

1st Prize:

Ms. Ridhi Kabra

NALSAR University of Law, Hyderabad

Title: "Defining the contours of a Commercial Arbitral Tribunal: Can ICSID decisions confer an inherent power on the tribunal to regulate appointment of counsels?"

"International arbitration dwells in an ethical no-man's land. There exists no supranational norm of sufficient clarity that allows arbitrators to regulate the behavior of a counsel, whose participation is detrimental to the fair adjudication of the dispute. In such circumstances, if a party appoints a counsel much after the tribunal has been formed, such that the independence and impartiality of the tribunal is put to test, important questions about the scope of inherent powers of the tribunal are raised. Two ICSID decisions have sought to address this problem, by advocating the existence of an inherent power, exercisable under certain circumstances, to terminate the appointment of such a counsel. This paper attempts to expand the use of such a power in the field of international commercial arbitration, in the absence of any codification of law on the issue. The fundamental assumption of this paper is that the power is to be exercised only in situations when the tribunal has been formed and a party has exercised mala fides in appointing a counsel post such formation. It proposes the adoption of a middle path between the two ICSID decisions in order to ensure legitimacy of the arbitral process."

2nd Prize:

Mr. Ritwik Bhattacharya

Gujarat National Law University, Gandhinagar

Title: "Implied Exclusion of Part I of the Arbitration & Conciliation Act: Propounding the Test of Certainty."

"The prevailing position of law in India, on a question that should, in theory, have a straightforward answer is becoming increasingly difficult to resolve: under what circumstances would the jurisdiction of Indian courts be excluded under the Arbitration and Conciliation Act 1966, and what stipulations must contracting parties insert in their agreement to oust the jurisdiction of Indian courts? The focal point of this confusion is centred on the question as to what suffices to trigger this "implied exclusion" of Part I of the Act as laid down by the court in Bhatia International v. Bulk Trading S.A. Nearly a decade after the Bhatia International pronouncement the answer to this is still clouded. The Supreme Court's latest judgment in Yograj Infrastructure v. Ssang Yong Engineering has added to the difficulty.

Though the issue of "implied exclusion" has arisen before the Supreme Court and various High Courts on several occasions, however, no Court has attempted to lay down definite requirements, which if fulfilled would constitute implied exclusion. The issue of "implied

exclusion" has come before the courts in five different forms, depending on, the seat of arbitration, the proper law, the procedural law, and the curial law. Through this paper the authors seek to lay down a definite test that could be followed uniformly, by analyzing various previous decisions that have appeared before the Court on the matter. The soundness of the test will then be examined against the backdrop of the latest case on "implied exclusion" of Yograj Infrastructure v. Ssang Yong Engineering. A uniform specific test as suggested by the authors is much required to add the much needed stability in Indian arbitration laws."

3rd Prize:

Ms. Anjali Anchayil
National Law School of India University, Bangalore

Title: "Bhatia International to Videocon Industries and Yograj Infrastructure: Recasting the Foundations of Arbitration Law in India."

"In 2002, the Indian judiciary changed the face of Indian arbitration through the judgment in Bhatia International v. Bulk Trading S.A. which permitted Indian courts to interfere in arbitral proceedings held outside India unless their jurisdiction was expressly or impliedly excluded. In spite of the heavy criticism it met with, the decision in Bhatia International has held sway for a decade now and has resulted in the creation of a unique jurisprudence on the rule of implied exclusion. This essay analyses these judgments on implied exclusion and argues that the Courts in India have effectively re-laid the foundations of Indian arbitration law through the development of the rule of implied exclusion."

Finalists:

Mr. Jagdish John Menezes
NALSAR University of Law, Hyderabad
Title: "Simplicity, Clarity and Consistency - What the Supreme Court should do in Bharat Aluminium Co. v. Kaiser Technical Services Inc."

"A Constitutional Bench in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., is presently considering the Supreme Court's earlier decision in Bhatia International v. Bulk Trading S.A. [(2002) 4 SCC 105]. The ratio in Bhatia International concerned when Part I of the Arbitration Act, 1996, may be applied to arbitrations that are seated outside India. The Court's 'exclusion' doctrine, that Part I will apply unless expressly or implied excluded by the parties, has been applied subsequently based on varying considerations by the High Courts and the Supreme Court itself, causing great apprehensions among parties, particularly foreign investors as to when the Indian Courts will exercise jurisdiction over their disputes. The decision has also

impacted India's position as an arbitration-friendly jurisdiction, and its ability to resolve commercial disputes in a quick and efficient manner. This piece points out the problems with the 'exclusion' doctrine and proposes that the Court instead resolve this predicament, using simple, clear and consistent criterion. The Court should rely on the seat of arbitration, to decide whether Part I of the Act should apply i.e. where the seat is foreign, Part I will not apply to the dispute. It proceeds to analyze the practical impact of such a decision, and how these may be overcome; acknowledging that certain lacuna in the Act regarding interim relief to the parties may require legislative intervention to be finally resolved."

Mr. R. Harikrishnan

Dr. Ram Manohar Lohiya National Law University, Lucknow

Title: "To be or not to be: The case of non-signatories to Arbitration Agreement - The Indian picture."

"The issue of non signatories to arbitration agreement is a problematic issue as it requires balancing of consensual nature of arbitration and the effectiveness of arbitration as a mode of dispute resolution. This note examines the issue of non-signatories to arbitration agreement under the Indian law. The issue of non-signatories has been addressed from two angles- firstly on the general question of joinder in arbitration proceedings and secondly in the context of interim measures by courts. On the general question of joinder, five decisions of the Supreme Court has been examined, namely Sukanya Holdings, Indowind, S.N. Prasad, Deutsche Post Bank and P.R. Shah. These decisions, except P.R. Shah, show reluctance on the part of the court to associate non-signatories in arbitration proceedings. On the question of non-signatories in the context of interim measures, the position is far from clear. As the Supreme Court is yet to decide this issue, the decisions of the High Courts are examined. While the Bombay and Gujarat High Courts have allowed interim measures against third party, the Kerala and Calcutta High Courts have refused to do so. The Delhi High Court has taken a mixed view on this matter. The concluding part of this note gives suggestions to address the issue of non-signatories including an amendment to Section 2(h) of the Arbitration and Conciliation Act, 1996."

Mr. Kunal Mimani

Gujarat National Law University, Gandhinagar

Title: "Conflict of Law Rules: The Law Applicable to the Arbitration Agreement."

"Arbitration, though intended to be detached from the idiosyncrasies of the conventional court system, is not completely detached from the web of laws. There are various aspects of an international arbitral process which generally mandate the applicability of different laws. The parties are at liberty to choose these laws; problem arises when they do not. Who makes the choice for the parties when they fail to do so? Importantly, how is such a choice supposed to be made? The focus of this paper is going to be on the law applicable to the arbitration agreement."

Very often, upon the commencement of the proceedings, a challenge is made to the validity and enforceability of the arbitration agreement itself. As an arbitral tribunal derives its jurisdiction from this arbitration agreement, it becomes important to settle this issue which goes to the very root of the arbitral process. The validity of the arbitration agreement is tested under the law applicable to it. Thus, determination of such law becomes an imperative task. This paper focuses on the connecting and guiding factors which aid in arriving at such a decision. International and domestic legal instruments and case-laws which speak on this issue will also be examined. The international legal community seems to be divided upon the question as to which holds a greater value in relation to the arbitration agreement – the law of the seat of arbitration or the proper law of the contract? This paper debates for and against the application of both factors."