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The International Comparative Legal Guide to:

International Arbitration 2019

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A practical cross-border insight into international arbitration work

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Caroline Collingwood
Rachel Williams

CEO
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Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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India

Sumeet Kachwaha

Dharmendra Rautray

Kachwaha and Partners

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

No particular form is required by law. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement need not necessarily use the word "arbitration" or "arbitral tribunal" or "arbitrator". The agreement, however, must be in writing. The arbitration agreement shall be deemed to be in writing if it is contained in an exchange of letters or other means of communication which provide a record of the agreement. Further, the agreement need not be signed and an unsigned agreement affirmed by the parties' conduct would be valid as an arbitration agreement. An arbitration agreement would also be considered to be in writing if there is an exchange of a statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. By an amendment to the Arbitration Act (not applicable to arbitrations which have commenced prior to 23 October 2015), it stands clarified that such agreements can also include communication through electronic means. [Section 7 of the Arbitration and Conciliation Act, 1996 ("Act").] A recent judgment of the Supreme Court of India dated 10 April 2019 states that where an arbitration clause is contained "in a contract", it becomes a contract only if it is enforceable in law. Under the India Stamp Act, an agreement is not enforceable in law unless it is duly stamped. Hence, such unstamped agreements would not be enforceable in law. This is, however, a curable defect (curable upon payment of the stamp duty and penalty). (*Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Engineers Ltd.*)

1.2 What other elements ought to be incorporated in an arbitration agreement?

From an Indian point of view, the most significant element would be the seat of arbitration, for that would determine which part of the Act would apply to the proceedings and the court which would have jurisdiction in relation thereto. Domestic arbitrations are governed by Part I of the Act, while off-shore arbitrations are governed by Part II of the Act. While Part I contains a comprehensive scheme for the conduct of arbitration (based on the Model Law), Part II is essentially confined to the enforcement of foreign awards (on the basis of the New York Convention). A long-ranging controversy in India has been whether Indian courts can grant interim relief in relation to foreign arbitrations (in the absence of any enabling statutory provisions in Part II). This now stands as settled, with the 2015 amendment to the Act clarifying that courts would have jurisdiction to grant interlocutory relief (in aid of foreign-seated arbitrations), as well as assistance in summoning witnesses, production of documents, etc.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

Section 8 of the Act states that a judicial authority before which an action is brought, in a matter which is the subject matter of an arbitration agreement, shall refer the parties to arbitration – the only condition being that the party objecting to the court proceedings must do so no later than his first statement on the substance of the dispute. In the meantime, the arbitration proceedings may commence and continue, and an award can be rendered. The Supreme Court of India has held in *Rashtriya Ispat Nigam Ltd. v. Verma Transport Co.* – (2006) 7 SCC 275 that once the conditions of the Sections are satisfied, the judicial authority is "statutorily mandated" to refer the matter to arbitration. Section 5 supplements this and provides, through a non-obstante clause, that in matters governed by the Act, no judicial authority shall interfere except where so provided for. This position stands further affirmed by the 2015 amendment to the Act which nullifies certain judgments which had created inroads into Section 8. The Section now has a non-obstante clause requiring the Court to refer the parties to arbitration, unless it finds that *prima facie* no valid arbitration agreement exists. However, Section 8 applies only to arbitrations where the seat is in India. Agreements for off-shore arbitrations are governed by Section 45 of the Act, which is somewhat differently worded. Here it is provided that a judicial authority, when seized of any matter where there is an arbitration agreement, shall refer the parties to arbitration – "*unless it finds that the said agreement is null and void, inoperative or incapable of being performed*". The latter part is borrowed from Article 8 of the Model Law. Thus, India has retained court intervention (to the extent permitted by the Model Law) only in relation to foreign arbitrations. An issue arose in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* – (2005) 7 SCC 234, as to whether a ruling by court (in relation to off-shore arbitrations) on the validity or otherwise of an arbitration agreement is to be on a *prima facie* basis or is to be a final decision. If it were to be a final decision, it would involve a full dress trial and, consequently, years and years of judicial proceedings, which would frustrate the arbitration agreement. Keeping this and the object of the Act in mind, the Supreme Court, by a 2:1 decision, held that a challenge to the arbitration agreement under Section 45 on the ground that it is

"*null and void, inoperative or incapable of being performed*" is to be determined on a *prima facie* basis.

At the same time, an issue would remain as to what is to be done in cases where the court does in fact come to a conclusion that the arbitral agreement is null and void, inoperative or incapable of being performed. A decision to this effect is appealable under Section 50 of the Act. Thus, a ruling on a *prima facie* view alone would not be satisfactory. One of the judges addressed this and held that if the court were to arrive at a *prima facie* conclusion that the agreement is in fact null and void, it would have to go ahead and hold a full trial and enter a final verdict (in order that it can be appealed if need be). Therefore, in such a situation, a foreign arbitration may well come to a halt pending final decision from an Indian court, but otherwise Section 45 proceedings would not have any significant impeding effect on progress of a foreign arbitration.

