



LEGALLY SPEAKING

Mr Shuva Mandal
In conversation with
Mr Nish Shetty

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Neeti Sachdeva: Through the legally speaking series, we hope to bring to you, views and conversations from the stalwarts at the bar on the bench and members of the legal community. In our previous edition of Legally Speaking, we had Mr Harish Salve, QC engage in conversation with Mr John Beechey, member MCIA Council. I am happy to report that we had over 500 people join the zoom call who actively engaged with the speakers. We have had multiple requests to make these sessions available later, and keeping with demand, we will be releasing the videos from this series on a later date. Today, we have Mr Shuva Mandal being interviewed by Mr Nish Shetty. Nish, Shuva, on behalf of the MCIA community and all those joining us live, I welcome you. I will first introduce both our speakers, and then request Nish to commence the conversation. Post which participants will be allowed to ask questions that they can submit on the zoom app itself. Though both our speakers don't require introduction but it is customary for me to do that. Shuva Mandal joined Tata Sons in July 2017. A graduate of the National Law School, Bangalore, Mr Mandal has over 17 years of experience in the legal profession and has advised leading Indian enterprises, global private equity firms as well as Fortune 500 companies. A member of the Bar Council since 2000, Mr Mandal began his career with legal firm AZB Associates before moving to Shardul Amarchand & Co as Partner and National Practice Head for Corporate, M&A and Private Equity. We welcome you Shuva.

Shuva Mandal: Thank you.

Neeti Sachdeva: Nish Shetty is the Head of Litigation & Dispute Resolution, Asia-Pacific, for Clifford Chance as also Co-Chair of the MCIA Council. He is regarded as a leading expert in the field of dispute resolution. Nish has advised on some of the most complex cross-jurisdictional disputes in recent years in Asia Pacific. He is also the first in Asia to be appointed as a Judge of Appeal on the FIA International Court of Appeal in Paris. Nish is ranked as a Leading Individual in dispute resolution by the major legal directories and by the Who's Who of the Commercial Arbitration. We welcome you Nish. And I now call upon you to take over the reins of the Legally Speaking

Nish Shetty: Thank you Neeti. Thank you. Hi Shuva, great to see you across the screen.

Shuva Mandal: Likewise Nish, Good Afternoon to you and everybody.

Nish Shetty: Good afternoon, Good Morning, Good Evening, wherever people are joining us from.

Shuva Mandal: Yes it's fascinating we are doing this. It's unfortunate that COVID got us to do this when we could have always done this otherwise.

Nish Shetty: Indeed and that is something that I certainly look forward to the next time one of us is able to travel and

see each other in person. But let's start there start our conversation there, unprecedented times. I am not sure there is a parallel for this. Let's start with corporate India, what are the issues that corporate India is facing? Now you are obviously the GC of one of the India's best known conglomerates, you have, your organisation is all across India and many other parts of the world as well. What's keeping you awake at night Shuva in these unprecedented times.

Shuva Mandal: I think Nish, you know, the problems we face, all the issues that you know corporate India or corporations across the world are facing is more or less could be broken up into one common theme is that of liquidity. I think if you can break this into three phases, what's the short-term issues what are medium term and what are long-term issues. So I think fundamentally the short term issue is about liquidity and that's kind of that liquidity stress in business is going to play out into the world of litigation, the world of dispute resolution, contract restructuring, insolvency, that's one short term and maybe going into at some level medium-term impact. At medium-term level I think, you know, this liquidity crisis is obviously going to impact some players more than others and so there is going to be a slight, if you may say, rearranging of the cards, amongst business organisations and enterprises as to who takes the largest share of that impact. And there are some sectors that will take larger share of the impact, sectors like hospitality, sectors like tourism, aviation so when you kind of think this through, I think in medium term the people are

starting to think what is it that we need to do to restructure our contracts and its not necessarily renegotiating with counter-parties but its also is there a different way of doing business, is there ways to do business in an asset light model versus an asset heavy model. What are the terms of financing that people typically took, so people have started to kind of thinking on these lines on a medium term. And as far as the long term is concerned if I were to put it, you know, that is where kind of to me its fairly important and that perhaps is something we should discuss is I think this crisis, COVID-19 is going to change in many ways the way we deliver businesses, the way we treat customers, the way we deliver services and the legal profession will not be an exception to this. So I think when you kind of play all these three out, that is more of a movement, the needle has moved much more over the last two three months, you know, since COVID started happening in China than we will say in the last decade of business thats been going on post the financial crisis.

