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EDITOR'S NOTE

Is ADR in India moving in the right track? There was a recent statement by one of the Chief Justice's of a High Court in India that arbitration is being preferred by people because of the inability of the judiciary to deliver justice and unable to come up to their expectations. Courts and governments are looking at mediation to solve backlogging of cases in courts. I think this view has to change. People still have faith in judiciary. ADR and Court should not be acting as adversaries, but rather as partners in the delivery of justice. ADR complements business and commerce. Mediation has a deeper meaning. It is a tool for peace-making and helps improve human relationships. Courts have their role in adjudicating rights and creating precedents.

Let us move ahead in the right direction.

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Evaluative Mediation: The Endless Argument

: JEREMY GORMLY

There are arguments in favour of evaluative mediation. What is occurring at mediation is the resolution of a particular dispute between parties by whatever means will appropriately achieve it. Resolution is the goal not purity of form. There is no reason why other tools cannot be applied in the same process so long as the processes do not conflict and so long as the parties know at the outset that another process might occur. The author tries to analyze the use of mediation techniques in the classic method or evaluative method.

When do mediators get to talk to one another? There are of course various conferences. They produce a lot of useful papers and discussions but time is short. Co-mediators get to talk a little but it is usually about the issue at hand. Even mediators who work in a mediation practice are off mediating and time to discuss is often limited. It must be rare for a mediator to be able to manage the obvious confidentiality issues and ring one another for advice during the mediation. I have not heard of that happening.

In this respect mediators are not unlike counsellors or even judges. They deal with other people's problems but can be quite isolated themselves—an irony for counsellors who so frequently deal with the problems of social isolation.

I am surprised at how rarely mediators can do what doctors, lawyers, engineers and counsellors do and discuss sometimes depersonalized versions of a current problem with a colleague. So far as I can tell that is because mediation usually produces a fairly speedy outcome and it over before the chance to discuss a problem arises. If a mediation is not completed within the day and the parties feel a prospect of settlement coming on, there is an imperative to bring about further mediation meetings sooner rather than later. If there is an "adjournment" of a mediation it is often because there needs to be something quite defined found out or undertaken before the parties can usefully re-convene. That is often a good step with a clarity about it that excludes a need for "discussion". All wait for the outcome. The point is that mediation is generally a resolution of a problem that has a pent-up quality about it so outcomes often come quickly after some blockage has been dealt with. That epitomises the benefits of mediation. It resolves nuggetty problems in a way acceptable to the parties with remarkable speed.

But when mediators do get to talk what do they talk about? It must differ from place to place but in Australia and so far as I can see especially in Sydney at present, there is an ongoing debate about the validity or integrity of evaluative mediation.

I use the term "evaluative mediation" to reflect the way it is being used in the debate – a wide definition. Evaluative mediation occurs when the mediator at some stage during the mediation either by volunteering a view or at the invitation of one or other party usually in private session, expresses a view about a topic – usually a technical topic in the area of special knowledge for which the mediator has been chosen but not necessarily – and where that view is not usually conveyed to any other party.

Classically a mediator does not express a personal opinion to a party. The mediator is detached from the merits. The task of the mediator is to assist the parties to find their way to their own solution. It is a commonplace experience for mediators to be asked "what do you think?" That may be asked even after extensive comments in an opening session about the non-determinative role of the mediator, the impartiality of the mediator and the trust the parties must have that the mediator is not an advocate for any party. The mediator may ask questions of a party in private session, cause a party to re-consider a view they hold, or cause a party to test assumptions. A mediator may even portray parties' arguments in different lights to show the different ways in which another party might look at the same matter.

The debate about evaluative mediation seemed to have arisen in two ways. The first is that in some types of mediation the mediator has been chosen because they hold expertise of some type and a party wants to make use of it to get an evaluation of their position. The second way it has arisen emerges I suspect from what has been perceived to be a defect in the classic model of mediation.

