Beyond Googlies & Cricket: India and Australia Trade, Investment, and Successful Dispute Resolution

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Expert International Panel: Gitanjali Bajaj – Partner at DLA Piper, Jo Delaney – Partner at Baker McKenzie, Bronwyn Lincoln – Partner at Corrs Chambers Westgarth, Natasha Bopaiah – Company Secretary at Australia India Business Council

Panel Chair: Matthew Hickey **–** Barrister, Level Twenty Seven Chambers

ADC Host: Deborah Lockhart – Chief Executive Officer at the Australian Disputes Centre

Welcome from Deborah Lockhart

Welcome everyone to the 3rd day of the Australian Arbitration Week 2019 in Brisbane, to look Beyond Googlies and Cricket.

In Australia it is customary to open an event by acknowledging the traditional custodians of the land: the Turrbal People of the Brisbane Region, the Gadigal people of the Eora Nation in Sydney, the Kulin Nation of Melbourne, the Kaurna people of Adelaide and the Noongar of Perth.

The ties between India and Australia run deep. And not just over the past 200 years. Evidence is emerging of people from Southern India arriving in Australia some 4,000 years ago and connecting with Australian Indigenous Nations. Trade happened. Cultural and genetic ties were formed. And undoubtedly, disputes were resolved!

The Australian Disputes Centre is delighted to be hosting this event; contributing to building strong and lasting bridges between the two nations and ensuring that dispute resolution students, business executives, and legal professionals can effectively play their part in ensuring that our trade and investment relationship continues to thrive.

MATTHEW HICKEY
BARRISTER, LEVEL TWENTY SEVEN CHAMBERS

Matthew Hickey: Good afternoon Ladies and Gentlemen. So glad to see so many of you in Brisbane this afternoon. I also want to greet all our friends around Australia and the world. We have a number of interesting topics to talk about in our forum. We welcome your questions. It will be broadcasted around Australia and in India. We welcome questions and we will allow some time at the end.

Of course we're here to talk about important and emerging relationships between Australia and India and the importance of consequences for dispute resolution, which of course we are all very interested in. But by way of context before we get into the initial topic, I want to say something about the Australia-India Comprehensive Enhanced Economic Cooperation Agreement, which I'm sure most of you in the room have an understanding of what that is all about.

You may not know that the two-way trade of goods and services between Australia and India have grown from **13.6 billion** in 2007 to **34.4 billion in 2018**. India has the largest democracy in the world and it amounts to 1.3 billion people. Strategically, it is very important for Australia. And as it happens the India-Australia negotiations for an enhanced cooperation agreement in May 2011 were followed by negotiations held in September 2015, and those remain ongoing. The Australian Government is putting its weight behind the importance of that activity. There was an interesting event yesterday, when Mr Tony Abbott was in India, introducing the importance of this strategic relationship in that part of the world.

Education and Infrastructure

Matthew Hickey: Returning to the first topic, the Australia and India Comprehensive Economic Cooperation Agreement. So Natasha, can I start with you? Since 2011, the Australian India Business Council has been working extensively to seek big backing from the industry to help the Australian Government ensure that the agreement is indeed comprehensive as it is described.

One of the key industries on which the agreement has focused and one of the key issues is the growing investment and trade relationship between Australia and India.

NATASHA BOPAIAH
COMPANY SECRETARY, AUSTRALIA INDIA BUSINESS COUNCIL

Natasha Bopaiah: Yes, it has focused on mining, human resources, education, health, contract, and manufacturing. We are looking at increasing the number of industries to focus on. It already has been in association in the past with the CIETEC 2017, which has identified 10 sectors for possible cooperation. We have already made submissions to CIETAC, considering changing policy. I think we have to meet the first submission deadline and with Prime Minister Scott Morrison going to India in January 2020, we hope that negotiations will be renewed with CIETEC.

I'm going to start with education. India has the largest population of 5 – 24 year olds and it cannot meet their educational needs. Australia has the skills and great technical educational training programs that they could potentially partner with India to meet its needs. But the problem with this is that the private sector is not sold on the India story. So even though trade has grown, there is a lot more potential and Prime Minister Modi is looking at changing the laws and regulations to encourage more foreign investment into India.

