

International Conference on
'Institutional Arbitration in Infrastructure and Construction'
New Delhi (October 16, 2008)

Inaugural address by Justice K.G. Balakrishnan, Chief Justice of India

Ladies and Gentlemen,

It is indeed my pleasure to address this august gathering which consists of eminent engineers, legal experts and public administrators from all over the world who are involved in the infrastructure and construction sectors. The Construction Industry Arbitration Council (CIAC) has indeed taken a welcome initiative by playing a leading role in organizing this conference. I have been made to understand that the central focus of this conference is to encourage the use of institutional arbitration mechanisms for dispute-resolution in the infrastructure and construction sectors.

At a global level, the construction industry involves a voluminous amount of capital investment as well as employment-generation. A fast-growing economy such as India has also been witnessing a boom in construction activities in recent years. A significant amount of public spending as well as private capital has been deployed in infrastructure and real estate projects. Much of this investment has come from foreign sources as well. In order to ensure the continued growth of investment in this sector, the onus is on the governmental agencies to create the right conditions for the same.

Some of these conditions pertain to efficiency in granting clearances and facilitating easy access to capital, labour and technology. However, another important condition is that of easy access to dispute-resolution.

Infrastructural and Real Estate projects necessarily involve complex contractual arrangements between several parties, irrespective of whether they are meant for industrial, commercial or residential use. In many instances, the parties belong to different nationalities. There is of course a need to clearly lay down the rights and liabilities of financiers, suppliers of materials, workers and the intended beneficiaries of such projects. Such contractual arrangements routinely include arbitration clauses that provide for the parties' preferred means of dispute-resolution. At present there is an overwhelming tendency in India to resort to ad-hoc arbitration mechanisms. This tendency is counterproductive since there is considerable scope for parties to be aggrieved by the functioning of ad-hoc tribunals. An empirical survey will reveal that a considerable extent of litigation in the lower courts' deals with challenges to awards given by ad-hoc arbitration tribunals. Questions relating to the lack of impartiality of arbitrators and procedural defects in the conduct of arbitration proceedings are the subject-matter of frequent litigation and hence add to the caseload before an already overburdened judiciary. In fact the judicial interventions with arbitral proceedings and awards in India have come to constitute a distinct branch of law i.e. the 'law of arbitration'. This trend clearly frustrates the foundational aim of providing for arbitration clauses - which is to

ensure speedy and efficient dispute-resolution in the commercial context.

The Indian government had made an important legislative intervention by way of the Arbitration and Conciliation Act, 1996 which largely incorporated international developments such as the 'UNCITRAL Model Rules' on arbitration and the 'New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards'. However, despite several years of the operation of this statute, there is a distinct preponderance in favour of ad-hoc arbitration mechanisms. It is in this setting that it is important to educate the business community in India about the merits of relying on institutional arbitration mechanisms. By resorting to institutional mechanisms, parties can ensure that their disputes will be resolved under globally accepted and updated arbitration rules coupled with supervision by personnel with expertise in the area. Furthermore, reliance on recognised international arbitral institutions has a positive correlation with the recognition and enforcement of arbitral awards across different countries.

The infrastructure and construction sectors require the expertise of personnel from different backgrounds – such as engineering, earth sciences and finance among others. This implies that dispute-resolution in these sectors also needs arbitrators who themselves are attuned to the inputs from different disciplines. Arbitral institutions are well-equipped to identify and retain the services of arbitrators with such interdisciplinary expertise.

Furthermore, their prior experience with similar categories of dispute-resolution places them in a unique position wherein they can ensure the conduct of arbitration proceedings in a time-bound and transparent manner.

In recent times, the Government of India has also indicated its' willingness to encourage the use of Institutional arbitration mechanisms. The Union Ministry for Law and Justice has been in talks with representatives from the Permanent Court of Arbitration (PCA) with the objective of the establishment of a regional centre by the latter. There are of course numerous arbitral institutions which can expand their involvement with Indian parties and even think of establishing arbitration centres in India. Some of these institutions are affiliated to trade associations while some are independent entities. One can easily recount the names of a few of these institutions such as the ICC International Court of Arbitration (Paris), the London Court of International Arbitration (LCIA), The Chartered Institute of Arbitrators (UK), the American Arbitration Association (AAA) and the National Arbitration Forum (USA) among others.

With an increasingly globalizing legal profession, the importance of arbitral institutions has also been on the rise. With the continuous inflow of foreign investment into infrastructural and construction projects in India, there is a concomitant need for personnel who understand the intricacies of commercial arbitration. In this respect the retired members of the judiciary and the active members of the bar in India are well-equipped to participate in and

conduct such proceedings. In fact India has the potential to emerge as a preferred arbitration destination in the Asia-Pacific region on account of its location and the possibility for cost-savings by parties seeking dispute-resolution. The growth of institutional arbitration mechanisms is indeed a welcome trend and the judiciary will also benefit from the same.

Ladies and Gentlemen, I have great pleasure in inaugurating this International Conference on 'Institutional Arbitration in Infrastructure and Construction'. I sincerely hope that the discussions in this conference will prove to be fruitful for all the stakeholders.

Thank You!