In earlier years in Sydney many mediators had a good classic opening session which would not differ significantly from a modern opening session. After the opening some mediators allowed the parties to negotiate without the mediator's involvement unless there was a problem. I suspect they saw that as a form of impartiality. Alternatively, if more active in style they acted as a messenger shuttling proposals between the parties with little added value other than personal emotional support for the actual disputants. In short in this from of early mediation the mediator took up a role of detachment not only from the issues but from debate that might bring about any suspicion of involvement in the issues.

Not surprisingly those who made frequent use of mediation became impatient with such a passive model of mediation and sought greater "intervention". The arrival of mediators on the scene early this decade – quite visible in Sydney – trained classically but more vigorous in style, made an impact. The new mediator had usually experienced a lot of mediation. They were generally more controlling of the events of the day. They would frequently insist on being informed of every proposal or offer, being present at every discussion between parties and above all, willing to become involved in quite active discussion of the issues in private session. They made the earlier style seem uninvolved. The newer style overcame the view that the mediator was an assistant to the process rather than a participant in it. It may be that this new style was never or rarely evaluative but it looked evaluative. It certainly seemed to be value adding in a way that the more passive style had not.

It is hard to detect when a change occurred. My guess is that it was shortly after the arrival of the more participatory mediators on the scene – so there may be a connection. But the regular users of mediation (and this was very obvious where litigation had commenced), sought what they variously called "interventionist mediators", "pushier mediators" "active mediators" or more bluntly mediators who would read the riot Act to unreasonable parties. Mediators of any type may not have been happy with these expectations but there was a clear expression of market preference. Mediation of course even in the most classic mould, need not be passive or lacking vigour. It can be a vigorous process especially where there is unreasonableness. Generally however, it is seen as polite, quieter and more contemplative than say arbitration or a court hearing. It is common to hear stories of the person who enters mediation thinking they can cross examine, make speeches or act adversarially. So far as one can tell the response to this apparent market demand was a more vigorous approach and the entry of evaluative techniques into classic mediation.

A classicist may assert that there is no such thing as evaluative mediation. If it's evaluative it's not mediation. If private evaluation is sought the party should go to an evaluator or the process should be called conciliation not mediation.

There are arguments in favour of evaluative mediation. What is occurring at mediation is *not about* mediation – it just uses mediation. The event is the resolution of a particular dispute between parties by whatever means will appropriately achieve it. Resolution is the goal not purity of form. There is no reason why other tools cannot be applied in the same process so long as the processes do not conflict and so long as the parties know at the outset that another process might occur. You cannot have an arbitrator giving private evaluation. The two things conflict. An arbitrator determines questions and must be open until award is delivered. That is inconsistent with giving an opinion to one party. You ought not be evaluating in mediation unless all parties know at the outset that you might do that. It needs to be in the mediation agreement.

One limitation may be that a mediator should not express a view about the ultimate matter in issue or about the merits of the claim being pressed or defended. If a party thinks the mediator shares a view on the merits of their claim it will cause them to think that they have a partisan on their side. The situation may be different if expressing a negative view. It may be reasonable to say to one party if asked "On my assessment you are unlikely to be successful" but quite inappropriate to say "You will be successful" or "Right is on your side".

Good mediation technique should bring parties to their own realization without evaluation by the mediator. There are situations however where there is a blockage caused by face, obstinacy or ignorance or by error or assumption – and an evaluative word may make the difference. Should it be ruled out?

(Author: Jeremy Gormly is a Senior Counsel and a qualified mediator in Sydney. He was appointed the Chair of the National Alternate Resolution Advisory Council to the Commonwealth Attorney-General in 2011.)