I am going to start with the Foreign Institutional Education Bill, which is due to be presented before Parliament any time now. This will allow foreign institutions to set up campuses in India but there are certain regulations. We do not know how well this will work because we do not know if foreign institutions can compete with the tuition fees of Indian institutions and whether the IBC will encourage investment in skilled training and technical education and training. Singapore has just partnered with the state of Assam in India to provide skilled training. India will need 122 million skilled labourers by the year 2022.

When it comes to Australia, one of the issues that Indian students face is their degrees being recognised. For example, if you complete a Master's Degree as a lawyer, it is not recognised in the country if you would stay on and this changes the visa recognitions. The visa regulations in Australia have changed recently and now Indian students are in the level three category. They are increasing the requirements for the level two category. Unless they are going to just going to a class one university, they will need to provide funding and proof of their English-speaking skills before they come here.

One of the problems Australia faces is that the quality of Indian students coming to Australia for education is very low. Less than 10% of the Indian students in Australia studied in the top 8 universities, whereas around 32% of Chinese students coming to Australia studied at one of those universities. I think this is simply because a large portion of the Indian students coming to Australia

have focused on migrating. So, given the changes to the points system, they are now focused on learning plumbing or becoming painters instead of doing an MBA because they will get additional points for that. This has left universities empty. Australia needs to market itself better in the education sector. They need to promote the quality of education. Maybe Australian students need to intern in India.

One of the steps that have been taken is collaboration. I think the University of Queensland is now collaborating with IRT New Delhi. Each one can show their research potential. My guess is that the flow of Indian students to Australia will decrease, but that may improve in the long term. The UK revised its post education visas in September.

Another sector for potential investment is infrastructure. If India is to reach its aim of a five billion dollar economy by 2025, they will need about 777 billion dollars investment in infrastructure. Australian companies have gone there. Now in the road sector, we have an Australian company which is a majority foreign investor. But again, the issues there are endless. One is land acquisition. It takes forever. People are not happy with the price that they get for their land. This happens in every single project. Another is facilitation payments. A lot of times Australian companies do not understand this concept and that delays everything. Then there is the tendering process. Tenders change in the last minute. Sometimes domestic companies do get preference over Indian companies so India needs to sort this out.

I think the biggest problem is dispute resolution. India is now 63rd in the world wide report for ease of doing business and 163rd in contract enforcement. They are setting up tribunals but I think that these are still issues at the moment.

Globalisation of the Legal Industry

Matthew Hickey: Let me introduce you [facing towards Gitanjali Bajaj] to the discussion. India opened its economy in 1991. Today it is the world's fastest growing major economy but when it comes to lean markets, despite all attempts otherwise, it remains somewhat closed off. ***Does the cooperation agreement provide an opportunity for liberalisation of the market and why is that important?***

Gitanjali Bajaj: Thank you. Before I answer that, I would like to add a quick point to what Natasha said about education. Education is actually seen as Australia's largest export to India but there are visa regulation issues. The only reason I am going to say something on this is because I came to Australia exactly 20 years ago, to study at University, and did a law degree. I was not just the only Indian student, I was the only foreign student doing a Bachelor of Laws in Australia, for the reason that you could finish your law degree but you wouldn't actually be able to get a job anywhere because no law firm would sponsor you and I didn't qualify for a working visa in Australia. I had the advantage of having some family here that I was able to use as a sponsor to get the family visa, so that I could join Mallesons Stephen Jacques in those days. I can see how that would discourage you, because why would you come all the way over here to do a law degree for five years, and not be able to work anywhere? So I think that is a very important point you make. If you really want the right type of people coming in, give them that opportunity. The flipside of that, from an Indian perspective, is that you don't exactly want brain drain either. So there has to be some balance there.

Comprehensive Cooperation Agreement

Twenty years on and I'm still here. On to the questions about whether the Comprehensive Cooperation Agreement provides for the opportunity to talk about the liberalisation of the legal industry. Yes, it does and in fact in the feasibility study that Australia did, when we are looking at the areas that the cooperation could be extended to, it wasn't just the area of liberalising trade but also the liberalisation of services, and in particular the legal services. This creates an opportunity, but will it actually happen? That in itself is a different question. We kind of need to understand what is currently there to answer whether it will happen. If you look at Australia and India right now, what we currently have is, in Australia any foreign national can come in and practice their domestic law or national law on a 'fly in-fly out' basis for a period of 90 days within a 12 month period. You could fly in for an international commercial arbitration and fly out again. You could also be registered as a foreign registered lawyer. That is what we basically refer to as the liberalisation of the legal industry. And of course direct foreign investment.