A recent case of seminal importance is *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.* – (2013) 1 SCC 641. Here, the court was faced with a situation where parties to a joint venture had entered into several related agreements – some with different entities from amongst their group. These agreements had diverse dispute resolution clauses: some with ICC arbitration in London; some with no arbitration clause; and one agreement with an AAA arbitration clause with Pennsylvania (USA) as its seat. The Supreme Court strongly came out with a pro-arbitration leaning stating that the legislative intent is in favour of arbitration and the Arbitration Act "*would have to be construed liberally to achieve that object*". The Court held that non-signatory parties could be subjected to arbitration provided the transactions were within the group of companies and there was a clear intention of the parties to bind non-signatories as well. It held that subjecting non-signatories to arbitration would be in exceptional cases. This would be examined on the touchstone of direct relation of the non-signatory to the signatories, commonality of the subject matter and whether multiple agreements presented a composite transaction or not. The situation should be so composite that performance of the "*mother agreement*" would not be feasible without the aid, execution and performance of the supplemental or ancillary agreements. *Chloro Controls* has been followed in *Ameet Lalchand v. Rishabh Enterprises (2018) 15 SCC 678* and *Cheran Properties v. Kasturi and Sons (2018) 16 SCC 413*.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The Arbitration and Conciliation Act, 1996 (as amended by the Arbitration and Conciliation (Amendment Act), 2015) governs the enforcement of arbitration proceedings relating to domestic and international commercial arbitration conducted in India as well as reference of foreign awards.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

India has a composite piece of legislation governing both domestic and international arbitration. The Act has two main parts. Part I deals with any arbitration (domestic, as well as international), so long as the seat of arbitration is in India. Part II deals mostly with enforcement of foreign awards.

"International commercial arbitration" is defined as an arbitration where at least one of the parties is a national or habitual resident in any country other than India or a body corporate which is incorporated in any country other than India or a company or association of an individual whose "central management and control" is exercised in any country other than India or the Government is a foreign country (Section 2 (1) (f) of the Act). The Supreme Court of India in *TDM Infrastructure Private Limited v. UE Development India Private Limited* has held that if both parties are incorporated in India, then even if the control and management is from outside India, the arbitration would be "domestic" and not "international". The difference between domestic and international arbitration (conducted in India) is discussed below.

The first difference is that if there is a failure of the parties' envisaged mechanism for the constitution of the arbitral tribunal, the appointment shall be made, in the case of a domestic arbitration by the High Court and in the case of international arbitration by the Supreme Court of India.

The second difference is in relation to governing law. In international commercial arbitration, the arbitral tribunal shall decide on the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute and, failing any such designation, the rules of law the tribunal considers appropriate given all the circumstances. In domestic arbitration (arbitration between Indian parties), however, the tribunal can only apply the substantive law for the time being in force in India.

The third difference is that in domestic arbitrations an additional ground for setting aside the award on "patent illegality" has been inserted by the 2015 amendment to the Act. This is not available in international arbitrations seated in India.

The fourth difference after the recent amendment is that any application to the court in an international commercial arbitration shall lie to the High Court, whereas in cases of domestic arbitration it will lie to a court which has original jurisdiction in relation to the matter.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The law governing international arbitration is based faithfully on the UNCITRAL Model Law and the UNCITRAL Rules 1976 (amended in 2010, but which has not yet been adopted by the Indian Legislature). There are a couple of departures designed to keep out court intervention. Thus, for instance, Section 8 of the Act departs from the Model Law in as much as it does not permit a court to entertain an objection to the effect that the arbitration agreement is "*null and void, inoperative or incapable of being performed*". (See also question 1.3 above.)

Section 16 (corresponding Article 16 of the Model Law) also makes a slight departure. Unlike the Model Law, no interim court recourse is permissible if the tribunal declares that it has jurisdiction. In such case, the challenge is permissible only once the final award is passed.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

International arbitration proceedings taking place in India are governed by the same set of provisions as domestic arbitrations.

See question 2.2 above.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The Act states that the relationship between the parties need not be contractual. Hence, disputes in tort (relating to the contract) can also be referred to arbitration. "Generally and traditionally all disputes relating to rights *in personam* are considered to be amenable to arbitration; and all disputes relating to rights *in rem* are required to be adjudicated by courts and public tribunals." *Booz Allen & Hamilton Inc. v. SEBI Home Finance Ltd.* – (2011) 5 SCC 532. Examples of non-arbitrable disputes are: disputes relating to a criminal offence; matrimonial disputes; child custody; guardianship; insolvency; winding up; and testamentary matters. The Supreme Court in a recent decision in *Shri Vimal Kishor Shah & Ors v. Mr. Jayesh Dinesh Shah & Ors*; *AIR* (2016) SC 3889, has now carved out a new category of non-arbitrable disputes, namely disputes arising out of trust deeds and the Trust Act 1882 (i.e. relating to private trusts). This is on the ground of implied exclusion in view of a complete and comprehensive code for dispute resolution under the provisions of the Trust Act, which envisages recourse to civil courts in this regard.

Another (court-sanctioned) approach to determine arbitrability is to see whether the parties can make a settlement regarding their dispute a subject matter of a private contract. (*Olympus Superstructures v. Meena Khetan* – (1999) 5 SCC 651.) The court here relied on Halsbury's Laws of England stating that the differences or disputes which can be referred to arbitration must consist of "*...a justiciable issue, triable civilly. A fair test of this is whether the difference can be compromised lawfully by way of accord and satisfaction*". (4th Edition, volume 2, para. 503.)

Where serious fraud was alleged, the dispute was considered to be non-arbitrable (*N.Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72) and courts refused to refer the parties to arbitration under Section 8 of the Act. The law seemed to take a turn in *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.*, pronounced on 24 January 2014, when the Supreme Court departed from *N. Radhakrishnan* and held that in the case of foreign-seated arbitrations (covered by Section 45 of the Act), the Court can decline to make a reference of a dispute covered by the arbitration agreement only if it comes to the conclusion that the arbitration agreement is null and void, inoperative or incapable of being performed, and not on the grounds that allegations of fraud or misrepresentation are involved. Another decision of the Supreme Court in *Swiss Timing Limited v. Organising Committee, Commonwealth Games 2010, Delhi* – (2014) 6 SCC 677 held *N. Radhakrishnan* to be *per incuriam* and that allegations of serious fraud are arbitrable even in relation to domestic arbitrations. The controversy, however, remains. In a recent case decided by the Supreme Court in *Ayyasamy v. A. Paramasivan and Ors.*, (2016) 10 SCC 386, the Supreme Court clarified that *Swiss Timing* could not have overruled *Radhakrishnan* (as the former was a Section 11 ruling which does not have precedential value). Moreover, while it held that a mere allegation of fraud may not be a ground to nullify an arbitration agreement, there may be cases where a criminal offence is made out or the issue is so complex that it can only be decided by a civil court on appreciation of voluminous evidence which needs to be produced. The Judgment, thus, sets the clock back, at least for domestic-seated arbitrations, and gives room to allow a civil suit to be filed and proceeded with, bypassing the arbitration agreement.

