

EDITORIAL NOTE

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This year marks the sixth year of the Indian Arbitration Law Review's ("IALR") continued scholarship and research in the arena of arbitration law in India. Ever since its inception, IALR has under the wing of Mr. Prashant Mishra, our Patron, aspired to promote excellence by publishing the most incisive submissions selected after a rigorous review process. We are, further, thankful to Mr. Udyan Arya Srivastava, Mr. Prabal De, Mr. Pranjal Agarwal, Mr. Syamantak Sen, and Ms. Aadya Bansal, the Editor-in-Chief of the previous volumes, and their colleagues, for making us reach where we are today.

Our editorial enterprise has been defined by the guidance and vision of some of the most esteemed legal luminaries in the Indian as well as international arbitration landscape, who continue to indebted us as our Board of Advisors. The invaluable inputs and direction offered by these internationally recognised jurists, practitioners, and academicians, from around the world have consistently benefitted us and our predecessors immensely. We are further particularly thankful to retired Hon'ble Justice A.K. Sikri, who found time amidst his busy schedule to enlighten us by agreeing to pen the Foreword for this volume.

Arbitration is one of the drivers of economic and legal prosperity in India and the previous year has been monumentally important in the journey of arbitration in India. The Supreme Court of India has in many judgments, most particularly in *Cox and Kings Ltd. v. SAP India Pvt. Ltd. & Anr.* and in the judgment passed by the seven-judge bench reconsidering the opinion in *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.* reaffirmed India's commitment to a pro-arbitration stance. This trend and dynamism inherent to the ever-evolving field of arbitration in India makes it incumbent upon the practitioners and students of arbitration law to stay

up to date. We aspire to play whatever little role we can in enabling the said practitioners and students of arbitration law in this eternal vigilance.

In pursuance of this aspiration, this Volume features many articles that incisively analyse the various contemporary issues that mark the field of arbitration in India. The authors in ***Stamping for Approval: Critiquing the Legal Conundrum of Unstamped Arbitration Clauses in India*** critically analysed the practical effects of *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.* Notably; the article was written in anticipation of the judgment delivered by the seven-judge bench seized with reconsidering the judgment in *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.* The article is particularly insightful, as to the credit of the authors the article's opinion coincides with the broader direction taken by the Supreme Court eventually.

Discussing the intricacies of arbitration in the field of investor state disputes, the authors in ***A Granular Look into the Interpretative Inconsistency in Investor-State Dispute Settlement and Navigating the Capacity Conundrum: Unravelling State Succession's Impact on Investor-State Dispute Settlement*** evaluate important aspects of Investor State Dispute Settlement mechanism. The article on the Interpretative Inconsistency in Investor-State Dispute Settlement cogently underlines the jurisprudentially concerning the problem of Investment Tribunals reaching different interpretations in similar circumstances. In a spirited defence of the legitimacy of the Investor-State Dispute Settlement mechanism, the authors offer a novel solution to the aforesaid problem by suggesting that the adoption of a concrete standard of review and an interpretative methodology. The article on ***Navigating the Capacity Conundrum*** discusses the relatively unexplored aspect of State succession in investment arbitration. The article discusses the various theories on the subject and further employs a hypothetical case to illustrate its doctrinal point.

Recognising the interdisciplinary nature of arbitration law, the authors in ***Interplay of Insolvency Code and Arbitration Act – The Legal Conundrum Emanating from Indus Biotech*** and in ***Patents: The***

Arbitrability of Connected Commercial Obligations and Claims discuss arbitration law in conjunction with insolvency law in the former and arbitration law in conjunction with intellectual property law in the latter. The article on the Interplay of Insolvency Code and Arbitration Act attempts to structurally solve the legal conundrum present in the interdisciplinary field of arbitration and insolvency law. Amongst other solutions, the authors posit using the ‘dressed-up’ petition test for the proper and fair adjudication of an insolvency petition juxtaposed with a Section 8 application under the Arbitration and Conciliation Act, 1996. Further, the article on Patents presents the reader with a comparative analysis of how different jurisdictions treat the subject of arbitrability of patent disputes.

In the article on *The Challenge in the Enforcement of Foreign Awards in Terms of Public Policy*, the author undertakes the task of presenting the reader with an evolution and unfolding of the term ‘public policy’ in the context of the enforcement of foreign arbitral awards in India. Finally, the authors in *Effect of Non-Disclosure by Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996* highlight that the impartiality and fairness of an arbitrator are the ground norms of the megastructure of Indian Arbitration guaranteed by Section 12 of the Act. The article further discusses the extant law in India concerning the law in UK, USA, Singapore and France, whilst also explaining the consequences of a failure to disclose on the part of an arbitrator in line with Schedule V.

We must, before concluding, sincerely thank the members of the Peer Review Board for their dedication and unrelenting hard work. Furthermore, the efforts of the students of the Editorial Board of the IALR, who have worked tirelessly to sift through the overwhelming number of submissions and finalise a collection of articles written by seasoned authors, well versed in arbitration law, must not go amiss. Most importantly, we must thank our readers, who make us what we are today. With this, we present to you the Sixth Volume of Indian Arbitration Law Review. We look forward to receiving feedback for this volume from our readers.