'Advocate'

In India it's not so clear cut and I say that because there have been recent cases which you may think have moved things on, but maybe have not. The position in India is that the *Advocates Act*, the way it is interpreted is as saying that only an Indian national can be a practising advocate. There was

traditionally a question of whether 'advocate' in India means a barrister or someone immediate to, or within litigious work, an agent who would just work in law. The distinction here is different. There was a case law ruling that interpreted the practices of the Act as involving both litigious and non-litigious work. Now recently, as recently as last year, there has been new case law, from the Supreme Court which is the highest court in India.

Legal Practice in India

This *Baji* case in many ways is a huge step forward because they did uphold that you can have foreign lawyers come in on a 'fly in-fly out' basis to practise in their own law, but there are loads of caveats. You can fly in and fly out but it has to be a casual visit because it 'cannot be a practice' and what will qualify as a practice will just be decided on a case by case basis. In our sector, when you look at international commercial arbitration, it was a little more forgiving in the sense that you can have an arbitrator flying in. But again it still wasn't an absolute 'yes'. It has caveats, 'as long as the institutional rules provide for it', and you follow the Bar Council Regulation, et cetera. The short point is, that this is the situation. Yes, we can use this forum to open that dialogue. But will it actually happen? From an outside perspective, I am not in India so I cannot give that perspective, my perspective here is that it looks unlikely.

The Bar Council in India has traditionally held a very protectionist view and the reasoning for its protectionist view in terms of competition. But I would think that people in India listening to this are probably better qualified to comment on whether that is actually changing within the Bar Council and the Indian practitioners. From where I am sitting, I do not think it will happen any time soon. Do I think it should happen? Like Natasha said, it is the ease of doing business. Prime Minister Modi wants economic reform. He said in 2014 that by 2018 we'll be in the top 50 in the World Bank's ease of doing business index. Now it is 2019 and India is the 63rd. There is movement. Great! But I do think that in the legal industry, we lawyers are the background facilitators for cross border transactions and trade and investment. So if you want ease of doing business, we as lawyers need to be present and available to our clients in the jurisdiction.

Indian Arbitration Reforms

Matthew Hickey: I received some feedback from those who are watching and they would like us to keep our voices up. You mention protectionism. Jo, can I turn to you with our second topic, the arbitration reforms in India. Despite that protectionist stance towards the legal industry in India, India is on the other hand increasingly seeking to enhance their reputation as an arbitration friendly

jurisdiction. There are a number of reforms and initiatives directed towards improving arbitration in India. ***Let's look at those legislative and case law reforms, perhaps the establishment of the New Delhi Arbitration Centre and the India Arbitration Council. Is that something you could talk to us about?***

JO DELANEY
PARTNER, BAKER McKENZIE

Jo Delaney: I have been working on India-related arbitrations for around 20 years now. It has gone through many different changes, including a period of time where we used to have to draft specific arbitration clauses for India-related contracts, because it had to exclude part of the *Arbitration Act* in India, because of the case law at the time. It is precisely because of these kinds of issues that have come up in cases that the Government has recognised the need for reform.

It took a long time for the Government to get some of these reforms through. There have been many reports over the years to improve the *Arbitration Act*. There is one thing that Prime Minister Modi has managed to do is to introduce two sets of reforms that have taken place. At the same time, the courts have really been pushing for a pro arbitration-friendly jurisprudence and have really been pushing to support arbitration. Thirdly, just to mention some of the cases very briefly that have been before the courts. The Supreme Court (as Gitanjali mentioned) is the highest court in India, and arbitration issues often end up in the Supreme Court. The Supreme Court is often required to decide on these issues. Sometimes, these issues would be better-decided or addressed by the legislature, but, it takes a long time for the issues to be addressed by the legislature. So, the Court has to deal with them. What we have seen in the last few years is that some of the landmark decisions have addressed a number of different issues. They have improved the arbitral process to make it more seat-centric, and as we know, for arbitration lawyers, it is very important that the seat be a strong arbitration-friendly place, and that the role of the courts in this is to provide the support and the supervisory role that they need to provide to make arbitration successful. They have tried to limit the ability of the Indian judiciary to interfere with the arbitral process. It was always one of the criticisms that was made among international arbitration lawyers about having the seat in India. It would often end up in the courts for a long time because the courts/judges would interfere more so in the process than courts in other jurisdictions and that could lead to significant delays. The Supreme Court has tried to address that as well. As we will see in a moment that, that has been addressed in some of the legislative agreements.