The Supreme Court in *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* (2017) 10 SCC 706 held that tenancy disputes (in the context of eviction of a tenant) are not arbitrable. However, in a subsequent case of *Vidya Drolia v. Durga Trading Company* (judgment date: 28 February 2019), the Supreme Court held that *Himangi Enterprises* states the law too broadly, as it even affects tenancies which have no statutory protection, and referred the issue for consideration by a larger bench.

The Supreme Court in *Emaar MGF Land Limited v. Aftab Singh,* 2018 (6) ArbLR 313 (SC), held that proceedings under the Consumer Protection Act are special remedy proceedings which are not barred by reason of an arbitration agreement. The aggrieved consumer, however, has a right to choose arbitration if he so elects.

High court decisions pending confirmation by the Supreme Court on the issue of arbitrability include judgments from the High Court of Bombay holding copyright disputes as arbitrable while shareholders' "oppression and mismanagement" disputes are not (again, on the ground of specific statutory remedy being provided for). The Delhi High Court has taken a liberal view, holding that debt restructuring disputes may be referred to arbitration despite the existence of a tribunal set up specifically to decide such matters.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

An arbitral tribunal is permitted to rule on its own jurisdiction. This is provided for in Section 16 of the Act, which corresponds to Article 16 of the Model Law. (Also see question 2.3 above.)

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

See question 1.3 above.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

See questions 1.3 and 2.3 above.

Additionally, the issue of jurisdiction can be raised by a party before the court by way of an appeal under Section 37 (2) (a) on the arbitral tribunal refusing jurisdiction. On the other hand, if the tribunal's finding is that it has jurisdiction, it can only be challenged after the award is rendered.

Indian courts have not yet determined the standard of review in respect of a tribunal's decision regarding its own jurisdiction. The likelihood is that challenge to jurisdiction will be unhampered by the otherwise narrow grounds under Section 34, provided it is not a disguised challenge on merits.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

A landmark Supreme Court decision, *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.* (2013) 1 SCC 641, states

the circumstances under which the arbitral tribunal would have jurisdiction over non-signatories to the arbitration. Please see the latter part of question 1.3 above.

Section 8 (as amended by the 2015 amendment to the Act) clarifies that a person claiming "through or under" a party to an arbitration agreement also has locus to ask for dismissal of judicial proceedings initiated in court and seek reference of the dispute to arbitration.

Indian courts have also taken a liberal view as to the consolidation of arbitrations. A Supreme Court decision in *P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.*, (2012) 1 SCC 594 held, *inter alia*, "*if A had a claim against B and C and if A had an arbitration agreement with B and A also had a separate arbitration agreement with C, there is no reason why A cannot have a joint arbitration against B and C*".

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The Limitation Act, 1963 applies to arbitrations in the same way as it does to proceedings in court (Section 43 of the Act). For these purposes, arbitration proceedings are deemed to have commenced (unless the parties have agreed otherwise) on the date on which a request for the dispute to be referred to arbitration is received by the respondent (Section 21 of the Act). The Limitation Act provides that the party invoking the arbitration has three years from the date of commencement of arbitration proceedings to seek appointment of the arbitral tribunal. The courts consider the limitation period as part of the substantive law.

Once time has started to run, no subsequent inability to bring the action stops the time running. However, well-known exemptions apply if:

- In good faith, proceedings are started in a court without jurisdiction.
- The case is based on subsequently discovered fraud or mistake.
- Any document necessary to establish the claimant's right has been fraudulently concealed from him.
- There is written acknowledgment of liability.
- There is a part payment of the debt.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Earlier, the provisions for winding up were dealt with under the Companies Act. Recently, in May 2016, the Ministry of Law and Justice in India introduced the Insolvency and Bankruptcy Code, 2016 ("Code"). The Code seeks to consolidate the laws relating to insolvency and bankruptcy resolution for corporates, limited liability partnerships, partnership firms, individuals, etc. The Code has established an Insolvency and Bankruptcy Board of India ("Board").

Where the insolvency process has been initiated by the creditors/company, the Code prescribes a moratorium against any new or ongoing proceedings.

Where a liquidation order has been made or a provisional liquidator or an official liquidator has been appointed, no suit or other legal proceeding shall be commenced or shall be proceeded with by or against the corporate debtor (subject to prior approval on behalf of the company by the Adjudicating Authority).

However, recent decisions by the Supreme Court and the Delhi High Court have cast ambiguity on the question of whether all legal proceedings shall be barred during the moratorium period under the Code. The Supreme Court in *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.* ("*Alchemist*") (delivered on 23 October 2017) observed that no arbitration proceeding can be initiated after the commencement of the moratorium period under the Code. However, the *Delhi High Court in Power Grid Corporation of India Ltd. v. Jyoti Structures* ("*Power Grid*") (delivered on 11 December 2017) held that the Code only prohibits initiation of debt recovery proceedings against a corporate debtor, and that other proceedings which may benefit or enhance the financial position of the corporate debtor may still be initiated by the corporate debtor during the moratorium period.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

In case of domestic arbitrations, Indian parties can only apply Indian law to the substance of the dispute. In other cases, the parties may either make an express choice of law or the proper law may be inferred from the terms of the contract and surrounding circumstances. It is the law with which the contract is most closely connected. Factors such as the nationality of the parties, the place of performance of the contract, the place of entering into the contract, the place of payment under the contract, etc., can be looked at to ascertain the intention of the parties.