Article

Scope of Specific Question Doctrine and Related Issues in Arbitration Law

: OM PRAKASH GAUTAM & AMIT KUMAR PATHAK

The applicability of Part I of the Indian Arbitration & Conciliation Act relating to domestic arbitration was also made applicable to international arbitrations by certain judgments. The authors try to critically analyze the issues and applicability of Part and Part II of the Arbitration Act with the help of the principles laid down by the Supreme Court in various leading judgments like Dozco India (P) Ltd., Venture Global Engineering and Thawardas Pherumal.

Implied Exclusion of the applicability of Part I of the Arbitration and Conciliation Act, 1996.

Supreme Court in Bhatia International v. Bulk trading S.A[1] held that, "*The provisions of Part I would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of Part I would compulsory apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail.*" And it concluded that "*Part I is to apply also to international commercial arbitrations which take place out of India, unless the parties by agreement, express or implied exclude it or any of its provisions*".

Implied exclusion of the application of Part I is been recognized by the Supreme Court. In Indtel Technical Services Private Ltd. v. W.S. Atkins Rail Ltd.[2], the parties had not chosen the law governing the arbitration procedure including the seat/ venue of arbitration and it was, therefore, that the Court went on to exercise the jurisdiction under Section 11(6) of the Act. It was specifically found therein that there was no exclusion of the provisions of the Act by the parties either expressly or impliedly, which is clear from the observations made in the paragraph 37 of that judgment. In the Venture Global Engineering v. Satyam Computer Services Ltd. & Anr.[3], it held that, "*Part I of the Act is applicable to the Award in question even though it is a foreign Award, as there was no implied*

(Footnotes)

[1] Bhatia International v. Bulk trading S.A., AIR 2002 SC 1432

[2] Indtel Technical Services Private Ltd. v. W.S. Atkins Rail Ltd., 2008 (10) SCC 308, 2008 (11) SCALE 735

[3] Venture Global Engineering v. Satyam Computer Services Ltd. & Anr., AIR 2008 SC 1061

exclusion of Part I." In the Citation Infowares Limited v. Equinox Corporation[4], it held that, "*In the present matter it cannot be said that there was any implied exclusion of the provisions of Part I.*"

In the recent decision (Date of Judgment: 08/10/2010) of M/s Dozco India (P) Ltd. Vs. M/s Doosan Infracore Co. Ltd.[5], the Supreme Court held that, "*in the case, the law governing the arbitration will be Korean law and the seat of arbitration will be Seoul in Korea, there will be no question of applicability of Section 11(6) of the Act and the appointment of Arbitrator in terms of that provision. This amounts to an "express exclusion" of Part I the Act. The law laid down in Bhatia International v. Bulk Trading S.A. and Anr. and Indtel Technical Services Private Ltd. v. W.S. Atkins Rail Ltd. and also in Citation Infowares Ltd. v. Equinox Corporation is not applicable to the present case.*" The Hon'ble Court reaffirmed the view of Sumitomo Heavy Industries Ltd. v/s ONGC Ltd. which adopted the view of the London Court of Appeal that "*All contracts which provide for arbitration and contain a foreign element may involve three potentially relevant systems of law: (1) the law governing the substantive contract; (2) the law governing the agreement to arbitrate and the performance of that agreement; (3) the law governing the conduct of the arbitration …*" observed, to ascertain whether the applicability of part – I was excluded it was necessary to see:

1. The proper law of contract, i.e. the law governing the contract which creates the substantive rights of the parties, in respect of which the dispute has arisen.
2. The proper law of the arbitration agreement, i.e. the law governing the obligation of the parties to submit the disputes to arbitration, and to honour an award.
3. The curial law, i.e. the law governing the conduct of the individual reference.

The Court observed that all the three laws are present i.e. the proper law of contract and proper law of arbitration is Korean Law with a seat of arbitration in Seoul, South Korea and the curial law is the Rules of International Chamber of Commerce.

Section 34 Application is maintainable for Domestic as well as Foreign Award.