They have also tried to understand and recognise the need to expand arbitration to non-signatories, which we have also seen as Australia. Through the use of the language such as 'through' and 'under', a party being involved in arbitration 'through' or 'under' has been given an expansive definition by the Supreme Court. They have tried to limit the scope of public policy, which has been one of the most difficult issues in India. It was a long time ago when the *Sadhu* case held that the public policy was limited. There was a subsequent case where Indian law and anything that was patently illegal under the Indian law was an expansion of public policy and it made the neutral issues being raised when it came to the involvement of awards. Now, the Court and also, the legislative amendments have tried to reduce that concept of public policy again.

Indian Judicial Attitude

The Delhi High Court in particular, and also, the other High Courts have also delivered many pro-arbitration decisions. I just want to mention this is not yet fully-resolved, but the Delhi High Court has endorsed the approach taken that two Indian parties can agree to have a foreign seated arbitration. So, that seems very much in support of the arbitral process. It has also been the case that Indian parties have agreed to have their arbitration held in Singapore to avoid some of the issues that can arise through arbitration in India.

To summarise the amendments that have taken place: there have been two sets of amendments to the Arbitration Act, one in 2015 and one recently in 2019. In 2015, they tried to introduce time-limits. One of the major issues with arbitrations seated in India is that the arbitration will be run like court proceedings. It often happens in Australia as well, but this does mean that, sometimes, the arbitration proceedings are significantly delayed because there are multiple adjournments. So, they have introduced a time-limit that the award had to be issued within 12 months of commencement of the arbitration – that has been extended to 18 months. It could be extended taking into account the consent of the parties. Now, it has been extended in the 2019 amendment, so that the 12 month-period starts, when the statement of claims is introduced. So, there is still quite a good amount of time for the parties to get their case before the arbitral tribunal, to get the arbitral tribunal to make a decision and issue an award, but not too long that the process goes on forever.

Another major change that is really going to have a significant impact on the 'delay issue' is the appointment of arbitrators. It was often the case that your Indian-instituted arbitrations would be delayed because you had to go through an appointment process for the appointment of the arbitrators by the courts, and the Supreme Court or the High Court that was considering the issue would decide by looking at the arbitration agreement first, and then, decide who to appoint, and that

process would take a number of years. Now, there is a time-limit that is being encouraged, though, not expressly stipulated, that it is to be addressed within 60 days. To assist the process, the Supreme Court or the High Court is allowed or permitted to refer the appointment to one of the arbitral institutions. They have tried to improve the process for challenging arbitrators, so that it is more express as to what standard it is, and when it can be challenged. So, they have introduced a neutral standard of justifiable doubt when it comes to impartiality. When it comes to an arbitration agreement, they have tried to streamline that process as well, and push for the prima facie approach. It is a less-detailed analysis of whether or not there is a valid arbitration agreement.

Interim relief was a major issue, which led to the expansion of Part I, which ties domestic arbitration to international arbitration. And now, there is an express provision that interim relief can be given by the Indian Courts in the course of foreign-seated arbitrations. So, that is a major development. They have tried to introduce provisions to support costs, so that costs follow the event. With costs, as we know, is always an important incentive of parties to keep to the process, prevent delays, and also, encourages settlements often, because if you think you have a strong case, then, you are likely to engage in the arbitration because you know that, at the end of the day, if you do win, you might get your costs, but if you have a weak case, it might encourage you to find a settlement option. Costs are very important.

They have also tried to streamline their challenge process – this is another area of delay. Where you would try to apply for setting-aside an award, and there was a case that allowed a foreign-seated award to be set-aside or even whether such an application should be considered by the Indian courts. This has been narrowed. In particular, as I mentioned, the public policy grounds for setting-aside an award have been narrowed.