The proper law of the arbitration agreement is normally the same as the proper law of the contract. Where, however, there is no express choice of the law governing the contract as a whole, of the arbitration agreement as such, a presumption may arise that the law of the country where the arbitration is agreed to be held is the proper law of the arbitration agreement. But this is only a rebuttable presumption. (*NTPC v. Singer Co.* – (1992) 3 SCC 551.)

See also question 2.2, last paragraph.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

In respect of procedural matters relating to the arbitration proceedings, the laws of the seat of jurisdiction shall prevail. The court may, invoking the principle of comity of nations, apply the mandatory laws of another jurisdiction if the contract is in breach of that law.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The proper law of arbitration (i.e., the substantive law governing arbitration) determines the formation and legality of arbitration agreements. Please see question 4.1 above.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The law does not impose any limits on the parties' autonomy to

select arbitrators. The number of arbitrators, however, cannot be an even number. An arbitrator need not have any special qualification or training or be a member of the Bar.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

There is a default provision provided for *vide* Section 11 of the Act. The default provisions are triggered if:

- The parties cannot agree on the appointment of an arbitrator within 30 days of receipt of a request to do so.
- Two appointed arbitrators fail to agree on the third arbitrator within 30 days of the date of their appointment.
- The arbitration is to be heard by one arbitrator and the parties fail to agree on that arbitrator within 30 days of receipt of a request to agree on the appointment.
- The parties' mechanism for the appointment of an arbitrator fails.

If the default is in relation to an international commercial arbitration, the appointment shall be made by the Supreme Court of India. In domestic arbitrations, the appointment shall be made by the High Court which has jurisdiction in relation to the matter (determined by where the cause of action arises; or the respondent resides or carries on its business).

The Amendment of 2015 states that the Supreme Court/High Court can delegate powers to any person or institution to appoint arbitrators. (So far there is no delegation of the power to any person or institution.)

An application under Section 11 now has to be disposed of by the Supreme Court or High Court as expeditiously as possible and an endeavour must be made to dispose it within 60 days from the date of service of notice on the opposite party (Section 11 (13), Act). Impliedly overruling a 7 Bench decision in *SBP v. Patel Engineering Ltd.*, AIR 2006 SC 450, the 2015 amendment to the Act states that the courts' role at this stage will be restricted to only *prima facie* examination of the existence of an arbitration agreement (Section 11 (6) A).

5.3 Can a court intervene in the selection of arbitrators? If so, how?

The court can intervene only in a default situation (see question 5.2 above).

After the arbitral tribunal is constituted, the jurisdiction of the court can be invoked only if an arbitrator has become *de jure* or *de facto* unable to perform his functions or fails to act without undue delay. If there is any controversy as to these circumstances, a party may apply to the court for a decision on the same.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

Like Article 12 of the Model Law and Article 10 of the UNCITRAL Rules 1976, the Act also requires the arbitrators (including party-appointed arbitrators) to be independent and impartial and make full disclosure in writing of any circumstance likely to give rise to justifiable doubts on the same (Section 12 of the Act).

Schedule V to the Act lists the kind of relations between an arbitrator and a party/advocate/subject matter of the dispute, which give rise to justifiable doubts regarding an arbitrator's independence.

Schedule VII to the Act lists the kinds of relations between an arbitrator and a party/advocate/subject matter of the dispute, which would, notwithstanding any prior agreement between the parties, disentitle a person from acting as an arbitrator, unless post the dispute arising, parties expressly waive such a conflict.

Schedules V and VII can be said to be along the lines of the IBA Guidelines on Conflicts of Interest.

An arbitrator can be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not possess the qualifications agreed to by the parties. Subject to any agreement between the parties, any challenge shall be made within 15 days of a party becoming aware of the constitution of the tribunal or becoming aware of the circumstances leading to the challenge. The arbitral tribunal shall decide on the challenge. The court has no role at that stage and if a challenge is rejected, the arbitral tribunal shall continue with the proceedings and render its award. It would be open to the party challenging the arbitrator to take any wrongful rejection of challenge as a ground for setting aside the award.

The Indian courts have held that "the apprehension of bias must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision". (*International Airports Authority of India v. K.D Bali* – (1988) 2 SCC 360.)

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

The arbitrators are masters of their own procedure and, subject to the parties' agreement, may conduct the proceedings "in the manner it considers appropriate" (Section 19). This power includes "the power to determine the admissibility, relevance, materiality and weight of any evidence" (Section 19). The only restraint on them is that they shall treat the parties with equality and each party shall be given a full opportunity to present its case, which includes sufficient advance notice of any hearing or meeting. Neither the Code of Civil Procedure, 1908 (CPC) nor the Indian Evidence Act, 1872 (Evidence Act) applies to arbitrations. Unless the parties agree otherwise, the tribunal shall decide whether to hold oral hearings for the presentation of evidence or for arguments or whether to conduct the proceedings on the basis of documents or other material alone. However, the arbitral tribunal shall hold oral hearings if a party so requests (unless the parties have agreed that no oral hearing shall be held).

The arbitrators have the power to proceed *ex parte* where the respondent, without sufficient cause, fails to communicate his statement of defence or appear for an oral hearing or produce evidence. However, such failure shall not be treated as an admission of the allegations and the tribunal shall determine the matter on evidence, if any, before it. If the claimant fails to communicate his statement of claim, the tribunal shall be entitled to terminate the proceedings.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

See question 6.1 above. The other procedural steps are mostly as envisaged under the Model Law and UNCITRAL Rules, 1976.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

The conduct of Indian registered advocates is governed by the Rules of the Bar Council of India and the Advocates Act, 1961. These also govern the conduct of Indian advocates in arbitral proceedings sited elsewhere. There are no provisions guiding the conduct of foreign counsel in arbitrations sited in India.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

Apart from the provisions envisaged under the Act, the arbitrators are bound by the fundamental principles of natural justice and public policy in conducting the arbitration proceedings.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Foreign lawyers have no right of audience before Indian courts. However, they can appear and represent clients in arbitration proceedings. This is not an absolute right. They are not permitted to set up offices in India and can only appear in arbitrations on a fly-in, fly-out basis. Further, the arbitration must be one governed by the Indian Arbitration Act (i.e. commercial disputes).

