# Kluwer Mediation Blog

## Shifts or Illusions? The Reality of India's Growing Mediation Scenario

Rohan Dhariwal and Shrey Patnaik (National Law University Delhi, New Delhi) · Thursday, May 28th, 2015

It is quite well recognized that India is not particularly a mediation-friendly country, and the corporate-legal community is yet to internalise commercial mediation as an alternate for dispute resolution. Despite the establishment of civil mediation centres across certain High Courts of the country, organised mediation has largely remained obscure in its application for larger disputes. Until now, that is. Amarchand Mangaldas & Suresh A Shroff & Co is India's biggest law firm, with offices spanning the country. In 2014, a dispute arose regarding the contents of a family will concerning the division of shares in the firm, which was referred to mediation by the Bombay High Court based on a mutual agreement between the parties. This decision had come much to the surprise of the legal-commercial community, bearing in mind the status of mediation in the country and the employment of professional mediation for a dispute of this magnitude. Added to this, the mediation's resounding success leading to the split of the firm has transformed the way in which commercial mediation is looked at in India. However, it needs to be answered whether the successful application of mediation in the Amarchand Mangaldas split, touted as the largest law firm split in this part of the world, represents a positive breakthrough for organized mediation in India, or does it merely expose the various shortcomings of the application of the process in the country? The answer, surprisingly, lies in the middle.

Amarchand & Mangaldas & Suresh A Shroff & Co. was India's largest law firm by revenue, having most of its equity owned a single family comprising brothers Cyril and Shardul Shroff (the firm's joint managing partners), their respective wives (who were practicing senior partners in the firm) and the family matriarch Bharati Shroff. Bharati, who owned the single largest share in the law firm, a stake of 22.5%, passed away in August 2014.

In her videographed will of 2012, she said any brother could buy out that share with the proceeds going to charity. Through a subsequent codicil in 2014, she amended her previous declaration to will all her assets, including her equity in the firm to Shardul, citing strained relations with Cyril. While Shardul stressed on the primacy of the will, Cyril claimed that her holding was not hers to bequeath, being governed by the partnership agreement and a family framework agreement signed in 2001.

The warring brothers approached the Bombay High Court for resolution of the dispute which subsequently referred the dispute to mediation in November 2014. After six-month long deliberations, brothers finally decided to settle the dispute amicably by splitting the firm into two through a detailed settlement. On May 5, 2015, the Bombay High Court approved the successful conclusion of the settlement.

The successful resolution of the Amarchand Mangaldas dispute involves substantial ramifications for the corporate-legal world, especially due to its visibility, the sizeable and public nature of the dispute and its importance to the legal community. In a country where dispute resolution is relegated to the overburdened judicial machinery, arbitration was seen as an alternative to lengthy and expensive litigations, and was adopted with some success. However, despite efforts by several individuals, mediation had failed to gain the same prominence and importance in a country plagued by judicial inefficiency. Seen merely as an alternative that is similar to arbitration, mediation was never seen as a legitimate standalone alternative capable of resolving high-stakes disputes of such nature.

Fortunately, the mediators have recognized the role of the mediation process in the successful resolution of what seemed like an increasingly protracting affair. In their joint statement, the mediation panel to the dispute has commended the "spirit of accommodation and keenness" displayed by the parties, also focusing on how a quick and speedy settlement was reached despite the complexities involved. They mentioned how the alternative would have been an extremely long, drawn-out litigation process that the parties wanted to avoid.

Despite the success of the mediation, certain peculiar facts concerning it need to be critiqued, in order to examine the status of mediation in India. At the first instance, the choice of the mediators seems doubtful. The extremely accomplished panel consisted of Senior Advocate Harish Salve, one of India's leading counsels, Justice BN Srikrishna, retired judge of the Supreme Court of India, and Nimesh Kampani, a leading investment banker. But what is surprising here is the lack of prior professional association of the three with mediation. Despite their numerous outstanding accolades in the legal field, their experience with mediation techniques is relatively unheard of. There seem to be two likely reasons for this, drawn in context of India's attitude towards mediation. First, mediation is not seen as a process independent of more 'legal' dispute settlement mechanisms such as litigation and arbitration. The accommodative and consensual nature of mediation is not emphasised as much as it should. Second, there seems to be a dearth of well qualified standalone professional mediators in India who are working at the top level. Most mediators in India practice it as a backup to their legal careers, and successful Indian mediators exclusively working in this field are extremely rare.

Another interesting facet to this mediation is the fact that the panel was called a 'Mediation/Arbitration' panel, and the mediators came out with an 'arbitral award' that bound the parties. This further exemplifies the reluctance of Indian parties to exclusively resort to mediation and surrender to consensual dispute resolution processes. It is not argued that mediation should occur without other, more legally enforceable processes; instead, it should be independent, yet harmonious. Instead of imposing litigation-esque judicial decision making through arbitration, mediation

should remain what it is supposed to be: consensual.

In India, mediation is still employed primarily for small family disputes, thus being unheard of in complex disputes having large commercial ramifications. There are certain fundamental flaws in the way mediation is seen and conducted in India. Indians seem to be having some reluctance in embracing the consensual nature of such processes, and are viewing it as a quicker alternative to litigation and arbitration. And therein lies mediation's strength. The successful resolution of the Amarchand Mangaldas dispute exemplifies these features of mediation at their best. It is unmistakable that due to the visibility and coverage of this successful application of mediation, more and more entities are going to prefer mediation to other methods. Half the battle would be won here. The other half, about the mediation procedure itself, is a battle for another day.

---

*To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please subscribe here.*



This entry was posted on Thursday, May 28th, 2015 at 2:52 pm and is filed under

General, India

You can follow any responses to this entry through the Comments (RSS) feed. You can skip to the end and leave a response. Pinging is currently not allowed.