



Centre for Trade and Investment Law

CTIL AND YOUNG ITA EVENT: SYNOPSIS OF THE DISCUSSIONS

INVESTMENT ARBITRATION IN INDIA: CHALLENGES AND OPPORTUNITIES

On October 29, 2018, CTIL and Young ITA hosted a panel discussion on ‘Investment Arbitration in India: Challenges and Opportunities’ in New Delhi. The distinguished guests on the Panel consisted of Hon’ble Justice Indu Malhotra, Judge, Supreme Court of India, Mr. Arvind Datar, Senior Advocate, Supreme Court of India, Mr. K. Rajaraman, Additional Secretary, Department of Economic Affairs, Government of India, Ms. Niti Dixit, Partner, S&R Partners and Mr. Dipen Sabharwal, Partner, White & Case. The discussion was moderated by Dr. Prabhash Ranjan, Assistant Professor, South Asian University and commenced with the introduction and welcome address delivered by Dr. James J. Nedumpara, Head and Professor, Centre for Trade and Investment Law followed by Mr. Aditya Singh, Young ITA Asia Chair and Associate, White & Case.

The Panel discussed the discontents of the international investment arbitration with focus on the Investor-State dispute settlement system. The world order is undergoing a reform where states are revisiting their investment treaties to narrow the scope of arbitration so as to strike a balance between investors’ interests and the state’s power to regulate. With respect to India, the Panel charted the development and transition of India’s international investment treaty policy from the pre-White Industries period to the India’s Model BIT of 2015. The Panellists also deliberated upon various nuanced issues under the Model BIT. Some of the issues included the need for greater transparency, standard of protection, exhaustion of local remedies, and issues related to taxation. Mr. Rajaraman presented the Government’s views and explained the measures already in place, including an Inter-Ministerial Group appointed to provide prompt advisory to the Government with respect to investor notices and claims. Justice Malhotra, in her address, highlighted the need to revisit the legitimacy of the extant brand of arbitration system.

Largely, the view prevailed that India has made strides to develop an investment arbitration climate that provides reasonable and fair protection to the investor’s interest without ceding the sovereign policy space. However, the panellists and the participants felt that there is scope for India to bolster its internal law and investment policy so that the system is geared to receiving steady investment flow while retaining the sovereign right to regulation various economic activities.

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