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are none.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

No, the courts have no such jurisdiction. In relation to both India-seated and foreign-seated arbitrations, parties can, with the approval of the arbitral tribunal, seek the court's assistance in taking evidence. The court may issue summons to witnesses or order that evidence be provided directly to the arbitral tribunal (Section 27).

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

This is provided for *vide* Section 17 of the Act. A party may, during the arbitral proceedings or at any time after the making of the award but before it is enforced, apply to the tribunal for grant of interim measures. Prior to the 2015 amendment, the orders of the tribunal were not enforceable without recourse to a separate court proceeding. However, the new Act states that the tribunal shall have the same power as is available to a court under Section 9 and an interim order passed by an arbitral tribunal would be enforceable in the same manner as if it were an order of the court. Any disobedience of such order can result in contempt of court.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Section 9 of the Act enabled a party to approach a competent court for any interim relief before or during the arbitral proceedings or even after the award is pronounced, but before it is enforced. The Model Law, in fact, has a more restrictive provision – it does not contemplate recourse to a court for an interim measure after the award is pronounced (Article 9). This, however, now stands curtailed as explained below.

After the Amendment of 2015, the court is retrained from entertaining an application under Section 9 once the tribunal has been constituted, unless circumstances exist which may not render the remedy provided for under Section 17 efficacious (Section 9 (3), Act). The aim is to empower the tribunal and keep court intervention out.

The Supreme Court, in the case of *Sundaram Finance v. NEPC* (1999) 2 SCC 479, held that if a court is approached before the arbitral proceedings are commenced, the applicant must issue a notice to the opposite party invoking the arbitration clause or, alternatively, the court would have to be first satisfied that the applicant shall indeed take effective steps to commence the arbitral proceedings without delay. Further, the court would have to be satisfied that there exists a valid arbitration agreement between the parties.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

Usually a three-fold approach is followed: (i) existence of a *prima facie* case in favour of the applicant; (ii) irreparable hardship, i.e. which cannot be compensated in terms of money; and (iii) balance of convenience.

Indian courts are somewhat liberal in granting interim relief and rarely hold an applicant to terms such as security or costs.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Injunctive relief is governed by the provisions of the Specific Relief Act and an interlocutory relief in relation thereto is governed by the

provisions of the Code of Civil Procedure. Interlocutory relief is granted on the principles highlighted in question 7.3 above. The same principles would apply to an anti-suit injunction. The leading case is *Modi Entertainment Network v. W.S.G. Cricket Pte Ltd.* (2003) 4 SCC 341. The Supreme Court here crystallised the principles for granting an anti-suit injunction. The court must be satisfied that the party against whom the injunction is sought is amenable to the personal jurisdiction of the court. Further, if the injunction is declined, the ends of justice will be defeated. The court will also take into account the principles of comity.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

The arbitral tribunal can order security for costs (by way of deposit) that it expects to be incurred in relation to the claim or counterclaim (Section 38, Act).

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

Under the amended Act, the tribunal shall have the same powers that are available to a court under Section 9 and the interim orders passed by an arbitral tribunal would be enforceable in the same manner as if it were an order of the court. Hence, subject to any stay an aggrieved party may obtain from an appellate court, the interim measures ordered by an arbitral tribunal are to take immediate effect and be enforced through court process (should the need so arise). There is no precedent so far as to the scope of judicial review insofar as the appellate court is concerned. See question 7.1 above.

There is, however, no parallel provision for enforcement of interim measures ordered by a foreign-seated tribunal.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

Section 19 of the Act states that the arbitral tribunal shall not be bound by the provisions of the Evidence Act. However, decided cases have held that certain provisions of the Evidence Act, which are founded on fundamental principles of justice and fair play, shall apply to arbitrations.

Hence, "fundamental principles of natural justice and public policy" would apply, though the technical rules of evidence contained under the Indian Evidence Act would not apply (*State of Madhya Pradesh v. Satya Pal* – AIR 1970 MP 118).

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

Section 27 of the Act provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the court for assistance in taking evidence, including any disclosure, discovery or attendance of witnesses. Hence (unless the parties voluntarily comply), disclosure/discovery/attendance of witnesses can only be ordered through the court and in accordance with the provisions of the CPC.

Indian courts do not encourage wide requests for discovery. Generally, courts would order discovery if satisfied that the same is necessary for a fair disposal of the matter or for saving costs.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

Please see question 8.2 above.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

The Indian Oath's Act, 1969 extends to persons who may be authorised by consent of the parties to receive evidence. Thus, this Act encompasses arbitral proceedings as well. Section 8 of the said Act states that every person giving evidence before any person authorised to administer an oath "shall be bound to state the truth on such subject". Thus, witnesses appearing before an arbitral tribunal can be duly sworn by the tribunal and be required to state the truth on oath, and, upon failure to do so, commit offences punishable under the Indian Penal Code. Witnesses are generally required to give evidence by sworn affidavits (witness statements). However, a mere irregularity in the administration of an oath or affirmation does not invalidate the proceedings (Section 7, Indian Oaths Act, 1969).

