

**Establishment of the India centre of the
London Court of International Arbitration (LCIA)
(April 18, 2009 - New Delhi)**

Address by Hon'ble Sh. K.G. Balakrishnan, Chief Justice of India

Dr. H.R Bhardwaj (Union Minister for Law and Justice)

Sir Richard Stagg (British High Commissioner to India)

Jan Paulsson (President, LCIA Court)

Adrian Winstanley (Director General, LCIA)

And Ladies and Gentlemen,

I am happy to be present here for the inauguration of the India centre of the London Court of International Arbitration (LCIA). The LCIA is of course amongst the most well known institutions which facilitate commercial arbitration for business concerns all over the world. The establishment of a regional centre in India is in many ways a testament to the growing importance of our country in the realm of International business and trade.

In the overall economic scenario, the availability of effective dispute-resolution mechanisms is a pre-condition for attracting investors as well as maintaining the confidence of parties involved in commercial transactions. With the continuing expansion of commerce and foreign investment in our country, there will be a steady increase in the demand for legal professionals to represent business concerns in domestic as well as international commercial arbitration proceedings. The need for expedient dispute-resolution is even more urgent for parties involved in infrastructural projects, where delays can lead to substantial monetary losses as well as the frustration of developmental objectives.

In India, the Arbitration and Conciliation Act was enacted in 1996 to replace the older statute that dealt with arbitration. This act was largely based on the *UNCITRAL Model Law* for conducting arbitration proceedings as well as the *New York Convention for Enforcement of Foreign Arbitral Awards*. However, the India statute does make some significant departures from these international instruments, in so far as it provides for a wider range of grounds for challenging arbitral awards before the courts.

At present, a significant proportion of arbitration proceedings involving Indian parties can be characterised as ad hoc in nature. This means that parties in commercial transactions usually frame their own arbitration clauses to decide on aspects such as the location of arbitration, applicable rules and the composition of arbitral panels. However, the awards given in such ad hoc arbitration proceedings are frequently challenged before the courts on technical grounds such as the apprehension of bias on part of arbitrators or the plea that either of the parties was not fully aware of the implications of the applicable rules. The considerable volume of litigation that arises from commercial arbitration proceedings in India is a cause for worry since it frustrates the initial objective of speedy dispute resolution.

In light of these problems, it is desirable to promote the involvement of specialised institutions such as the LCIA for conducting arbitration proceedings. These arbitral institutions offer parties the option of adopting internationally recognised arbitral rules as well as the experienced personnel and infrastructure required for conducting the proceedings. Instead of a situation where the parties in a commercial dispute struggle to agree on the composition of arbitral panels, an arbitral institution makes the choice for them by picking from a pool of experienced arbitrators. Furthermore, the involvement of well-known arbitral institutions also tends to confer a certain degree of legitimacy on arbitral awards when they are examined for the purpose of recognition and enforcement in domestic jurisdictions.

In commercial disputes between parties from different countries, there is always apprehension of a bias in favour of parties belonging to the country where the dispute resolution proceedings are being held. Such apprehension can be effectively mitigated through the involvement of international arbitral institutions, which are perceived to be neutral in such matters.

However, the crucial importance of arbitration proceedings is drawn from the overall orientation of these proceedings. In a commercial arbitration proceeding, the agents for the parties are expected to show a spirit of compromise rather than confrontation. Unlike adversarial litigation, where counsels try to refute each and every argument raised by the other side, in a commercial arbitration emphasis is placed on how the agents for the parties help the panel of arbitrators in arriving at a practical solution. The arbitrator also takes on an active role, nudging the parties towards a solution and proceeds to make an award for giving effect to the same. The parties exercise a considerable degree of control over the proceedings and retain the option of arriving at a negotiated settlement.

Needless to say, the establishment of the LCIA's regional centre here in New Delhi will give an opportunity to many Indian lawyers to represent parties in arbitration proceedings. In the coming years, the members of our bar will hopefully get more and more opportunities to showcase their expertise at the international level. I would like to thank the President and Director-General of the London Court of International Arbitration (LCIA) for inviting me to speak here today.

Thank you