Nish Shetty: Shuva thats a great way of dividing the discussion into short, medium and long. Let's start, if we may, on the short first. Now you mentioned liquidity being the key issue, you also touched on the impact that liquidity crunch may have on disputes. Now, obviously with MCIA hosting this and those in the MCIA community that are involved in dispute resolution as a business, would be interested in knowing how you think that dispute resolution landscape will be impacted in the short term. Now again, if one looks back at other economic crisis and I know there is, there is a lot

of talk about whether this is an economic crisis and if it is an economic crisis does it sort of mirror anything that we have seen before in other economic crises of the past and many think that it simply doesn't because the matrix are different. But just from a dispute resolution perspective previous economic crises have led to a significant uptake in terms of disputes, because even then people are dealing with that liquidity crunch and looking for ways of unlocking values from existing contracts, existing counter-parties etc, how do you think that is going to play out in these circumstances?

Shuva Mandal: So, you know, I kind of put it, let me first deal with what you asked, what is the immediate impact level we are going to see and then we will see how it plays into dispute. You know my view is the way it's kind of playing out you know if you just go back to 2008, when post Lehman crisis that commercial world faced, I think what fundamentally happened then in 2008 was people started taking their contracts more seriously. If you ask, you know players like, some of us like you, who were kind of very closely involved in 2008, people started taking their contracts more seriously, people started exercising more caution, people started exercising more diligence in businesses they did. So that was the big change if you ask me between 2008 and onwards. 2020, what is I don't think that's going to be the overall corrective steps. To me 2020 the big corrective step that's going to happen now is there is a huge expectation out there that businesses will deliver differently, businesses will become much more efficient and technology is just one

part of that efficiency change, I don't think technology is the only piece in that efficiency change, it is expected there will be more expectation of value addition to the work people are doing. There is going to be higher expectations on speed at which things are delivered, the solutions that are being offered and again you know I don't want to make this a technology discussion, kind of that is just an enabler, that is not the core of delivering the service and it is you know if again you take 10 years back it's normally I tend to compare things in a 10 year timeline and that is the correct way to do it, you know unfortunately the legal industry generally speaking and I am generalizing when I say this, has been rather slow in picking up to changing the way it delivers its products. So if you kind of remove the, if you could just kind of remove a few things how businesses have changed and that has happened globally in every other business, but fundamentally you know its other than some businesses like I would say financing where things have become very different much more efficient, people are raising larger sums of capital over shorter periods of time, with greater disclosures, greater certainty and more trust with investors. I think the rest of the businesses and more specifically dispute resolution, litigation there is a trust deficit between various players be it lawyers, judges, arbitrators, litigants, there is generally a trust deficit and I think 2020 will you know will have to solve this trust deficit. It will force people to get more efficient and if that is not happening and if those players don't adopt these efficiency models, I am not saying they are going to go away,

I think they gonna become just less attractive. And 2030 will have a different story to tell in that situation.

Nish Shetty: Just backing up, backing up to your first point you made, about contracts being more carefully drafted, I think there are two very important points made and I think we should explore both of them, the first as I said the more carefully drafted contracts and second is just efficiency and how the legal industry has been you no less than quick in perhaps finding the efficiencies and perhaps still operating in traditional mode. Let's come to that although I guess in a sense we are employing tech right now and I suspect lot of people that have chimed, have sort of dialled in this webinar are lawyers or have an interest in law. Let's come back to that. But going back to the first question, around more carefully drafted contracts and in particular dispute resolution provisions within those contracts. Now this is not limited to India, I think globally arbitration, commercial arbitration has become pretty much the norm in contracts, part of that has been the result of I guess global trade, greater cross border transactions between parties and really a reluctance for one party to pick a dispute resolution process that is closely associated with domicile of the counter-party. So you don't pick litigation in the home Court of the counter-party that you are entering into a cross border deal with. So arbitration has been that process, that dispute resolution process that sought to bridge that gap between counter-parties from different jurisdictions. Now in essence those contracts are now going to be tested in this COVID environment where as you said liquidity is a big issue,

these contracts will no doubt come to be tested. In the Indian context is that, does that paradigm apply in the same way, do you feel that since 2008 there are more arbitration clauses going into contracts and do you feel that, that's going to be a change this time around when these contracts get tested?