The right of cross-examination would necessarily have to be granted as a principle of fairness. If cross-examination is not possible (say, due to subsequent death of a witness), the affidavit is disregarded.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

The arbitral proceedings or record is not privileged. Indian law under the Indian Evidence Act, 1872 (Sections 122–129) recognises the following as privileged: (i) lawyer-client communications; (ii) unpublished official records relating to affairs of the State if detrimental to public interest; (iii) communications between husband and wife (during and even when the marriage is over); and (iv) communications made to a public officer in official confidence when he considers that it would be detrimental to public interest. All of the above are capable of waiver by the party affected.

Indian law provides that no attorney shall be asked to disclose any communication made to him by his client in the course of and for the purpose of his employment. There are some exceptions to this rule. For instance, there is no privilege if the communication is made in furtherance of an illegal purpose or if the attorney observes that some crime or fraud has occurred after commencement of his employment.

Privilege cannot be extended to in-house counsel, as a lawyer is required to give up his certificate of practice (the same is suspended) so long as he is in full-time employment. (The relationship switches from a lawyer/client one to an employer/employee one.)

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contain reasons or that the arbitrators sign every page?

An arbitral award must be in writing and signed by the arbitrators (or a majority of them) and state the date and place of arbitration. It shall state reasons upon which it is based, unless the parties have agreed otherwise (Section 31, Act).

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

The arbitral tribunal's powers to clarify, correct or amend an arbitral award are limited. The arbitral tribunal may, on its own initiative or on application of a party, correct any computation, clerical, typographical or any other errors of a similar nature occurring in the award within 30 days from the date of the award (Section 33(4), Act). A time limit of 30 days is prescribed in this regard.

Parties may by agreement request the tribunal to give an interpretation of a specific point or part of the award, or request for an additional award as to claims presented in the proceedings but omitted from the award. The time limit for such an application is also 30 days.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

A challenge to an arbitration award would lie under Section 34 of the Act, corresponding to Article 34 of the Model Law. To paraphrase, an award can be set aside if:

(a) the party making the application was under incapacity;

(b) the arbitration agreement was not valid under the law agreed to by the parties (or applicable law);

(c) the party making the application was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(d) the award deals with a dispute not contemplated by or falling within the terms of submissions to arbitration or it contains decisions beyond the scope of the submissions to arbitration;

(e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;

(f) the subject matter of the dispute was not capable of settlement by arbitration; or

(g) the arbitral award is in conflict with the public policy of India.

The Amendment of 2015 has clarified that an award is said to be in "conflict with the public policy of India" only if:

i) the making of the award was induced or affected by fraud or corruption or was in violation of Sections 75 and 81 (pertaining to breach of confidentiality of constitution or settlement proceedings);

ii) it is in contravention with the fundamental policy of Indian law; or

iii) it is in conflict with the most basic notions of morality or justice.

Prior to the amendment, the Supreme Court in *ONGC v. Saw Pipes* (2003) 5 SCC 705 had held that a domestic award can be set aside if it is "patently illegal", i.e., if the award is contrary to the terms of the contract entered into between the parties or the substantive law. The amendment has narrowly construed the "public policy" ground as stated above. Further, it stands clarified that the ground of "patent illegality" is not available in an international commercial arbitration (seated in India). Secondly, an award can be set aside for being patently illegal only if the same is apparent on the face of the award. Thirdly, a challenge on the ground of public policy and whether an award contravenes the "fundamental policy of Indian Law" will not entail a review on the merits of the dispute (thus overruling the controversial Saw Pipes Judgment). It has also clarified that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

Prior to the amendment, the mere filing of a Section 34 Application to set aside the award would result in automatic stay of the enforcement of an award. However, under the new Act this is not the case. A separate application is now required to be made to stay the enforcement of the award during the pendency of the Section 34 proceeding.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

Though the Act is silent on the point, in law it may be possible to exclude certain grounds of challenge, but judicial review as such cannot be excluded as that would be contrary to the public policy of India and would be considered to be a restraint on legal proceedings (which is prohibited in law).

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No, the courts cannot assume a new jurisdiction (which it otherwise does not have) on the basis of the parties' agreement.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

An application for setting aside a domestic award can be filed under Section 34 of the Act. Such application must be made within three months from the date of receiving the award. The court, if satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, may condone a delay of a further period of 30 days but not thereafter. There is no provision to set aside a foreign award (the only provision being to enforce or refuse to enforce the same on the New York Convention grounds). The Supreme Court in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services* (*supra*) has overruled an earlier controversial decision which permitted Indian courts in certain circumstances to entertain and set aside application of foreign awards.

The 2015 amendment to the Act calls for expeditious disposal of a challenge to the award and in any event within one year from the date on which notice has been issued to the other party (Section 34 (6), Act).

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Yes. The relevant legislation is the Arbitration and Conciliation Act, 1996. India has made the "reciprocity" and "commercial" reservations under Article I of the New York Convention. As a result, the Central Government of India must further notify the foreign territory as a territory to which the New York Convention applies in order for the foreign award to be enforced. However, an award made in Ukraine after the breakup of the USSR was held to be an enforceable foreign award even in the absence of a separate notification recognising the new political entity as a reciprocating territory (*Transocean Shipping Agency (P) Ltd. v. Black Sea Shipping* (1998) 2 SCC 281).

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No, it has not.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

The general approach is to support the arbitral award – see *Bilendra Nath v. Mayank* (1994) 6 SCC 117. The Supreme Court has held that "the court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal".

In the case of a foreign award, a party seeking enforcement would have to file an application before the High Court where the defendant resides or has assets along with the original award, or a copy duly authenticated, original arbitration agreement, or a duly certified copy, and such evidence as may be necessary to prove that the award is a foreign award (Section 47(1) of the Act). After the amendment, it is only the High Court which has jurisdiction for all matters concerning international commercial arbitration.

See also question 11.5 below.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Subject to any challenge to the arbitral award, the same is enforceable as a decree and in such a situation, the principles of *res judicata* would apply.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

There are two different regimes under the Indian Act for enforcement of an arbitral award. The domestic law regime is covered under Section 34 of the Act, which is based on Article 34 of the Model Law. Enforcement of a foreign award is governed by Section 48 of the Act, which is based on the New York Convention. Section 34 stipulates that an award can be set aside if it is in conflict with the public policy of India. See question 10.1.