In the case of Venture Global Engineering v Satyam Computers Services[6], the Supreme Court held that, "*In any event, to apply S. 34 to foreign international awards would not be inconsistent with S. 48 of the Act, or any other provision of Part II as a situation may arise, where, even in respect of properties situate in India and where an award would be invalid if opposed to the public policy of India, merely because the judgment-debtor resides abroad, the award can be enforced against properties in India through personal compliance of the judgment-debtor and by holding out the threat of contempt as is being sought to be done in the present case. In such an event, the judgment-debtor cannot be deprived of his right under S. 34 to invoke the public policy of India, to set aside the award. The public policy of India includes - (a) the fundamental policy of India; or (b) the interests of India; or (c) justice or morality; or (d) in addition, if it is patently illegal. This extended definition of public policy can be by-passed by taking the award to a foreign country for enforcement*"[7]. Hence the Application under Section 34 is maintainable for domestic as well as foreign award.

The Decision stands has been criticized on the ground that there are Special provisions for the enforcements of foreign awards made in Part II of the Act. The general provisions of Part I would thus stand excluded in reference to the foreign awards. A foreign award is enforceable under Section 48 and is to be executed as a decree[8]. As special provisions are made for foreign awards are made under Part II of the Act, general provisions provided under Part I including Section 34 should not be attracted to challenge a foreign award[9]. The provisions

(Footnotes)

[4] Citation Infowares Limited v. Equinox Corporation, (2009) 7 SCC 220

[5] M/s Dozco India P.Ltd. Vs. M/s Doosan Infracore Co.Ltd., Arbitration Petition No. 5 of the 2008 (Supreme Court)

[6] Venture Global Engineering v Satyam Computers Services, 2008(1) SCALE 214

[7] Venture Global Engineering v Satyam Computers Services, 2008(1) SCALE 214, Para 20-21

[8] Force Shipping Ltd. v. Asha Pura Minechem Ltd., (2003) 3 RAJ 418 (Bom): (2003) 3 Bom. LR 948; Trusuns Chemical Industry Ltd. v. Tata International Ltd., (2004) 2 RAJ 552 (Guj.); J. Bachwat's Law of Arbitration and Conciliation, 4th Ed., 2005, Vol. I, Pg. 953- 954

[9] Force Shipping Ltd. v. Asha Pura Minechem Ltd., (2003) 3 RAJ 418 (Bom): (2003) 3 Bom. LR 948; Bulk Trading SA v. Dalmia Cement (Bharat) Ltd., 2006 (1) Raj 54 (Del.); Justice R. P. Sethi, "Law of Arbitration and Conciliation", Vol. I, 2007, Pg. 697-698

of Section 34 which *inter alia* prescribes the grounds of challenge on which the award can be challenged as in *pari materia* to the provisions of section 48 of the Act which *inter alia* confers a right on a person who has suffered a foreign award to object to its execution in the manner laid down therein. If the plea regarding maintainability of Section 34 with respect to foreign award is accepted then the person who has suffered a foreign award would be entitled to have two rounds of litigation of challenging the said award, one by resorting to the provisions of Section 34 and thereafter raising an objection when the said award is put in execution. Such an interpretation has been held to be absurd Interpretation of the provisions of the Act[10].

In Bhatia International v. Bulk Trading SA & Others[11], it was observed that the Act is one consolidated and integrated Act. General provisions applicable to all arbitrations will not be repeated in all chapters or parts unless the statute expressly states otherwise. Part II contains provision for the enforcement of the foreign awards which necessarily would be different. The arbitration having not taken place in India, all or some of the provisions of Part I may also get excluded by express or implied agreement of the parties. On the basis of the Supreme Court Judgment in Bhatia International Case the law on the subject was summarized as under: *"(a) When there are general provisions under the Statute unless the statute expressly states that they are not to apply then in that event, the general provisions would apply; (b) when the statute provides special provisions for enforcement it is special provisions which would apply and not the general provisions. In the instant case there are special provisions for enforcement of foreign awards. Once therefore there are special provisions for enforcement of foreign awards then, the general provisions including provisions for challenge to the award considering the special provisions would be excluded. That would mean application of Part II, once that be so, Part I would not apply. Under Part I a decree can be executed only if the challenge under section 34 falls if made. Under Section 48, the foreign awards become enforceable and are to be executed as a decree. (c) All the consideration of the law set out in Paragraph 28 insofar as application of Section 9 is concerned it holds that, Section would not apply insofar as foreign awards are concerned after the award is made*".[12]

Scope of Specific Question Doctrine in India.

