

# EDITORIAL NOTE

—*Harshali Sulebhavikar & Shvena Neendoor*

With the Indian Arbitration Law Review (IALR) completing its seventh successful year of publication, we take a moment to reflect on our journey of fostering scholarly discourse in arbitration law in India. Established to provide a platform for students, practitioners, and academicians to engage with critical issues in this evolving domain, IALR has gained a prominent place in the arbitration community by consistently addressing contemporary and pertinent arbitration matters.

This volume represents our unwavering commitment to excellence, building upon the foundation laid by our predecessors and guided by the esteemed members of our Board of Advisors. The support of the illustrious Board of Advisors has been crucial in shaping the editorial standards at IALR. We sincerely appreciate the contributions of Mr. Udyan Arya Srivastava, Mr. Prabal De, Mr. Pranjal Agarwal, Mr. Syamantak Sen, Ms. Aadya Bansal, and Mr. Siddharth Sisodia, the Editors-in-Chief of previous volumes, along with their colleagues, whose dedication has played a pivotal role in the Journal's continuous growth and success. We also extend our heartfelt gratitude to Mr. Prashant Mishra, our Patron, who has been the backbone of IALR.

We are honoured to have Justice Rajiv Shakhder author the Foreword for this volume. With an illustrious career that includes serving as a Judge of the Delhi High Court and the Chief Justice of the Himachal Pradesh High Court, his profound insights into the legal landscape have added immense value to this publication. We are deeply grateful for his gracious contribution.

Arbitration has established itself as the mainspring in commercial dispute resolution, committed to core tenets such as party autonomy, efficiency, transparency, and effective resolution. Recent amendments to the Singapore International Arbitration Centre Rules (*'SIAC Rules'*) and the proposed amendments to the Arbitration and Conciliation Act, 1996

reflect dynamism of the field. This volume presents a diverse collection of articles, case comments, and analyses that mirror contemporary arbitration law's vibrancy. From critical assessments of statutory reforms to discussions on emerging challenges such as third-party funding, assignment of arbitration agreements, and the enforcement of foreign awards, the contributions in this edition provide valuable insights for practitioners, academics, and policymakers alike.

The article *'Assignment of Arbitration Agreement: Making a Case for Automatic Transfer Approach in India'* advocates for the automatic transfer approach in the assignment of arbitration agreement. Through doctrinal and cross-jurisdictional analysis, it argues for a restrictive autonomy of arbitration clauses and concludes that such clauses should transfer seamlessly with contractual rights and obligations. The subsequent article *'Third-Party Funding Codification Imperative: Augmenting Equitability in Indian Domestic Arbitration'* emphasises the need for a codified framework for Third-Party Funding in Indian domestic arbitration, proposing a *light touch* approach to balance non-disclosure necessities with transparency needs. Furthermore, *'One Step Forward, Two Steps Back: State of Arbitration in India'* critically examines the implications of the Ministry of Finance's recent guidelines on arbitration in government contracts, highlighting their potential to undermine India's arbitration-friendly stance.

The commercial world's landscape is rapidly changing, with Artificial Intelligence (AI) reshaping social and economic dynamics. The push to include technology to transform dispute resolution has been a longstanding conversation, particularly in arbitration, where efficiency is paramount. In the same beat, the authors of *'When Codes Meet Courtrooms – Examining the Enforceability of Blockchain Based Arbitral Awards Under The New York Convention and Indian Law'* acknowledge the evolving phenomenon of block-chain based dispute resolution mechanisms and address the loopholes in the current system to ensure proper recognition of such awards in the spirit of party autonomy.

As India continues to traverse the path of becoming a global hub of arbitration through legislative, judicial and institutional developments, evaluating its synergy with the global framework is crucial. The article '*National or International Public Policy: The Perfect Fit for International Arbitration in India? - Drawing Inspiration from The French Approach*' analyses the 'public policy of India' exception in arbitration law, advocating for a shift towards 'international public policy' in line with the French approach to enhance India's attractiveness as an arbitration hub. Additionally, the authors of '*International Arbitration: The Remedy to Cross-Border Insolvency's Enforcement Woes in A Post-Model Law World*' explore the limitations of the UNCITRAL Model Law on cross-border insolvency enforcement and propose international arbitration under the New York Convention as a viable alternative. They argue that the Model Law is plagued with ambiguities which affects its efficacy, in contrast to the New York Convention which has a proven-record of enforceability.