Section 48 stipulates that a foreign award will not be enforced if the enforcement would be contrary to the public policy of India.

Indian courts have applied different standards in construing the "public policy" ground in the aforesaid sections. In relation to domestic awards, the Supreme Court in *ONGC v. Saw Pipes* (*supra*) has held that an award will be contrary to public policy "if it is patently illegal" (i.e., an award can be challenged on merits on the public policy ground). However, insofar as foreign awards are concerned, the public policy ground has been narrowly construed. In *Renusagar Power Co. v. General Electric Corporation* (1994) Suppl. 1 SCC 644, the Supreme Court held that "*public policy*" shall be confined to "*the fundamental policy of Indian law or the interest of India or justice or morality*". The rationale for this diversity in approach is noted in the *Saw Pipes* case, *viz*. a foreign award may be questioned in the country in which or under the laws of which it was made. Hence a domestic award would have undergone a more vigorous judicial scrutiny before its enforcement in India.

A recent Supreme Court decision (*Oil and Natural Gas Corporation Ltd. v. Western Geco International Ltd.*, (2014) 9 SCC 263) has narrowly explained the expression "fundamental policy of Indian law" (as a ground to set aside an arbitral award as sanctified by *Saw Pipes*). In the *Western Geco*, the Supreme Court illustratively explained this expression included three concepts: first, the tribunal must adopt a judicial approach; secondly, it must adhere to the principles of natural justice; and thirdly, the decision should not be so perverse or irrational that no reasonable person would have arrived at the same. The court has clarified that these are not an exhaustive enumeration of what would constitute the "fundamental policy of Indian law".

The Amendment Act of 2015 clarifies that a merit-based challenge is no longer available (see question 10.1 above).

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

The law does not require arbitral proceedings to be confidential. If confidentiality is required, it must be provided for in the parties' agreement. However, it is doubtful that such agreement would be effective or valid where large corporate entities or government companies are involved as they must act transparently. To address this, the Arbitration and Conciliation (Amendment) Bill, 2018 proposed to introduce an amendment which would mandate the tribunal and the arbitral institutions to maintain confidentiality as regards all matters pertaining to the arbitration, except the arbitral award. The Bill has, however, since lapsed due to the upcoming General Election.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Yes, it can, there is no bar.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Arbitrators can grant declaratory relief and order specific performance. Damages can only be compensatory in nature. Liquidated damages must also fulfil the test of reasonableness. Punitive damages are not permitted. (Sections 73 and 74 of the Indian Contract Act, 1872.)

13.2 What, if any, interest is available, and how is the rate of interest determined?

Subject to the parties' agreement, the arbitral tribunal may award interest as it deems reasonable from the date of the award to the date of payment. Prior to the amendment, the default rate of post-*pendente lite* interest was 18%. However, now, unless otherwise directed by the tribunal, the award shall carry interest at 2% higher than the current rate of interest (prevalent on the date of award) from the date of the award until the date of payment (Section 7 (b), Act). The provision shall apply only to awards rendered in India.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

- Reasonable costs relating to the fees and expenses of the arbitrators, courts and witnesses.
- Legal fees and expenses.
- Any administrative fees of the institution supervising the arbitration.
- Other expenses incurred in connection with the arbitral proceedings and the arbitral award.

Normally the court or tribunal will follow the general rule while awarding costs, which is that the unsuccessful party will be ordered to pay the costs of the successful party. If the court or tribunal makes a different order, the reasons are to be recorded in writing.

The circumstances under which costs are to be determined are:

i) the conduct of the parties;
ii) whether a party has succeeded partly in the case;
iii) whether the party had made a frivolous counter-claim leading to a delay in the disposal of the arbitral proceedings; and
iv) whether any reasonable offer to settle the dispute is made by a party and refused by the other party. (Section 31-A(3).)

The court or tribunal can order that a party shall pay:

i) a proportion of another party's costs;
ii) a stated amount in respect of another party's costs;
iii) costs from or until a certain date only;
iv) costs incurred before proceedings have begun;
v) costs relating to particular steps taken in the proceedings;
vi) costs relating only to a distinct part of the proceedings; or
vii) interest on costs from or until a certain date.

The tendency of Indian courts and domestic arbitral tribunals has been not to award actual costs. It is to be seen if this will change following the 2015 amendment.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

A domestic award is required to be stamped. The stamp duty depends on the amount involved in the award and varies from state to state. An award relating to immovable property must be registered under the Registration Act, 1908 within four months of its date. Registration fees also vary from state to state and are *ad valorem*.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

The Bar Council of India Rules prohibits lawyers from charging contingency fees or any fees dependent on the outcome of a matter. Hence, there have been no professional funders in the market so far. Investor associations that wish to file class action suits can approach the Central Government through the Ministry of Corporate Affairs for funding.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

No, it has not.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Since 1994, India has signed a total of 84 BITs. Recently, the Government of India has allowed 58 BITs to lapse (subject to the 15-year sunset clause for investments made prior to the termination). For 25 BITs, the Government of India has issued Joint Interpretative Statements in order to align it with the 2015 Model BIT of India (http://investmentpolicyhub.unctad.org/Download/TreatyFile/3560).

India plans to negotiate any further BITs on the basis of the 2015 Model BIT and has recently approved a BIT with Cambodia on the basis of the new Model BIT.

India is not a party to the Energy Charter Treaty.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

The 2015 Model BIT of India has done away with the "most favoured nation" clause. Rather, it has introduced a provision that a breach of a separate international agreement would not constitute the breach of the Standard of Treatment India is obligated to provide to its investors.