The Supreme Court in the landmark decision of Thawardas Pherumal v. Union of India[13], held that, "*If a question of law is specifically referred and it is evident that the parties desire to have a decision from the arbitrator about that rather than one from the Courts, then the Courts will not interfere, though even there, there is authority for the view that the Courts will interfere if it is apparent that the arbitrator has acted illegally in reaching his decision, that is to say if he has decided on inadmissible evidence or on principles of construction that the law does not countenance or something of that nature[14]. An arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what be thinks is just and reasonable. He is a tribunal*

(Footnotes)

[10] Golderest Exports v. Swiss Gen V & Anr, 2005 (2) Raj. 581 (Bom.); Justice R. P. Sethi, "Law of Arbitration and Conciliation", Vol. I, 2007, Pg. 697-698

[11] Bhatia International v. Bulk Trading SA & Others 2002 (3) JT 150 (SC)

[12] Justice R. P. Sethi, "Law of Arbitration and Conciliation", Vol. I, 2007, Pg. 697-698

[13] Thawardas Pherumal v. Union of India, AIR 1955 SC 468

[14] *Ibid*, Para 11

selected by the parties to decide their disputes according to law and so is bound to follow and. apply the law, and if he does not, he can be set right by the Courts provided his error appears on the face of the award. The single exception to this is when the parties choose specifically to refer a question of law as a separate and distinct matter[15]*. If no specific question of law is referred, either by agreement or by compulsion, the decision of the arbitrator on that is not final however much it may be within his jurisdiction and indeed essential, for him to decide the question incidentally*".[16]

In the case of Alopi Parshad and Sons, Ltd., M/s. v. Union of India[17], the Supreme Court held that, "*The award of an arbitrator may be set aside on the ground of an error on the face thereof only when in the award or in any document incorporated with it, as for instance, a note appended by the arbitrators, stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous. If, however, a specific question is submitted to the arbitrator and he answers if, the fact that the answer involves an erroneous decision in point of law, does not make the award bad on its face so as to permit of its being set aside*[18]*. In such a case, the decision being of arbitrators selected by the parties to adjudicate upon those questions, the award will bind the parties*"[19].

In the case of Union of India v. A. L. Rallia Ram[20], "*An award being a decision or an arbitrator whether a lawyer or a layman chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous. The award of the arbitrator is ordinarily final and conclusive, unless a contrary intention is disclosed by the agreement. The award is the decision of a domestic tribunal chosen by the parties, and the civil courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding, if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement. But it is now firmly established that an award is bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there is found some legal proposition which is the basis of the award and which is erroneous. An error in law on the fact of the award means: "you can find in the award for a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous It does not mean that if in a narrative a reference is made to a contention of one party, that opens the door to setting first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound. (AIR 1923 PC 66 Ref to) But this rule does not apply where questions of law are specifically referred to the arbitrator for his decision; the award of the arbitrator on those questions is binding upon the parties, for by referring the specific questions the parties desire to have a decision from the arbitrator on those questions rather than from the Court, and the Court will not, unless it is satisfied that the arbitrator had proceeded illegally, interfere with the decision*"[21].

