



IN THE SEAT: SUMEET KACHWAHA

Sumeet Kachwaha is one of India's top arbitrators, and enjoys an excellent reputation for his arbitration skills. He figures as a Leading Individual in Asia Pacific Legal 500, and was one of two from India named in the International Who's Who of Commercial Arbitration 2012 by the esteemed Global Arbitration Review. He also sits on the KLRCA Advisory Board. In this exclusive interview, Mr Kachwaha provides his views and outlook on the evolving landscape of arbitration in the region.



How did you begin your career in arbitration?

I guess it started in right earnest in the late 90's when I got involved with two major arbitrations from US and UK. We worked alongwith a top tier US firm and a U.K. Magic Circle firm. The stakes were high and the matters interesting. The opening up of the Indian market and the new Arbitration & Conciliation Act in 1996, made this a happening branch and I embraced this chapter of my legal career.

What would you say have been the major changes in the arbitration market compared with when you began practising?

It is a new ball game now. India has changed and so has the arbitration market. Indeed the change is at the global level. The (UNCITRAL) Model Law of 1985 and the more visible presence of the arbitral institutions has contributed to the growth of the arbitration bar and the arbitration market. A new arbitration jurisprudence has taken shape. If one attends the IBA (or any other law association) conference, one would notice that the arbitration committee is amongst the most active ones.

What do you enjoy most about working in the arbitration field?

For me, the most satisfying aspect is that parties have their day in “court”. In a regular civil court one is generally at the mercy of the judge, his moods, pleasures and priorities. In India, case management is very poor and you have little idea when your case may be heard and to what extent. In an arbitration, you are more in control and have at least one assurance that you would have reasonable opportunity to put across your views before an open minded tribunal. This comes from the nature of arbitrations and the fact that parties have some role in its constitution. Secondly, arbitration is the only mechanism for a dispute resolution lawyer to be of assistance to his client in any jurisdiction. An arbitration can take place anywhere in the world but the lawyer will always be at home!

Tell us about your journey to the top. What were the challenges that you faced?

To begin with, I cannot call it a journey to the top. Yes, it is a journey (and hopefully will remain one). I miss the absence of an arbitration bar and lack of trained arbitrators (who understand the best practices for efficient arbitrations). Further, in India most arbitrations are ad hoc and end up following court procedures. Local arbitral institutions have yet to catch up with the global leaders.

From your experience, what are three important qualities an arbitrator should have?

In an international arbitration, the arbitrator should understand and bridge the cultural divide which may apply to the parties and their advocates. Further, too often, arbitrators get stuck in conducting arbitrations “their way”, (which may take one or the other party by surprise). It is best to clarify to the parties at the threshold how the arbitration will proceed and (to the extent possible) have consensus on procedural issues. Last and the most important is that the arbitrator must try and send back both parties with a feeling that justice was done. This will come naturally if they see fairness in action coupled with an open minded approach.

What is your advice to upcoming arbitrators?

Indian arbitrators must make effort to understand and imbibe the international practices, culture and jurisprudence of arbitration. They need to be on the same page as the international community. Further, serious practitioners must create for themselves a platform to share thoughts and views so that there is a visible growth of the arbitration bar. To the extent possible, they must start participating in international conferences.

Which living persons do you most admire in the legal fraternity and why?

I would say that I admire Mr. F.S. Nariman the most. He was the top litigation lawyer here (in India). *[Editor's note: Mr Fali Sam Nariman is one of India's most distinguished constitutional lawyers, and is considered as one of the living legends in the field of law in India.]* He need not have forayed into arbitrations. The fact that he did so bears testimony to his desire to learn and venture beyond his known territory. Despite India being nowhere near a centre for arbitration, through sheer brilliance and gifted qualities he became a leader in the arbitration bar, gaining recognition and respect not only for himself but for his country. As all great personalities, he wears his success lightly on his shoulders and with minimum fuss, continues to contribute to the growth and development of the law.

I consider it a privilege to have worked closely with him in some of the largest and significant cases to come up before courts.

What is the potential growth of arbitration industry in South Asia, and India in particular?

Let me first talk of India. In India, the commercial courts are so badly clogged that arbitration mechanism is a matter of necessity. However, the perception is that India suffers in comparison with some of the more sophisticated arbitration centres. Thus, arbitrations have started getting shifted outside. This needs to be overcome in order for us to achieve our potential.



As far as rest of East & South Asia is concerned, the balance of international trade and commerce is tilting here and it is but natural that parties would wish their disputes to be resolved here. Indeed, the process has started and it is only a matter of time for it to gain momentum. Therefore, I see exponential growth in the arbitration industry in the region.

In your opinion, how can India and Malaysia work together in promoting arbitration and ADR in ways that can benefit parties from both countries?

India and Malaysia have geographical proximity, cultural ties and share the Common Law heritage. I was very happy to see the recent initiative taken by the KLRCA in coming to India with two excellent seminars and also meeting up with the Indian judiciary. This sort of an exchange is invaluable in building mutual trust. The process may take a while but it is certainly worth pursuing in our mutual interest.

What do you think the key challenges will be for arbitrators in the Asia-Pacific region and what can arbitral institutions do to help?

In India, the key challenge for arbitrators is “acceptability”. Most arbitrations here end up before retired judges (as they carry the brand of independence and impartiality into their post retirement). But this is not a healthy practice. Retired judges are too stuck in court procedures. They are not in tune with the best arbitration practices and consequently arbitrations drag on.

Meanwhile, non-Judge arbitrators face an uphill task. They need recognition and acceptability. Therefore, we have to emerge from this “Catch 22” situation. Here the arbitral institutions have a key role to play. Indeed arbitrators and arbitral institutions have a symbiotic relationship - they strengthen each other.

I look forward to the growth, development, recognition and acceptability of the arbitration bar and the arbitral institutes in the Asia Pacific region.

Sumeet Kachwaha is the founding partner of Kachwaha & Partners, a leading Indian firm in dispute resolution and arbitration. He has handled landmark and high-stake disputes (including a large number of cross-border disputes). Mr Kachwaha figures in Band One in the litigation and the arbitration section of Chambers Asia 2009, 2010 and 2011. He also figures as a ‘Leading Individual’ in Asia Pacific Legal 500 for Dispute Resolution and in the World’s Leading Commercial Arbitration Experts. He also figures in the Who’s Who Legal in three Sections viz; Procurement, Construction and Arbitration. Mr Kachwaha is currently Vice President of Asia Pacific Regional Arbitration Group (APRAG) and sits on KLRCA’s Advisory Board.