Further, the 2015 Model BIT includes a clause for "exhaustion of local remedies". Broadly stated, the investor has to diligently

pursue all judicial or domestic legal remedies for a period of five years before submitting a notice of dispute for initiation of arbitration against India.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

The defence of State immunity is all but disregarded by the national courts in India.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

Civil courts in India are typically bogged down with delays. Arbitrations are thus popular and indeed necessary for commercial dispute. Traditionally, arbitrations are more commonplace in shipping, construction contracts, joint venture agreements and cross-border commercial contracts.

The enactment of the Arbitration and Conciliation (Amendment) Act, 2015 is the most recent noteworthy development. The amendment seeks to restrain judicial intervention and tackle inordinate delays with court-related matters. Many controversial rulings have been watered down or overruled by the amendment including the *Saw Pipes Judgment* (please see also question 10.1 above).

The Union Cabinet, on 7 March 2018, approved for presentation before Parliament an Arbitration and Conciliation (Amendment) Bill, 2018. The Bill has technically lapsed on account of the upcoming General Election (but is likely to be reinstated soon).

The Bill aims to strengthen institutional arbitration by establishing an independent body to lay down standards of practice in arbitration, make the arbitration process more cost-effective and ensure timely disposal of arbitrations.

Some salient features of the Bill are:

- A new Part has been proposed and provides for the creation of an independent body, namely the Arbitration Council of India (ACI), for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms. Its functions include: (i) framing policies for grading arbitral institutions and accrediting arbitrators; (ii) making policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters; and (iii) maintaining a depository of arbitral awards (judgments) made in India and abroad.
- Insertion of Section 29 A modifying the existing time limits and providing that an award in an arbitration, other than international commercial arbitration, must be made within 12 months from the date of completion of the pleadings.
- Statement of Claim and Defence to be completed within a period of six months from the date the arbitrators receive notice in writing of their appointment.

Prior to the aforesaid Cabinet decision, the New Delhi International Arbitration Centre Bill, 2018 was introduced in the Lok Sabha (Lower House of the Parliament of India) on 5 January 2018 and passed on 4 January 2019. However, this Bill has lapsed too due to the upcoming General Election. Pending enactment, an Ordinance was promulgated on 2 March 2019 which provides for the establishment of the NDIAC to conduct arbitration, mediation, and conciliation proceedings and declares the NDIAC as an institution of national importance. The key objectives of the NDIAC include (i) promoting research, providing training and organising conferences and seminars in alternative dispute resolution matters, (ii) providing facilities and administrative assistance for the conduct of arbitration, mediation and conciliation proceedings, and (iii) maintaining a panel of accredited arbitrators, mediators and conciliators.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

LCIA India has, in the past, published a set of "Notes for Arbitrators" to provide guidance to arbitrators conducting arbitrations under its Rules, including on issues relating to management of time and costs. However, LCIA India has now wound up.

On 8 October 2016, the Mumbai Centre for Arbitration (MCIA) was launched with support from the Maharashtra State Government. The MCIA Arbitration Rules include mechanisms for expedited proceedings and interim and emergency relief (including emergency arbitrators). The Rules provide an accelerated procedure for low value or simple disputes, where the Chairman determines whether the expedited procedure is appropriate. The fee structure is in proportion to the value of the sum in the dispute.

Sumeet Kachwaha

Kachwaha and Partners
1/6, Shanti Niketan
New Delhi – 110021
India

Tel *+91 11 4166 1333*
Email: *skachwaha@kaplegal.com*
URL: *www.kaplegal.com*

Sumeet Kachwaha has over 40 years' experience, primarily in dispute resolution (arbitration & litigation). He is ranked in Band One in *Chambers Asia* since 2009 through to 2019 in the Arbitration section. He is also ranked in *The Legal 500 Asia Pacific* in Tier 1 in the Dispute Resolution section as a "Leading Individual". Mr. Kachwaha also featured in GAR's *Who's Who Legal Arbitration, 2017*.

He currently serves as vice president of the Asia Pacific Regional Arbitration Group (APRAG). He also serves on the six-member Advisory Board of the Asian International Arbitration Centre (formerly known as the KLRCA) chaired by the Attorney General of Malaysia. He is a former chair (three-year term) of the Dispute Resolution & Arbitration Section of the IPBA.

Mr. Kachwaha is a frequent speaker in various international forums on dispute resolution and also writes frequently on the subject. The Law Commission of India's Supplementary Report No. 246 for Amendment to the Arbitration and Conciliation Act, 1996 has referred to and relied upon two articles by Mr. Kachwaha.

Dharmendra Rautray

Kachwaha and Partners
1/6, Shanti Niketan
New Delhi – 110021
India

Tel: *+91 11 4166 1333*
Email: *drautray@kaplegal.com*
URL: *www.kaplegal.com*

Dharmendra Rautray completed his LL.M. in 1996 from the London School of Economics and was thereafter called to the England and Wales Bar in 2001. He is a member of Lincoln's Inn. He is a faculty member for the CLE Programme conducted by the New York City Bar, New York. He successfully argued the Constitution Bench matter *Bharat Aluminium Co. Ltd. v. Kaiser Aluminium Technical Services Inc.* before the Supreme Court of India.

Mr. Rautray's main areas of practice are construction arbitrations, litigation, contracts, business transactions and international trade.

Mr. Rautray has authored two full-length books on arbitration published by Wolters Kluwer (2008 and 2018) and several articles published in leading international law journals. He is also a member of the IBA APAG Working Group on Initiatives for harmonising Arbitration Rules and Practices.

Kachwaha and Partners is a multi-discipline, full-service law firm which has offices in Delhi and Mumbai (Bombay) and associate lawyers in the major cities of India. The main office of the firm is in New Delhi, conveniently located next to the diplomatic mission area. It is easily accessible from all parts of Delhi, as well as its suburbs.

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com