In the case of Tarapore and Company, M/s. v. Cochin Shipyard Ltd., Cochin[22], the Supreme Court held that, "*Even the question of jurisdiction of an arbitrator can be the subject matter of a specific reference. If the parties agree to refer the specific question whether the dispute raised is covered by the arbitration agreement, it becomes a specific question of law even if it involves the jurisdiction of the arbitrator and if it is so, a decision of the arbitrator on specific question referred to him for decision even if it appears to be erroneous to the court is binding on the parties*[23]*. If a question of law is specifically referred and it becomes evident that the parties desired to have a decision on the specific question from the arbitrator about that rather than one from court, then the court will not interfere with the award of the arbitrator on the ground that there is an error of law apparent on the face of the award even if the view of law taken by the arbitrator does not*

(Footnotes)

[15] *Ibid*, AIR 1955 SC 468, Para 12
[16] *Ibid*, AIR 1955 SC 468, Para 13
[17] Alopi Parshad and Sons, Ltd., M/s. v. Union of India, AIR 1960 SC 588
[18] Alopi Parshad and Sons, Ltd., M/s. v. Union of India, AIR 1960 SC 588, Para 16
[19] *Ibid*, Para 17
[20] Union of India v. A. L. Rallia Ram, AIR 1963 SC 1685
[21] *Ibid*, Para 13
[22] Tarapore and Company, M/s. v. Cochin Shipyard Ltd., Cochin, AIR 1984 SC 1072
[23] Tarapore and Company, M/s. v. Cochin Shipyard Ltd., Cochin, AIR 1984 SC 1072, Para 25

accord with the view of the court, the award cannot be set aside on the sole ground that there is an error of law apparent on the face of it"[24].

In the case of Continental Construction Co. Ltd. v. State of M.P[25], the Supreme Court held that, "*If no specific question of law is referred, the decision of the arbitrator on that question is not final however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The arbitrator is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not he can be set right by the Court provided his error appears on the face of the award*".

Conclusion:

The decision of Dozco India is a good development in the field of international commercial arbitration after Citation Infowares, because it narrows down and limits the application of Bhatia International, the scope of which was broadened by the decisions of Supreme Court in Venture Global. It is however a decision of significance, as it transplants a few internationally accepted principles into Indian law and controversially places reliance on arguably overruled propositions of law. Venture Global has been criticized for giving contradictory view from Bhatia on applying provisions of Part I when there are specific provisions in Part II which are *pari materia* to the provisions of Part I. Thawardas Pherumal decision has been followed and confirmed by the subsequent decisions. We hope that the law will be settled to favour international arbitrations in India.

(Footnotes)

[1] *Ibid*, Paras 16, 18, 20, 32

[2] Continental Construction Co. Ltd. v. State of M.P., AIR 1988 SC 1166

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Think ... The Rear View Mirror

When driving during rush hour, most of us keep our eyes on the road and what's ahead of us. Rarely do we ever keep our eyes on what's behind us and what's to the left or right of us for more than a few seconds at a time.

Yet, concerning many matters in our lives, we fail to look ahead and keep driving along. When faced with some tough and trying times in life, we tend to look around and look behind instead of looking ahead. We also allow mistakes to resurface by recalling them. That's driving by looking in rear view mirror.

By wondering 'what if' won't change the past. Again, we're taking our eyes off of the road ahead. Once you know to where you are going and who you are, you'll begin to focus on what's ahead of you more often. There is nothing wrong with remembering the past mistakes, heartaches, trials, and tribulations.

There is something wrong with living in the past. You have to keep the faith and stop looking behind you and to the left or right. You're never going to get ahead by looking back. If you do, you're liable to have a wreck.

It's time to move forward!

India and Pakistan to arbitrate at the PCA

India will file its counter-memorial before the Permanent Court of Arbitration (PCA), at The Hague, in response to Pakistan's memorial seeking a complete moratorium on the 330-MW Kishanganga Hydro Electricity Project at Jammu & Kashmir. India is expected to base its arguments on the provisions of the 1960 Indus Water Treaty, which it claims, allows use of western rivers — Chenab, Jhelum and Indus — for hydro power projects, with certain restrictions, and that India has not violated the treaty. New Delhi is also expected to tell the court that since Neelum-Jhelum Hydroelectric Project in PoK — which Pakistan claims will be affected — is "India territory" occupied by Pakistan, Pakistan cannot raise the Kishenganga project before the PCA.

