

## Thrash it out

An international arbitration centre has been set up in Mumbai, promising relief to businesses lacerated by disputes



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#Make in India #Madhukeshwar Desai #MCIA #Mumbai Centre for International Arbitration #arbitration centre



Illustration Courtesy: Ashish Asthana

It is quite common for businesses to face bloodletting due to disputes and no one wants to get caught in the tangled and protracted web of court litigation. With some of the largest corporates in the world being headquartered in Mumbai, their primary concern was lack of certainty for time-bound dispute resolution. Besides, arbitration facilities in India are ad hoc, prolonged, inefficiently managed and expensive. Though there are nearly 10 arbitration centres in India, for any credible institutional arbitration, the closest venue so far had been Singapore.

### **The arbitration centre**

But all this changed on October 8 when Maharashtra opened a state-of-the-art Mumbai Centre for International Arbitration (MCIA).

“We saw that successful financial centres across the world, like in Singapore, Hong Kong, Paris and New York, had an arbitration centre which was missing in Mumbai,” says Madhukeshwar Desai, CEO, MCIA.

“With MCIA the government has now moved to institutional arbitration, which will remove inefficiency and bring uniformity in government contracts, dispute resolution and most importantly, it bolsters confidence in investors,” adds Desai.

Former supreme court judge, justice SS Nijjar, who is also MCIA council member, says, “For the last 10-15 years, most of the developed world has moved to institutional arbitration. In India, so far we did not have any institution administering arbitration in an efficient manner, besides the established Indian Council of Arbitration in Delhi. We need more such mechanisms.”

He adds that “To make ‘Make in India’ work and send a right signal to investors, this is a great step forward and it conveys that if you bring your business in India and if it gets into a dispute, we have a system in place. MCIA will hopefully encourage and facilitate many other arbitration institutions in India in the long run. Ten years down the line we will have to see how much difference it will make.”

### **The users**

Former Bombay high court chief justice Mohit Shah, who recently conducted an international arbitration at MCIA between an Indian company and a Sri Lankan company, says that the conference hall and the facilities provided are very good. “The ambience is professional, like I have seen at the SIAC [Singapore International Arbitration Centre].”

Agrees Nithi Murugesu, attorney at law, Colombo, who represented the Sri Lankan company. In an email to justice Shah, Murugesu wrote, “We were also quite impressed with the new arbitration centre and the facilities offered, a place which [is] a good alternative to the SIAC and KLRCA [Kuala Lumpur Regional Centre for Arbitration] which are two centres we use as a neutral venue.”

Supreme court advocate Nakul Dewan, who too recently concluded an arbitration at MCIA, says, “This is the first arbitration centre as internationally equipped as any other major jurisdiction.” He adds that compared to arranging an arbitration at a five-star hotel, where facilities like live transcription, video conferencing, sound proofing and good projection are difficult to organise, it is comparatively cheaper at MCIA.

Trinath Tadakamalla, partner at Phoenix Legal, adds, “For our day-long, three-way video conference between arbitrators sitting in Delhi, MCIA and Hong Kong, we booked the MCIA and it came at a fairly reasonable cost as compared to Hong Kong and Singapore. Our clients were happy. Being close to the Bombay high court, it is also a locational advantage.”

## **The genesis**

The idea of an efficient and timely dispute redressal system was formalised when Maharashtra chief minister Devendra Fadnavis had set up a task force to transform Mumbai.

Poonam Mahajan, an MP from Mumbai, who along with Fadnavis personally supervised the MCIA project, says, “As 30 percent of Singapore’s total arbitration has at least one Indian party involved, it means that India was losing nearly \$3-4 billion revenue. After Singapore, Maharashtra is the first region in South Asia to bring out such a forward-thinking arbitration policy and now we can also conduct dispute resolution from other jurisdictions in our own country. All commercial contracts will have a compulsory arbitration clause. The difference is that MCIA has pioneered in getting the best practices and practitioners on board.”

Justice Nijjar adds: “Along with ease of doing business, the government wants to avoid losing this precious revenue going out of the country and being spent in foreign countries on facilities which MCIA has created here. Now dispute resolution can be done incurring much less costs within the given time frame.”

Over the years, the union government has repeatedly said that dispute resolution must move to institutional arbitration. In October 2015, The Arbitration and Conciliation Act, 1996, was amended with a 12-month time frame for arbitrators to give their ruling in disputes. In October 2016, the Maharashtra government brought in a policy to move all government contracts with value over '5 crore to have an inbuilt institutional arbitration clause.

## **The rules**

MCIA, a private, not-for-profit trust registered in India, has its rules based on international best practices.