On the judicial front, the Supreme Court and the High Court have continued to grapple with questions of arbitration law. The courts have attempted to step in to ensure that the Indian law continues to bolster efficient dispute resolution, as seen in the judgments of *Cox and Kings Ltd v SAP India (P) Ltd* and *Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, In re*. This Volume features analytical expositions of both decided and pending questions. The article '*Reaffirming the Group of Companies Doctrine in Indian Arbitration: A Comprehensive Analysis of the Cox and Kings Judgment*' provides a thorough analysis of the Supreme Court's judgment in reaffirming the Group of Companies Doctrine in Indian arbitration, exploring its implications for non-signatories and its role in harmonising Indian arbitration with global standards. The authors of '*When Laws Collide: Resolving MSME Act — Arbitration Act Disputes in India*' highlight legal ambiguities arising from overlapping dispute resolution mechanisms in the two acts, arguing for refining the MSME Act's dispute resolution framework rather than overhauling it entirely. They highlight that the recent Supreme Court referral in *NBCC (India) Ltd v State of W.B.* to a larger bench underscores the need for judicial

clarity on key aspects of the MSME Act, including the scope of Section 18 and the registration requirement under Section 8. The forthcoming ruling is expected to shape the legal landscape for MSME dispute resolution in India.

Further, the article *‘Permitting Modification of Arbitral Awards to Expedite the Delayed Disposal of S. 34 Challenges – A Case for Recalibrating the Lakshman Rekha’* critically assesses the judicial approach to Section 34 of the Arbitration and Conciliation Act, analysing whether modification of arbitral awards should be permitted to enhance efficiency in dispute resolution. This discussion gains significance in light of the Supreme Court’s referral of the issue to a larger bench and the Viswanathan Committee’s recommendations for legislative amendments.

The past year has been one of new beginnings and landmark achievements for IALR. In collaboration with the NLIU Centre for Parliament Studies, IALR submitted comments on the *2024 Draft Arbitration Amendment Bill*, reinforcing its commitment to policy engagement. Marking another milestone, IALR organised the 1st NLIU-IALR Arbitral Award Drafting and Presentation Competition, in collaboration with the Singapore International Arbitration Centre (SIAC) and Shardul Amarchand Mangaldas (SAM). Held on February 1-2, 2025, at the National Law Institute University, Bhopal, the event aimed to foster practical advocacy and decision-making skills among participants. Furthering our goal of policy engagement, the competition featured a distinguished panel discussion on ‘Navigating Emergency Arbitrations: Insights from India and SIAC,’ with insights from Mr. Vakhtangi Giorgadze (Deputy Counsel, SIAC), Mr. Vijayant Paliwal (Partner, SAM), and Mr. Prashant Mishra (Arbitration Practitioner & Patron, IALR).

This volume features a special article on the issue of Emergency Arbitration from the winner of the competition. In *‘Protective Preliminary Orders Under the 2025 SIAC Rules: Analysing Enforceability in Indian Courts’*, Mr. Kanishk Srinivas evaluates the mechanism of Protective Preliminary Orders (PPOs) introduced in the new SIAC Rules. Addressing concerns relating to consent and procedural fairness, the article argues that PPOs

could be enforceable under the same principles governing emergency arbitration reliefs.

We extend our heartfelt gratitude to our core committee members- Akhila, Adira, and Divyank, as well as to the entire Editorial Board. Their unwavering dedication has been instrumental in the success of this volume and the achievements of the past year. As the journal looks ahead, there is confidence that, under their stewardship, IALR will continue to ascend to greater heights, reflecting a bright and promising future.

This volume is enriched by the diverse contributions from practitioners, academicians, and students, both within India and internationally. Their scholarly submissions have significantly enhanced the academic discourse on arbitration law through this journal, and we are grateful that IALR was the platform chosen to share their esteemed insights, underscoring a shared commitment to advancing understanding and practice in the field.

With great pride, we present the seventh volume of the Indian Arbitration Law Review and eagerly anticipate your feedback and reflections. Heartfelt gratitude is extended to the members of the Peer Review Board and Editorial Board for their unwavering dedication in curating this volume and ensuring the highest standards of scholarly excellence. Most importantly, we thank our readers for their continued support and engagement in advancing the discourse on arbitration law in India.