Shuva Mandal: So, no doubt I think the fact that arbitration needs to be adopted and is being adopted, I think we have crossed that bridge. I think we don't need to kind of for the audience here and for generally more sophisticated buyers of legal services, I think the efficacy of arbitration is fairly well established. The challenges are different, the challenges are efficacy of arbitration system in India or just the enforcement of arbitration in India, so that is a separate debatable topic. But I think businesses have accepted arbitration but that does not necessarily mean, in this situation that we are in and I am giving this response very specific to the situation, we are in, is necessarily going to see a massive uptake in disputes because and this is where I feel litigation, the profession has been a few steps behind so, fundamentally as we go into April, May, June, July in the next quarter when these disputes come up, given the inefficiencies in dispute resolution, specifically in the Indian context I foresee more players saying we will resolve this between ourselves. I am not saying there won't be disputes, I am not saying there will not be pre-litigation issues, you will have a lot of strategy, you will have a lot of role for lawyers to discuss pre-litigation issues, threaten each other with litigation, but I think the

propensity for corporates or business enterprises to walk down the litigation path in this environment in my view is lesser, because and again not because they wouldn't have chosen it, it's primarily because the system continues to be so inefficient that in these trying times, when liquidity is an issue or costs is an issue or you are expecting efficiency to flow through. And it's a sad story but I don't think the system is ready to deliver that efficiency.

Nish Shetty: Let me ask you this Shuva in terms of one of the moves towards efficiency, I am not sure I get this is a deliberate move by the legal fraternity to move towards efficiency or tech-enabled solution, but what is happening for existing disputes, especially those that are coming close to hearings for example, the first reaction to the pandemic was let's defer the hearing or the hearings because not everyone can be in the same room together and the traditional way of conducting a hearing was everyone turns up in the same place flies in from wherever and uses premises like MCIA and conducts the hearing, that's no longer possible. So the debate has now moved on to what we call virtual hearings, similar exercise to the one that we are engaged in at the moment, with different people, different places but the tribunal and the participants both legal participants and clients turning up virtually in a virtual environment to conclude the hearings, so that you don't have to adjourn this for however long, it is unclear how long this pandemic is going to last and how long these social distancing measures are going to remain in place. Do you feel that virtual setting is one step towards the efficiency that you are seeking as a client, or

do you feel that that's just an obvious step and there is a lot more that can be and should be done by the legal fraternity.

Shuva Mandal: Yes, it is latter. It is an obvious step, I don't think, it is not an adoption, you are left without a choice, so that virtual hearings will happen is given. Are we seeing some blockages, are we seeing inefficiencies in the way virtual hearings are held, admittedly yes, all these will get sorted out. You know whether it is the Indian judicial system whether it is the arbitral system, it is unfortunate that we have to rely on the likes of zoom or video or other such platforms, you know, again as I said nothing stops arbitral centres to come up with proper secured technology platforms that enables you know virtual hearings, these platforms like these that we are on are not meant for you know litigation types situation. These have to be much more customised in document sharing, editing, recordings, this is really not these are not the right platforms, we are just working on a very makeshift basis. Are these going to happen in the next 5-6 months, I have no doubt it is going to happen. Even if there was the pandemic was to go away, the world will not become normal because people have tasted or people have got habituated to these new solutions and they will insist on them. You know, it is pretty much like when the mobile phone came, you know initially people resisted calling on mobiles but then it became the only way you spoke to people and I think the big message is for the legal fraternity, we included in this, if we don't adopt it I don't think there is a choice. Ultimately customers will thrust it

and you know what is very specific for the Indian system here is what I always feel bad about is you know contrary to it maybe inimical to your interests in many ways, is what we have done with inefficiencies in the arbitration system in India, we have only exported arbitration out of India. It's what India did for many years on capital markets right, we constrained the growth of our capital market, that does not mean you had futures on Indian capital markets being traded in Singapore HongKong the rupee being traded in Dubai we just export these out and the same thing is right now happening in the arbitration system. So instead of developing our own domestic arbitral systems, institutions, we have just managed to export this whole thing out to Singapore.