2019 Amendments: *Arbitration Act*

Very quickly on the 2019 amendments: one of the major amendments is to introduce confidentiality provisions. But there are some potential issues with that. It does include the usual exceptions – those exceptions are quite. There might be some other amendments down the track to improve that. There is immunity of arbitrators. There is also a potential issue with minimal qualification for accreditation of arbitrators. The latter could be an issue with foreign-seated arbitrations.

One of the major changes introduced by the 2019 amendments is the new Arbitration Council in India. It has not yet been set-up. The provisions relating to the Council are not yet in force. The idea is to set-up an overall body that is intended to supervise all the other arbitration institutions that carry on

business in India. There are a number of such institutions in different states, and they are doing arbitrations in different ways. The idea of the Arbitration Council is to introduce some standards of accreditation, so that there can be a grading process. This was one of the recommendations from the community that introduced/proposed the reforms. There is concern as to whether the Arbitration Council will amount to a regulator. This is something to watch and see to understand how the Arbitration Council would work. There is also concern that the Arbitration Council would be constituted of Government appointees, even though the composition of the Council is supposed to be diverse and include foreign-experienced arbitrators or foreign-accredited arbitrators, as well as locally-accredited arbitrators. There is a concern that because the Government would make out the appointment, it would just be a Government designated body – so, there are a few concerns about that. There is one new body that you mentioned (to Matthew), which is the New Delhi Arbitration Centre, which is to be introduced similarly to the Mumbai Centre for International Arbitration. The Mumbai Centre has been very successful so far, in improving the arbitration process in Mumbai, to providing training facilities for arbitrations. Perhaps, the New Delhi one will also be/introduce some similar standards.

The Role of Arbitration in Australian-Indian Investment

Matthew Hickey: Thanks Jo! I turn then to perhaps the synthesis - the thing we have learnt about so far is the development of investment and trade opportunities between Australia and India, the changes and amendments that have been made in the approach to arbitration, within India specifically. ***I ask you then, Bronwyn, against that background, what is the role for arbitration or mediation given the Australian-Indian investment context and the opportunities that may follow?***

BRONWYN LINCOLN
PARTNER, CORRS CHAMBERS WESTGARTH

Bronwyn Lincoln: Thank you, Matt! I'll come to your question (in a moment). It just occurred to me while sitting here listening to the observations being made that it has been 20 years since I ran my first ICC arbitration involving a huge project in India. Listening to the developments and the willingness now to embrace arbitration is really good to hear.

In the last decade, what was seen was a large number of Indian disputes, where the parties had chosen arbitration in Singapore. Singapore, of course, has been a powerhouse, not just for arbitration, but international litigation for the International Commercial Court, mediation – the one-stop-shop for disputes, not only in Asia, but wider areas. It catches a large part of the market for disputes involving Indian parties. It seems to me that there is a

huge opportunity for Australia. If I go back to the opening remarks about 'certainty' in international trade – what is essential to parties and businesses engaging in cross-border transactions and investing in another country, is to know that, at the end of the day, their investment is protected. It is about risk management. It is about making sure that when you go through that whole process, if things don't work out at the end of the day, you have recourse. You don't just have legal rights, but you can also enforce those rights, so that you can recover your damages, or seek injunctive relief, or whatever relief you might need.

Australia is really well-placed against the background of the developments in India, and our experience, our practitioners, our culture of mediation – all of those things come together to put us in a really good position to, in my view, challenge Singapore. That's what we should be doing. We should be going out there talking to people and promoting the expertise we have. It's particularly important, because in my experience in the Indian Courts, as has already been mentioned, there have been delays, and it takes me back to the first matter about a dispute that I mentioned. We had an ex-parte application in the Delhi courts for an injunction, and 18 months later, was the first inter-party hearing. Now, that did not bother us at the time, and again, it crossed my mind, I don't know whether the proceedings ever went ahead. We went on with the arbitration and they may well still be sitting there, I don't know, it may have been resolved. We can import some of our case-management learnings into the dispute-resolution process involving Indian parties and Indian projects. We should be looking for those types of opportunities.