Suzuki seeks mediation to end alliance with Volkswagen

Japan's Suzuki Motors has filed for international mediation at the International Chamber of Commerce International Court of Arbitration in London its dispute with equity partner Volkswagen. The German firm bought a 19.9% stake in an agreement with Suzuki in 2009, but the relationship has soured since then. According to Suzuki, Volkswagen refused Suzuki's demand that it sell back its stake in the Japanese automaker in an increasingly acrimonious dispute.

Survey on Arbitration in India

In the backdrop of recent efforts undertaken by the Law Minister towards updating the Arbitration Act, Ernst & Young Fraud Investigation and Dispute Services (FIDS) team conducted a survey to understand the current perspective of general counsels, Indian and International law firms and key members of the legal fraternity on Arbitration in India. The survey report titled 'Changing face of arbitration in India' revealed that about half of the total survey respondents felt that arbitration procedure in India is expensive and does not provide timely resolutions. The main objective of this study was to assess the ground realities of arbitration and gather perspective of general counsels & law firms on the need for Arbitration in India, its drawbacks, regulatory system and steps that are required to make India a preferred Arbitration destination.

New Mediation Law in Hong Kong

A new Mediation Bill, which seeks to establish a proper legislative framework for conducting mediation without hampering the flexibility of the mediation process and to assist in the promotion of the more extensive and effective use of mediation in Hong Kong, will be tabled at the Legislative Council on November 30. The bill will provide legal certainty regarding confidentiality of mediation communications and admissibility of mediation communications in evidence and also standardise the terminology and Chinese renditions for "mediation" and "conciliation" used in existing ordinances.

Announcing 2-day International Master Conference

New Frontiers in Dispute Management & Resolution in the Globalised World

Conducted by IIAM to be held on 1st & 2nd of March, 2012 at Bangalore, India. The Master Conference panels will include an outstanding group of leading General Counsel, Attorneys, International Arbitration and Mediation experts and top Academics. For more details: dir@arbitrationindia.com

Certificate Programs

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(15 hours – 10-11 December, 2011)
The certificate program conducted by IIAM, will focus on the dynamics of power in negotiation and explore specific techniques in maximizing each party's potential to negotiate at their best. Through discussion, simulations, exercises and role-plays, it will focus on the structure and goals of the mediation process and the skills and techniques mediators use to aid parties in overcoming barriers to dispute resolution.

Certificate in Arbitration Law (CAL)
(15 hours – 14-15 January, 2012)
The certificate program conducted by IIAM, offers the participants to know the underlying theory of arbitration law and practice, with emphasis on drafting of arbitration clauses and agreements, awards, procedure of arbitration, important case laws, ethical issues, venue and institutional arbitration methods. The program will also look at the art of drafting of a dispute resolution clause appropriate to the parties' business needs and dispute resolution desires.

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CDM is a distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment.

You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded.

For more details on CDM, mail to training@arbitrationindia.com

The Lighter Side

A crab and a lobster are secretly dating. Pretty soon, the lobster tells her father, who then forbids her to see the crab anymore. "It'll never work, honey." he says to her. "Crabs walk side-ways and we walk straight."

"Please," she begs her father. "Just meet him once. I know you'll like him." Her father finally relents and agrees to a one-time meeting, and she runs off to share the good news with her crab sweetie.

The crab is so excited he decides to surprise his beloved's family. He practices and practices until he can finally walk straight!

On the BIG day, he walks the entire way to the lobster's house as straight as he can. Standing on the porch, and seeing the crab walking towards him, the lobster dad yells to his daughter.....

"I knew it! Here comes that crab and he's drunk!"