Nish Shetty: Well, I guess given who our host is, I should ask you what MCIA has done to change that landscape in fairness, because it has changed, beyond MCIA, I think the arbitration landscape in India has changed in fairness since 2015. I guess as both an external observer but also someone that is in India a lot at least was in India a lot before current circumstances I think it is fair to say that they have been steps taken in the right direction but it's also fair to say that some steps have gone the other way as well. From your perspective Shuva how has that landscape changed, would you say by and large for the good is there more that needs to be done by Institutions such as MCIA, by the government and by the users.

Shuva Mandal: Sure. So I can kind of break it up you know this way, let's talk about the good, so has the good has it

been a significant change in the way people approach arbitrations, I think definitely it has happened. But what is the good and the good that has changed is the speed, speed has become I am not saying the delivery on speed is happening fully yet but the realisation of speed has definitely dawned. That is the first thing. Second which I am particularly impressed with and maybe specifically from Bombay and New Delhi perspective I think there is a fantastic young bar on arbitral lawyers, so I think I am seeing a lot more younger lawyers who are focused on arbitration, which to me is a fantastic thing. Its not, because I have often complained, be it the arbitrators or lawyers in arbitration, if you are just making it a morning shift and evening shift between the courts and arbitrations we are not gonna go anywhere we are just playing the system. I can see that slight shift happening where the young bar which is doing arbitrations as morning shift, the afternoon shift and evening shift which is the right way to go about it. And I think what has not happened over the last 3 years and in fact I tend to believe that we have gone a few steps back is you know the judicial and the legislative lack of a better word ping pong, right, we have oscillated between positions we have kind of we still debate about what is the fundamental policy or is it the public policy, we still spend pages and pages of documents go into you know what is going to be the interest which is applicable, what is fair disclosure by an arbitrator, I mean look this is where I get get very confused I don't think the job of an arbitration system is you know to create jurisprudence I mean we are done with it, we have to look at this as a business where a customer is essentially looking at

arbitrators to solve disputes. It's basically a promise that's gone wrong which needs to be rectified and what has happened in this whole process, we are spending an inordinate amount of time in these procedural issues, in the enforcement issues and as a result we are throwing the baby with the bathwater. There is no arbitration system, if people still debate on what is going to be public policy.

Nish Shetty: But how much of that is the fault of the system, how much of that is the fault of the counter-parties, clients, basically trying to leverage the system to delay matters.

Shuva Mandal: You know you are right I think you have hit a very important point is again let's again take a one step back, it's a promise that has gone wrong, so if I promise you something is gone wrong we are in an arbitration, obviously there is someone who is going to try to gain the system. That's why there is the promise that went wrong, the one thing that has to change and I think this is where the institutional arbitral setups are well positioned is to impose costs. The reason today we have so much of frivolous or non serious litigation, where people are litigating be in arbitration or outside arbitration because the optionality cost is very little. So if I kind of give you broad maths and we have done this internally if we were to sue, if we were to defend a 500 million dollar claim and we were to lose, typically we land up paying costs in the range of 20 million to 25 million, right. And you are looking at an arbitral process which goes between 18 months typically 18 to 24

months typically, not that it is statutory issue, whether it is international or in India takes 18 odd months. So what have I done, I have definite definite payout, even if I had a weak case I have deferred the payout by 18 months at a cost of 5%. So if you take a rational business view why would I even not litigate, so when you make this 5% - 15%, if you saddle somebody with 18 million dollar cost if they lost the 500 billion dollar litigation, you would see people assess their cases way better before they went to the dispute. And I think unless you see this change happening in commercial cases, you know, we are going we are just going to be doing these thoughts that we need to change the system that we need to add efficiency in the system, so costs and there is a reason when you imposed costs you make sure the serious players come into it. And that is how you going to encourage mediation also. Right.

