SIAC Rules 2016 Roadshow, New Delhi

Report by Sarthak Sarin
Senior Associate
Khaitan & Co

and

Harshavardhan Goel
Student
National Law School of India University

On 1 October 2016, the Singapore International Arbitration Centre (SIAC) held its New Delhi leg of SIAC Rules 2016 Roadshow. The event attracted an impressive turnout of over 100 delegates, representing both the legal as well as the business community from several parts of India.

The event kicked off with a welcome address by Ms Lim Seok Hui, CEO of SIAC and SIMC. Ms Lim’s address underscored India’s importance as SIAC’s top foreign user and also emphasised that the key objective underlying the SIAC Rules 2016 (and ultimately SIAC’s commitment) is to prioritise its users’ convenience by saving time and cost.

The opening remarks for the Event were delivered by Mr Alvin Yeo SC, Chairman and Senior Partner, WongPartnership LLP and Member, SIAC Court of Arbitration. Mr Yeo very eloquently described the SIAC Rules 2016 as a culmination of global efforts, incorporating varied practitioners’ perspectives and best practices, and were designed keeping the users in mind. He juxtaposed the SIAC Rules 2016 against the recent amendments to the (Indian) Arbitration and Conciliation Act and affirmed a highly favourable future as regards the growth of arbitration practice in India.

Mr Fali Nariman, Senior Advocate, Supreme Court of India, was the keynote speaker for the event. Always a captivating and witty speaker, Mr Nariman enthralled the audience with his first-person account as the lead counsel in the recent decision of the Supreme Court of India in Sasan Power, which decision examines the permissibility of a foreign country as the seat for the resolution of disputes between two Indian parties. Mr Nariman welcomed the various new and innovative provisions of the SIAC Rules 2016 and praised SIAC for its efforts in incorporating the best global practices in arbitration into its Rules.

Members of the audience

Left to Right: Alvin Yeo, SC, Ganesh Chandru, Chong Boon Leong, Steven Lim, Kevin Nash, Kelvin Poon, Kabir Singh
The topic for the first panel was *Early Dismissal, Emergency Arbitration and Expedited Procedure: Practitioner’s New Toolkit*. The panel was moderated by Mr Alvin Yeo SC with Mr Kelvin Poon, Partner, Rajah & Tann Asia; Mr Kabir Singh, Partner, Clifford Chance LLP; Mr Steven Lim, Managing Partner (Singapore), Nabarro LLP; Mr Ganesh Chandru, Executive Partner, Lakshmikumaran & Sridharan; Mr Chong Boon Leong, Partner, Allen & Gledhill LLP; and Mr Kevin Nash, Deputy Registrar and Centre Director, SIAC as participating speakers.

Mr Poon introduced the audience to Rule 29 of the SIAC Rules 2016 pertaining to early dismissal of an application and elucidated upon the standard that ought to be achieved in order to ensure successful early dismissal. Mr Singh examined the potential practical issues in such applications and relied upon ICSID case law to substantiate his points. Mr Lim dwelled upon the new provisions in the SIAC Rules 2016 pertaining to emergency arbitration and expedited procedure and illustrated the practical benefits of these provisions from the standpoint of his personal experience as an emergency arbitrator in several SIAC arbitrations. Mr Chandru discussed the expedited procedure under Section 29-B of the (Indian) Arbitration and Conciliation Act including the framework as regards the enforcement of emergency arbitrator awards by Indian courts. Mr Chong contrasted Mr Chandru’s presentation with examples of direct and indirect enforcement of emergency arbitrator awards by courts in jurisdictions such as Singapore, Hong Kong and the United States. In the end, Mr Nash answered questions from the panel and audience regarding the practical aspects underlying the procedure for the early dismissal applications and re-agitation of jurisdictional questions in early dismissal applications.

The second panel on *Multiplicity in Arbitration: Multi-party and Multi-contract Arbitrations under the SIAC Rules 2016* was moderated by Mr Andre Maniam SC, Partner, WongPartnership LLP and involved M. Ashish Chugh, Partner, K&L Gates; Mr Montek Mayal, Senior Director, FTI Consulting; Mr Kevin Nash, Deputy Registrar and Centre Director, SIAC; Mr Prakash Pillai, Partner, Clyde & Co.; and M. Vyapak Desai, Senior Partner, Nishith Desai Associates as speakers.

Mr Chugh differentiated consolidation in litigation from consolidation in arbitration, whilst presenting a broad overview of the consolidation framework under the SIAC Rules 2016, and emphasised that this framework can prove to be very useful in complex multi-contract and multi-party disputes prevalent in the infrastructure industry. Mr Mayal discussed the many benefits of consolidation such as effective determination of issues and saving time and cost. Mr Desai, however, introduced a cautious perspective and advocated for a conservative approach to be adopted by the SIAC Court in this regard, while identifying the potential issues that could arise at the enforcement stage. Mr Pillai seconded Mr Desai’s argument and remarked that an aggressive usage of the ‘prima facie’ standard in the SIAC Rules 2016 could potentially lead to denial of enforcement of the award, akin to losing a game of Snakes and Ladders. Mr Nash intervened to balance the contrasting views in the panel and reiterated the cost-effective nature of consolidation and dwelled upon the built-in safeguards in the Rules that could help avoid any potential violations of the principles of natural justice.
The final panel on the User’s Guide to Arbitration in India: Leaps & Bounds and Burning Questions was moderated by Dr Lalit Bhasin, President, Society of Indian Law Firms and comprised Mr Vyapak Desai, Senior Partner, Nishith Desai Associates; Dr Sanjeev Gemawat, Executive Director (Legal), Dalmia Bharat Group; Mr Tejas Karia, Partner, Shardul Amarchand Mangaldas; Mr Atul Shanker Mathur, Partner, Khaitan & Co.; and, Mr Naresh Thacker, Partner, Economic Laws Practice.

Mr Desai delved into the applicability of the 2015 Amendments to the (Indian) Arbitration and Conciliation Act to demonstrate how the substantive rights of the parties may be affected by the Amendments. Dr Gemawat, acknowledging India’s lack of endeavour to codify confidentiality of arbitration proceedings into law, expressed his dissatisfaction at the recent amendment’s omission in this regard. Mr Karia discussed the Supreme Court of India’s recent decision in Sasan Power and opined that two Indian parties could seat their arbitration abroad provided that the proper law of contract was Indian. Mr Mathur discussed the positive effects of the (Indian) Commercial Courts Act on Indian arbitrations. As the final speaker, Mr Thacker broadly analysed the 2015 Amendments and India’s ensuing efforts to establish itself as an arbitration friendly jurisdiction.

The Closing Remarks were delivered by Mr Prashant Mishra, Partner, Luthra & Luthra Law Offices on behalf of Mr Rajiv Luthra, Founder and Managing Partner, Luthra & Luthra Law Offices and Member, SIAC Board of Directors. He remarked that the administration of cases involving nearly 100 Indian parties by SIAC in 2015 alone is clear evidence of the Indian legal and business community’s confidence in the institution. He was also very optimistic as regards the popularity of SIAC Rules 2016, not just in India, but worldwide.