

RAMESH KUMAR: No, I don't think I could put it any better than Kingshuk has. I tend to agree that in any jurisdiction that wishes to be considered seriously as a seat, your ideals need to converge towards some norm. And I know, there is this or at least there appears to be this perception that maybe there's a difference between Singapore and India. I don't think there is. We have one decision from the High Court, one judge said on it. It didn't go on appeal. I think

it comes down to how one interprets the Arbitrator's actions in that particular case, three judges in the Court of Appeal may take a different view. But I think the point to bear in mind is, that there are rules and I think in this particular case, the Arbitrator followed the IBA Rules to the T. Maybe, if you took a slightly more contextual approach to the prescriptions in the IBA Rules, things would have been different. The point I think I'm getting at is both jurisdictions are trying their best to try and to get to a uniform standard, but it may well be because of cultural differences that maybe there is something different. I don't know, I don't think there is, I'm guessing, but this is where an institution can really make a difference. An institution will know its own flock, as it were, and if there is going to be something specific about a particular jurisdiction where importantly enforcement is going to happen, then the institution can come in and say we understand this, so, this is our checklist. The problem with checklists is they sometimes set minimum standards rather than what one should do I think it's a difficult balance, but the short answer is I don't think it ought to be too different. But if an Arbitrator is aware then I don't think there's any harm in disclosing. I agree with Kingshuk the fact that you come clean and say it is really in itself an indication of a lack of bias, so I don't see any harm.

KARTHIK SOMASUNDRAM: It can only strengthen the process.

RAMESH KUMAR: Yes, correct. So if I knew something, although right now I'm struggling to see exactly how it is different but if I did know something I think there's no harm, you just come out and say it and then you let the Parties deal with it .

KINGSHUK BANERJEE: If ever in doubt, disclose as he says.

KARTHIK SOMASUNDRAM: Right.

SNEHA JAISINGH: Yes.

KARTHIK SOMASUNDRAM: I mean that's the language from the IBA guidelines. All right, let's get to some lighter matters and we have we're running out of time, but we'll try and cover a few things quickly. Coming back to the topic itself as it reads. Sneha, do you think it's truly an there is a India Singapore arbitration corridor or is that a misnomer for India related disputes being administered in Singapore?

SNEHA JAISINGH: Okay, so the short answer is, yes. Equally though I don't think yes, of course, a lot of India matters are going Indian Parties are choosing the Singapore seat and we can't deny that it would be foolish to say that, that's not the case. But equally we can't deny how much our jurisdictions are influencing each other's laws and practitioners. And the fact

2 that we're sitting here, we are ideating, we are discussing how two different courts, take two
3 different views or perhaps even sometimes the same view on the same the dispute that arises.
4 I would say that there is very much a corridor that is that exists. I think there's a lot that we
5 can learn from Singapore, but at the same time, I think we also have to be conscious that India
6 is not just a larger version of Singapore. There are we have our own sort of realities to deal
7 with. We have our own sort of infrastructure, our own user experience to improve and I think
8 that's where perhaps we can take some lessons and create an internationally global seat like I
9 said, that is commercially sensible for Parties. And I think perhaps the I'm going to flip it and
10 maybe my Singapore counterparts may not be too fond of me after this. But I think the real
11 test is (a), one, we should have to stop justifying why we should choose an Indian seat is when
12 we know that we've really arrived. And the second is I asked my Singapore counterparts, would
13 they choose Bombay as a seat for a particular kind of matter?

14 **KARTHIK SOMASUNDRAM:** Ramesh, do you want to take a crack at that?

15 **RAMESH KUMAR:** Thanks, it's a difficult question. I ...

16 **KARTHIK SOMASUNDRAM:** I will still get your drinks.

17 **RAMESH KUMAR:** Okay. I think I would certainly choose Bombay if the client is
18 comfortable with it, right? I think all of us are part of an ecosystem. We do what we do because
19 the market demands something. I was just talking to a friend before we came here. I mean, I
20 think there's a certain reality there is a corridor, it's just that it's not the same goods and
21 services moving both ways, some things are moving this way, some things are moving that
22 way. Now I appreciate that we're all lawyers, Arbitrators, we want things to be a certain way,
23 but I think if you were to ask Singapore, we're quite envious of India. You have your
24 investments coming into this country that Singapore can only dream of. What we're doing is
25 we're parasiting.

26 So, the short answer is, I would definitely choose Bombay if a client were comfortable with it.
27 Sorry, I meant Mumbai. And... but I think the reality is this that when you have international
28 Parties, they're going to look for neutrality. Right? Singapore has sold itself as the Switzerland
29 of Asia. And so that works, that works. Now can India change? Of course, with time. I think
30 Hong Kong did quite a good job but then it also took a hit when the laws changed. So, I think
31 it's a matter of time as people get more and more familiar with this ecosystem, it will change.
32 I think it will take a bit of time, but for now I think it's moving in the right direction. I think
33 that's the best the best way I can put it.

KARTHIK SOMASUNDRAM: Yeah. Kingshuk, I'm sure you have clients who are strong Indian clients with strong bargaining powers in a dispute scenario or even at that at an earlier stage when you're contracting and you're sort of putting pen to paper. And they could choose either Mumbai or Singapore as a seat. What would you recommend today? Would you actively recommend Mumbai? Would you, you want your client

KINGSHUK BANERJEE: Honest answer?