Nish Shetty: MCIA rules and it is not unique to MCIA, in that sense in terms of international arbitration rules, the power to award costs is there and most if not all International arbitration tribunals would typically award costs. So that is a key feature. So in the MCIA rules you have the ability today in India if you wanted to, to have the arbitrator impose those very costs that you think are important and can make a difference. Shuva the time that we have before Q&A, I want to also focus on your long term vision. So you have nicely broken up into short, medium and long and you are really saying as I understood you what happens post COVID-19. What's the world going to look like post COVID-19, how is the

business going to be delivered and how is a business of law going to be delivered what are your thoughts?

Shuva Mandal: I definitely think post, firstly post COVID is still a phrase that has to be proven so and I hope its proven sooner rather than later, but you know I would go back to the point of efficiency and I know its a very ambiguous word but I think it means a lot. I think lot of us understand what it means, it means cutting through the layers that go into delivering services. I think clients are going to get more selective about their legal advisors. Clients are going to look at legal advisors that can add value proposition. I can see the focus on branded legal service becoming less relevant, it's going to be more value proposition of legal services. I foresee that specially in the litigating world there will be a huge shift to written advocacy over verbal advocacy and that is going to be one big change in cutting time. I'll give you a few examples, so you know we have mooted a few proposals from some of the the senior judiciary, senior members of the government about how civil suits how in many civil suits if there was a pre notified panel of arbitrators attached to every High Court, which is dealing with commercial cases above a certain monetary value, ok, so we are not affecting what we call cases which should be south of say 100 crores, and there are not those many but they take a lot of time so those are pre notified panel of arbitrators that did everything from framing of issues to determination on facts and then leave very focused points for the high courts to come in and give their views on the law. That would you know release a lot of time and resources for dealing with

the rest of the cases in the system. So I think, those kind of changes are bound to happen. Are we going to see a system where both judges and arbitrators are going to now ask for more concise written arguments more concise page limited issues list, I definitely think. You know, this whole culture especially within the arbitration and it's a hangover of the court system that goes into arbitration which is to take your opponent by surprise to raise a new issue, I think that has to stop. We are not in a warfare, this is, at heart we are trying to not outdo each other. It is about, there is a reason why it is called dispute resolution, it is not litigation or adversarial, it is not supposed to be adversarial. I think that is the part that is still not coming through in India that arbitration is not inherently adversarial there is finding a solution in the arguments also. So I think these issues are going to come up but the big theme I can see is there is going to be a shift from verbal advocacy to written advocacy and that will change the way litigations are managed, it's a great opportunity for people in the younger bar, I think the younger members of the bar, I think this is their moment when they will both for arbitrators and for judges it is going to be less relevant who is making the argument versus what is the quality of argument.

Nish Shetty: And just on that point we have got a number of questions that have come in to us Shuva, I have filtered through some of them but just on that last point, in terms of an organisation such as yours giving opportunities to the younger practitioner's as opposed to the I guess the

stalwarts the traditional players, how important is that to your organisation to see the creation of the younger, newer bar in India when it comes to arbitration is that high in your agenda or not?

Shuva Mandal: Huge. I think it is and I know and I have done my best for that. I think we encourage a lot of young lawyers, we do encourage them to attend hearings, we are being more selective based on the importance of cases to go to the senior members of the bar. I think you are going to see that change it is not just about us, we alone will not be able to make that change but I can see that trend in a lot of Indian corporates and when it comes to the shift from the verbal advocacy to the written advocacy I think it's going to be a few years, a few months before that whole change will happen rather quickly.

Nish Shetty: And if one looks and this is a question that's come in for you Shuva, I see that they are ignoring the fact that I am a moderator and sending some my way as well and I'll try and answer one or two of those but coming to you, the question that's posed is would you feel comfortable in the context of the virtual hearing to have cross examination of witnesses in a commercial case conducted virtually as well or do you feel that something still needs to go the traditional route of having people in the room?