Tips for Achieving Timely Resolution in India

Matthew Hickey: That question of delay leaves me thinking of the final of our topics. I put to the panel at large any suggestions or practical tips and things informed by your experience, in particular, resolving disputes in India. Arbitrations in India and these proceedings have a reputation for moving slowly, slowly as compared with other jurisdictions, which gives rise to one of the main reasons behind the reforms that have been spoken about. ***Would anybody care to provide some tips on how practitioners might go about keeping the process moving?***

Jo Delaney: The first tip I would provide – it used to be that you would say to make sure your arbitration was not in India. I am not sure that is the case anymore, with all these reforms. The courts are a lot more supportive and acting more quickly now, particularly in arbitrations. So, the tip I can provide now is to ensure that you have an active Arbitral Tribunal. In the past, in India-related cases, it was very common for the retired Indian judges to be appointed by Indian parties. It is still very

common for that to happen, but we are also seeing more and more appointments being made of Indian arbitration lawyers, and India has an amazing arbitration community. There are many lawyers based all over India, but particularly in Delhi, Mumbai, Bangalore, Chennai, who have varied experience in arbitration. Many of them have practised in London or New York or somewhere overseas for at least two-three-five years, and then, have come back to India to set up their own operations. If those lawyers are involved in the arbitration process, they are firstly, familiar with the international standards that we would all like to operate in a manner that is consistent. If they are the arbitrators, they will ensure that the process is rigorous. If they are the Council, they will also ensure that the process is moving forward and is quite rigorous. So to consider the Arbitral Tribunal is very important.

Matthew Hickey: ***Do you also have anything to add on the question of moving things forward?***

Natasha Bopaiah: I have practised in India – in New Delhi and in Mumbai, for five years and the one thing that I have noticed is that if you have a lawyer who can make an effort, your dispute will move. You can file applications showing urgency, to expedite matters, and things will move, but you just need lawyers who are involved in the dispute.

Gitanjali Bajaj: I would also like to add that this is so true. We were in an interlocutory proceeding in India last year for our client in Delhi and Chandigarh. This is precisely what happened. The Indian lawyers that were helping us, actually we were all surprised that we did get a judgment within four months. I had been advising my client that even though this is an interlocutory proceeding, this could take forever. But it was some proactive case management by an Indian counsel, who was, every time the case got adjourned without a reason, walking up and down and demanding to know why this had happened, and it was one of the fastest moving processes.

Can I also say something in relation to what Jo had said regarding the skill-sharing – with New Delhi Arbitration Centre, the dream or the goal is that it is going to be the SIAC of India. It is going to be the international arbitration hub which brings the seat back. The reason that the Indian Parliament is going to SIAC is because it is an English speaking jurisdiction and we have quite a lot of similarities. I think this is very much a development that we should be watching out for. If that is the case, that dream that is happening in Singapore, can move back to India, with Indian seated arbitrations and then, applying what Jo was saying that they have an amazing arbitration community, can make sure that the tribunals are comprised of this community. Essentially, we can take the disputes back to India. But, I don't know whether it will be an institutional rule that will allow foreign lawyers, because, you know, if that happened, then we can offer them our services. This is the advantage of SIAC and Singapore that any of us can go and run an arbitration there.

Confidence in Arbitration and Investment in India

Matthew Hickey: Natasha, you said earlier, talking in a different context, that Australian industry is not sold on the Indian story. In relation to turning dispute resolution to India, rather than Singapore, it begs the question – ***How then do we go about better understanding or better selling the India story to people who might not presently be sold on it?***

Natasha Bopaiah: The first thing is that India is a very diverse market. You need to go and you need to research. So, I think Ikea spent 5 years just researching the market. They sell things that you would not find in an Ikea anywhere else. So, that's one thing you need to do.

The second thing is that for certain industries, you would need to collaborate with an Indian partner and you cannot just go where you get the best deals. You need to find someone who has a name in the industry, who has been practising in India, like the top 50 companies or something. I think for anybody who is interested in investing in India, you need to read Peter Varghese's Report. He has identified the 10 sectors, states and issues.

Matthew Hickey: Arbitration, of course, is no good for anybody unless when the end comes, you can enforce arbitral awards. That's an important aspect of arbitration for the winner ultimately. ***Has anybody got any tips for ensuring that that process runs smoothly?***

Bronwyn Lincoln: Are we talking about enforcing in India?

Matthew Hickey: Yes.