KARTHIK SOMASUNDRAM: Yes

KINGSHUK BANERJEE: Honest answer. Okay. So maybe let's work our way through this. If my client had a strong bargaining power, we can start by assuming that they've got a very strong contract in their favour. So they've got a tight contract, no onerous terms, which means that if they get into a dispute they are likely to win well, if you're likely to win and you know that upfront when you're contracting then you want finality. And if you want finality you have to choose Singapore today, that's the reality. Because at the end of that dispute, once you won that award, you can you can derive some comfort that it's very unlikely that a Singapore court is going to set aside that award. Of course, there are exceptions, but that's the comfort that you can derive. Having said that, sometimes Parties want a little room post-award. They may not have a very tight contract, they may have they may have a contract which can go either way. And if you want that room to fight at the end of that award, then I don't see why Mumbai or Delhi is not a good choice, not because there is no finality, but Indian courts tend to be a little more expansive when they construe the same provisions that a Singapore court does. And therefore, there's a possibility that even if you're on the wrong side of an award, you could, you may succeed. So that's my two bits there are other strategic considerations but we are running out of time, Karthik. So maybe that's the maybe over drinks.

KARTHIK SOMASUNDRAM: Yes absolutely. And that's the ingenuity that Ramesh was talking about of the Indian lawyers which is a little wriggle room that will help you at the end. Sneha, do you have any different views on that would you recommend Bombay over Singapore?

SNEHA JAISINGH: I mean since we're running out of time, I do think Kinshuk did put it pretty accurately. But I also think that I mean, like you said, there are several other considerations that you have to take into account and that includes ultimately, where are the assets, where are you going to go to enforce this award that you have? What kind of nationality are the Parties? Perhaps if they're predominantly Indian or are very familiar with Indian, I've also had very successfully, actually we've got, we've negotiated, you know, a cross-border

transaction agreeing to MCIA and a Mumbai seat. So I mean, it is it is there are many, there are very many considerations and it ultimately depends on what is that transaction, what is the nature of the dispute that is likely to arise from that transaction. And I think those are very important when you decide.

RAMESH KUMAR: I think one consideration is and that's a real consideration. I mean, I missed mentioning it, you can't enforce a Singapore seated emergency award in India, you can't enforce Tribunal issued interim order out of a Singapore arbitration in India and sometimes that can be a real challenge. And that may be one of several considerations for which you may choose an India seat, but I mean there are several considerations.

KARTHIK SOMASUNDRAM: Other issues. Yeah, correct. Dawn and Ramesh, coming to you guys, the last one. What would you and you've heard the Indian counterparts and they would strongly recommend Singapore perhaps as still even today as a first port of call but considerations may change. But if one were to ask you what would you expect or require the Indian seated jurisdiction to recommend India as a seat for arbitrations to your clients in this corridor?

DAWN TAN LY-RU: You know, first of all, let me say that Singapore brings its own value proposition to the table. The cost arbitrage aside, I think that neutrality, transparency and so-called trust premium I think they do count for quite a bit. So, if you're talking about what would make India attractive as a seat, I would suppose we have to deal with enforcement considerations. So, immediate enforcement would be a definite plus, perhaps bypassing Section 48, leading to public policy exceptions, noting the interesting decision of *Nagaraj* which perhaps had the unintended decision of driving more disputes to be arbitrated in Singapore.

KARTHIK SOMASUNDRAM: Yes.

DAWN TAN LY-RU: Statutory protections for international disputes, exemption from the time caps. For example, an increasingly pro arbitration judiciary which I understand is a work in progress. And yeah, of course lower costs, right? I mean that's something that we struggle with and I mentioned this at the outset of this discussion.

KARTHIK SOMASUNDRAM: Yeah. Ramesh, do you have anything to add?

RAMESH KUMAR: Just to be clear the question is what could India do?

KARTHIK SOMASUNDRAM: What would India do.

2 **RAMESH KUMAR:** Okay, I think I'll just make two points. I think India has its own value
3 proposition. I think I already touched upon confidentiality, so setting aside applications I think
4 that would make. It's a small thing, yeah but I think it would go a long way, especially looking
5 at the type of disputes that one sees today where there's, you know, IP tech. So, that's one
6 thing. The other thing I think is this that every sort of step comes with, it will come with some
7 sacrifice. I think if you open up the bar and I don't think this has anything to really do with the
8 legislation because I think the legislation is quite welcoming, the ecosystem if it's more
9 welcoming of foreign Arbitrators, foreign Counsel, the perception will change, immediately, I
10 think Mumbai will be seen as more cosmopolitan than it is. I'm not suggesting it isn't, but this
11 is about perceptions and that's what is being sold. So, those are my two minor suggestions.

12 **KARTHIK SOMASUNDRAM:** We'll stop on that, on that tricky topic. Do we have some
13 time for questions? No, we're done? Okay, time for coffee? Okay, we'll take one. The boss says
14 we can take one. Yes, anyone has any questions for anybody in the panel, no? Or views because
15 we have a lot of Singaporean. Yes, views as well. Please asking from Singaporean. All right, we
16 are good. Thank you.

17 **ANUSHKA MANSHARAMANI:** With this, we come to an end, to the Singapore-India-
18 Singapore Corridor event. Thank you, to our distinguished speakers for their invaluable
19 perspectives. We will now proceed for a short break. Before we reconvene for the Mumbai
20 debate on the motion, "This House Believes that Million Dollar Infrastructure Disputes should
21 not be Arbitrated." Before that I would request the panel to step forward for a picture. Thank
22 you.