Besides an ad valorem fee structure in proportion to the value of the sum in the dispute and an upper limit for both the arbitrators’ fees and administrative fee, it has a time limit of 12 months to settle disputes.

MCIA can also administer arbitrations wherein the seat of arbitration is not Mumbai or where the governing law of the parties’ contract is a law other than the Indian law.

A panel of arbitrators as of now is chosen and appointed as per their suitability to a particular case and its requirements.

There are also rules for expeditious disposal (within six months) for low value disputes at a lower cost and provisions available for an emergency arbitrator for interim relief. The MCIA secretariat will scrutinise the awards to ensure all claims have been dealt with and there is no apparent challenge to the award before it is finalised. Besides, in a first, it can consolidate all domestic arbitrations in a case. Its proceedings and awards are confidential.

The sprawling centre is spread over an area of 7,000 sq ft and has seven hearing rooms. The organisation consists of a secretariat and a 17-member council of domestic and international arbitration practitioners.

According to the MCIA secretariat, the rules were drafted over eight months by a committee of eminent legal luminaries. These rules were then sent to judges in the council for their inputs before finalisation.

Advocate Promod Nair, Arista Chambers and MCIA council member, says, “MCIA rules have been very carefully drafted and provide for international standards keeping in mind Indian requirements and needs. This will provide good framework for arbitration to proceed in India with safeguards for the parties and arbitrators ensuring that arbitrations are completed expeditiously. Specifically for low value disputes, there is further expedited procedure. All this will happen in facilities which are top class. The MCIA will be a game-changer for arbitration in India.”

Mahajan too stressed that MCIA’s rules were created under the expertise of some of the top Indian and international practitioners.

Neeti Sachdeva, registrar and secretary general, MCIA, says, “The council members, however, will not be appointed by the MCIA secretariat [to] act as arbitrators. They will assist and help the secretariat to ensure that rules are applied in spirit.”

The arbitrators will be cherry-picked and Sachdeva says, “In a three-member tribunal, each party can nominate its arbitrator which has to be approved by MCIA subject to their availability.

“The secretariat shall also get a disclosure form signed by the arbitrators to disclose if they have a relationship with the party, are non-biased, have an independent view and of high calibre before appointing the nominated arbitrator.

“In case the secretariat feels the nominee may not be the best person as an arbitrator we reserve our right not to appoint him as an arbitrator but somebody else. A sole arbitrator is always appointed by MCIA.”

Vyapak Desai, partner, Nishith Desai & Associates, adds, “A pool of good arbitrators on board will be trained and guided in consonance with international best practices. Bringing in correct processes, infrastructure, and trained and good arbitrators, disputes will certainly get resolved fast and efficaciously.”

He stresses that “MCIA will scrutinise the awards so that they are not challenged, which is missing in India. Availability of a good arbitrator and scrutiny of awards will result in an increasing number of good awards which will be difficult to challenge unlike an ad-hoc arbitration where errors happen and ultimately awards are not enforceable. This process also removes prejudice, challenge and errors.”

### **The arbitration**

Experts told Governance Now that though arbitration is supposed to be cost-efficient, effective and timely, that is not the case in India in general so far. It has been done on ad hoc basis without a neutral third-party managing arbitration. Arbitrators are paid per hearing and in 99 percent of the cases there is no incentive to complete arbitration.

“Arbitration involves huge expenses and time of those involved. One has to spend money in crores of rupees and cases drag on for 20-30 years. Now with amendments in the 2015 Act, every arbitration has to be decided within a year and it can extend maximum up to one and a half year. In that sense, the centre will be a tremendous boost for people to move to India,” says justice Nijjar.

“With MCIA putting a cap on the arbitrator’s fees, they get paid a fixed amount and finish arbitration to get on to the next assignment and be more efficient. This also gives a fair idea of costs to the parties involved in a dispute on the administrative and arbitrators’ fees. The only fees we cannot control is the counsel fees,” adds Sachdeva who claims that compared to the International Chamber of Commerce, Paris, and the Singapore International Arbitration Centre, the MCIA rates are lower.

Nair makes a pertinent point when he says, “There are no guidelines as to how arbitration procedures should be followed, as a result of which it has been unstructured and expensive. Arbitrators have had a free hand in charging whatever fee they desire and there has been no body to actually administer, manage or police the arbitration. Now all that is going to change.”

He explains, “If an arbitrator is not tendering timely service, the institution at the back end will ask the arbitrator to complete the process as soon as possible. Arbitrators are as good as their reputation and if the arbitrator does not do a good job, he is unlikely to be reappointed by the institution. So this is an incentive for the arbitrator to provide much better quality of service and be appointed again by

the institution. Where there is no institution associated with the proceedings at all there is no incentive for them to gain further work, in such cases arbitrators are a law unto themselves.”

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