Shuva Mandal: You know, I gave an answer, I think the fact that you know cross examination is the very test of cross examination I agree with you will be very challenging on a

virtual hearing but what I have, a different question is I challenge why do we need a cross examination. When so much of commercial disputes is based on written evidence, so much of it, you know, so much of it is linked to contracts, you know you have the whole agreement clause and almost virtually every agreement this agreement supersedes everything else and you know the very next minute comes a list of witnesses you want to cross examine, what were the pre agreement discussions, what was the wording of the agreement, why do we have to go into the wording of the agreement, so here I feel there are going to be some seminal changes, this is what is adding to the pain of the system it could be a lawyer's delight but I can tell you it isn't the most exciting thing to discuss witness statements.

Nish Shetty: Except for the lawyers. Yes.

Shuva Mandal: Exactly. You have to understand so I think, what we understand is every lawyer has to repurpose themselves the repurposing is what are you trying to do out there, we are not here to create literature, that is the big big concept that has to go out. You are here you are there to solve client problems, which is a promise gone wrong. It's as simple as that. I don't think there's anything more to it.

Nish Shetty: No, specially in commercial disputes. When I sit as an arbitrator I have counsel sometimes saying to the witness look at this document this is an email that you have sent, isn't it? And I sort of go, isn't it obvious to everyone that this is an email that the individual has sent,

so that's not a debate so what is it that you really need out of your evidence and you know it's very rare I think in commercial cases both small and large where you have a smoking gun that's going to determine the commercial dispute between the parties. It tends to be a lot more subtle, it could be interpretation of clauses, there is law involved. But I take your point that we specially litigation lawyers tend to sort of think that, dispute lawyers tend to think that cross examination process is the be all and end all of the overall process of justice that we all are trying to further.

Shuva Mandal: To give you an example, you need more expert witnesses, expert statements, absolutely, Yes. Experts are going to play a big role today in resolving disputes, in fact, Neeti knows this my pet peek has always been and I will never miss an opportunity to say it again and again that we need experts in the arbitrators themselves we don't need them as witnesses. You know it is vast majority of the disputes in the arbitration space are technical in nature, vast majority of them, you look at the whole gamut of construction disputes and we still gravitate to retired judges. I mean I have nothing against the retired judges, they are very learned, they are great and have administered justice for years but I do not think the arbitral system is a kind of a proxy for the judicial system. And unless we get out of that I mean how many clients, so here is what the funny thing is and I have and maybe you will give me the answer you will have 10 people reach out to Nish Shetty, to be their lawyer on matters which amount to 100s of millions but I am not sure you will have

three people reach out to you to be an arbitrator in that disputes. So I've always wondered why is it that the case?

Nish Shetty: Right. Well again I think the Indian experience is slightly different and I think I take your point and it's a one that I agree with. You really need to choose your arbitrators well and in many many other jurisdictions, other than India the process that you just described is exactly what happens. If you have a dispute that has technical elements in it, then the sophisticated client actually says the arbitrator that I would like to choose and often it's a three member tribunal then there is an option to have your person, by your person I mean the person that you think is most suitable to determine that dispute put forward, they will look at the expertise and the technical credentials of that individual. Now there is something to be said, even in the construction dispute arena, you used that as an example, where you both you may need both construction technical expertise that you may also need legal expertise because there is an overlap of both technical and legal issues. But that's the analysis that sometime,s often times its lacking in India where people tend to default to members of the judiciary because they feel that that's the right way to do it. But I think institutions such as MCIA have a role to play. Because they are not bound to appoint retired judges, they have, before in some of the cases that MCIA has had before it, but they have equally appointed counsels, they have appointed younger practitioner's and I think that's the direction of travel that I would encourage MCIA and arbitration generally and the arbitration community in India

generally to travel towards. I am conscious of the time Shuva but there is one question that I've been asked to answer, it says, Singapore has been the preferred jurisdiction for international arbitration so far, with the good chance that the world will pivot to lesser travel and virtual hearings do you see greater localised nation of arbitrations, people adopting local seats or venues with domestic arbitrators even for international matters. The short answer is No. I don't think so. For the simple reason that if you are talking about international matters by definition there is an international party and that international party or parties will have their own domestic options available, now if each party says I want my domestic option and that alone, then getting someone to agree to another party's domestic option unless it's one that is very credible, beyond reproach such that the other counter-party says no problem even if you go domestic I know that if I am against you I will have a fair hearing, there will be a fair outcome. So it goes back to some extent to what we were talking about earlier, post COVID-19 how is the world going to change etc, are we going to have more nationalistic approach, our supply chain is going to be decentralised, are we going to have that sort of activity, is globalisation dead, all of that is still being debated. But when it comes to dispute resolution and when you are having to choose a venue I think neutrality is still going to be the cornerstone, in my view, of that decision making process unless you are dealing with a venue that is neutral regardless of whether it is a domestic party or a foreign party, even in the case of Singapore. Even in the case of Singapore where you have Singapore counter-party in our