Jo Delaney: So, similar to what Gitanjali said, I think the process has changed and has improved. So, it was that many years ago, it would take 5-10 years to enforce an award and we saw that in the White Industries case. I did have a few years ago, a claim that my client wanted to commence against an Indian party and the concern I had was if we spent a lot of money on this process, will we be ultimately able to enforce the award in India and get our money? That was their number one concern. They did not want to spend money on the process if they could not do that. I spent a lot of time talking to my Indian lawyer friends in different parts of India in Mumbai, Delhi, Chennai and Bangalore to really get a sense from them as to whether the system had improved as much as people say it had. They all consistently assured me that you could get an award enforced within 1-2 years in the (relevant) High Court, then that process could get appealed to the Supreme Court, which could take another 1-2 years. We had an estimate between 2-5 years, which is a significant improvement. I think probably you could even reduce it to 1 year if you had a very proactive counsel and counsel I have spoken to in India have

said that. In our case unfortunately, it was not sufficient to persuade our client for their claim, so we did not find out, but I do hear that it really has improved.

Bronwyn Lincoln: I have actually been through the identical process with the same outcome. I suspect, going back to confidence that the business community will actually want to see it happening. Once they start to see the time reduce, they will talk to their clients about it and it will be addressed.

Jo Delaney: I am sure the cases that are available now, as opposed to when I was looking at this issue three years ago, would have assisted the client to make the decision. But three years ago they were not the cases with those short time frames.

Bronwyn Lincoln: And also litigation funders are very conscious of this too. If you are looking at seeking funding on behalf of the client and there is an enforcement issue or enforcement required in India, they are very hesitant to step in at the moment. Again, I hope that will change.

Matthew Hickey: We are drawing to the end of our time here this afternoon. We have so many enthusiastic people in the audience here. No doubt we have some questions. Again I invite questions by email from those of you who might be elsewhere. The email address is on the screen behind me [reads the email out loud]. Do you have any questions here in Brisbane?

Question: ***Is India moving towards adopting the CISG that is the Convention on International Sale of Goods?***

Bronwyn Lincoln: I do not know what the answer is to that. But it is interesting because China has been a huge adopter of the CISG and if you look at the development of arbitration in China and opening up to the world and then compare it to India, you would expect that it might need to, to develop further.

Jo Delaney: Often in contracts, the CISG is excluded. On a completely different note, the Singapore Mediation Convention that has just been signed in August, India is a signatory to that, as well as China. If you look at the list of signatories, it is a very odd list but actually most of the signatories are countries that want to introduce it. China wants to progress more mediations in Asia because of that.

Gitanjali Bajaj: Are there any reservations, like with the New York Convention?

Jo Delaney: They are just signing it.

Gitanjali Bajaj: I say that because India is already a signatory to the New York Convention. There is a procedure that they only recognise awards from jurisdictions that they have an official accept from.

That is only about 59 countries, while there are 190 countries that have signed the New York Convention. So there are 59 seats where awards would be enforced from in India. Australia is one of them.

Matthew Hickey: Are there any other questions from the floor? Well we have covered an awful lot of ground here this afternoon. We are grateful to you all for joining us here in Brisbane and all around the country in Australia and of course in India. Thank you, the panel has been an absolute delight to chair this afternoon. I hope you found this as illuminating as I have.

Closing remarks

Deborah Lockhart: My thanks to the chair and the panel for a very informative and enlightening discussion on the India - Australia trade relationship while noting its growing importance for both countries. The discussion made clear that there are some significant opportunities for ADR practitioners, as well as business and commercial interests, as they are the ones signing the contracts. It was therefore terrific to have the support of the Australia-India Business Council for this event to represent the commercial perspective.

In closing I extend a very big thank you to all of the panellists, to Matt and to Level 27 Chambers for hosting us in their very prestigious chambers here in Brisbane. Also thank you to our hosts across Australia: Holman Webb in Sydney, Corrs Chambers Westgarth in Melbourne, Allen & Overy in Perth, Dentons Fisher Jeffries in Adelaide, and across India: Shardul Amarchand Mangaldas in New Delhi, the Centre of Alternative Dispute Resolution at the Rajiv Gandhi National University of Law in Patiala, Jurisconsultus in Chandigarh and Verus Advocates in Kolkata. Thank you again for being with us and we hope to see you again at our next event.