experience the vast majority will choose a venue that is a seat outside of Singapore just to maintain that neutrality, notwithstanding the fact that most would think that there won't be that home court advantage. Shuva what are your thoughts as a user of these services?

Shuva Mandal: I agree with your conclusion but I have a different reason, I agree with your conclusion that these centres of arbitration will not go away but my reason is different. My reason is, you know, you can have five COVIDs happening but people are not going to shift to India because there is a concern, because disputes are so important that unless you have a quality arbitral setup you have the capability to deal with these kind of issues, be it in the arbitrators, be it in the bar, you aren't going to see a great efflux of cases. And that is what I mean, when you say domestic arbitrations, it's the interim reliefs, it's the arbitral process, it's the enforcement process. Oh my God, it's a challenge. It's a challenge. To most normal businesses, nobody wants to live with that uncertainty so unless we change that, we don't need a COVID to change it, if we are to change that without COVID I can assure you Singapore will go dry from India, but that's a very important task, that is what I am saying, that is what we need to build. It's not about what COVID represents an opportunity, COVID isn't going to accelerate the situation, it is only going to make it worse. So that's what hopefully will lead to a more realisation within the Indian system that they need to do things faster.

Nish Shetty: Thank you Shuva. I am conscious of the time. Sorry, go ahead Shuva.

Shuva Mandal: There is one interesting question which is quite futuristic and I think it is very interesting, he raises, my friend Gautam Narsiman, do you foresee an uptake in arbitration and mediation in insolvency or liquidation proceedings? And I think it's a very interesting question because you know once again demonstrates you have a crying need of restructuring insolvency in the country. You have a system which almost every participant here would know is jammed, which is just not moving. You have the corporate Courts which have just been made into insolvency courts, so there is a complete logjam out there. So we have also advocated before the bankruptcy board that this is an absolutely correct time to encourage Court monitored arbitral setups that go into insolvency and liquidation applications, so you have the final orders being all passed by the courts and but the entire process, so you have the admission and the order being passed by the courts, running the entire process there are so many technicalities involved about the asset, about the creditors, about how the package is going to be built that it should be kind of delegated to institutional arbitrators to manage. So will that happen, we don't know. But will that kind of ease the logjam in the corporate Courts, the answer is definitely yes.

Nish Shetty: But only a legislative intervention for that to happen given that the insolvency is not typically arbitrable in most jurisdictions but it is a very important point, I

accept. Shall we hand back to the MCIA team to see if there are any other matters or whether we end it here.

Madhukeshwar Desai: Nish, Shuva, unfortunately we are out of time. You have seen we have had multiple questions that we have people pinging us on the side as well, fighting for a slot to get views in, but unfortunately that's all the time that we have today. Thank you Nish, Shuva, for joining us. We got an interesting perspective on corporate India's views on dispute resolution, use of technology, efficiency, and ofcourse finally on insolvency as well and a small peek on atleast from both your eyes on what the future would possibly look like. I had like to thank our audience for joining in and engaging with us. These sessions are recorded and they will be up for everyone to view. I had just like to remind everyone that on Thursday, we have Mr Adrian Winstanley, former Chair of the LCIA interview Mr Darius Khambatta at 2:30. All those interested could join. Once again COVID or not, I know both of you, Shuva and Nish are extremely busy and I had imagine your calendars are still quite chocked up so thank you once again on behalf of the MCIA community and all those joining us.

Nish Shetty: Thank you.

Shuva Mandal: Thank you. Thank you Nish.

Nish Shetty: Thank you Shuva. Good to see you.