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JUDICIAL TREND ON DUE PROCESS IN ARBITRAL PROCEEDINGS: A COMPARATIVE OVERVIEW

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ABSTRACT: In international arbitration, arbitrators are under duty to ensure that, parties to arbitration will legitimately exercise their procedural rights and will not act in unreasonable manner. Unfair arbitral process results in challenge to the arbitral award, ultimately rendering the award unenforceable and arbitration a futile exercise. This has forced the tribunals to be over cautious, which often end up in 'due process paranoia.' Hence, it is important to understand and observe the 'Due Process' in any arbitral process. This research paper is an attempt to analyze the concept of due process in arbitration and judicial response to it by various judicial forums across the world.

This paper also analyzes 'due process paranoia' that often results in arbitrators succumbing to unreasonable demands of the parties and the decision of Singapore Court of Appeal in matter of 'China Machine…' guiding in avoiding such paranoia. Author has also discussed the challenge of ensuring due process in virtual arbitration.

Index Terms: **Due process, Arbitration, Judiciary, Tribunal, Model Law.**

INTRODUCTION.

Origin of term Due Process can be traced back to *Magna Carta* of England, 1215 (Chapter 39), which prohibited unlawful arrest and detention.[1] Originally its application was limited to criminal judicial proceedings which was subsequently applied to all civil judicial proceedings and later accepted in form of principles of natural justice thereby widening its application to all judicial and quasi-judicial proceedings.

Due process of law can be traced back to the Stoic concept of a universal ideal of moral conduct upon which all legislation should be based and which should not be superseded by any other rule, no matter how well-intentioned.[2]

Arbitration is a private dispute resolution process that is supervised by a neutral third party. It is a procedure in which parties agree to submit a disagreement to a nongovernmental adjudicator, who is chosen by or for the parties and gives a binding decision, finally settling the problem in line with neutral, adjudicative procedures that allow the parties to be heard.[3] Decision of arbitrator is final and binding upon the parties to the dispute unless challenged before court of law. Arbitration is predicated on due process, which is also the procedural cornerstone of the rule of law. It was used in arbitration because arbitral tribunals issue binding judgments that establish substantive rights for parties and act as a safeguard for procedural rights.[4]

"Due process in international arbitration requires, first, that the parties' agreement to arbitrate their dispute will be respected and enforced, that they will effectively have access to arbitration as their chosen means of justice, and that they will have a meaningful opportunity to participate in the lawful constitution of the arbitral tribunal. The core guarantees of procedural due process comprise the arbitrator's duty to treat the parties equally, fairly and impartially, and to ensure that each party has an opportunity to present its case and deal with that of its opponent. It also comprises the arbitral tribunal's duty to deal with all of the issues that are put to it."[5]

[1] The Magna Carta (1215) of King John defined English subjects' rights against the king's authority and is an early example of a 'constitutional' guarantee of due process. Charter 39 declares that "[n]o free man shall be seized, or imprisoned … except by the lawful judgment of his peers, or by the law of the land…"

[2] See Zeller, *the Stoics, Epicureans, and Sceptics.* (Reichel transl., Longmans, Green & Co., London 1870) pg. 226.

[3] See, Born, G, *International Commercial Arbitration*, Kluwer Law International, Leiden, 2014, p. 291

[4] J Lew et al., *Comparative International Arbitration* (1st edition, 2003), p. 674.

[5] Fabricio Fortese and Lotta Hemmi, *Procedural Fairness and Efficiency in International Arbitration*, Groningen Journal of International Law, vol 3(1): International Arbitration and Procedure, p. 112, retrieved from, https://grojil.files.wordpress.com/2015/05/grojil_vol3-issue1_fortese_hemmi_.pdf

STATUTORY RECOGNITION OF DUE PROCESS

Principle of Due Process has been set out U/Art. 18 of UNCITRAL Model Law. Article 18 provides that, "*the parties shall be treated with equality and each party shall be given a full opportunity of presenting its case*."

While commenting on the object of Article 18, Ontario Superior Court of Justice in *Re Corporacion Transnacional de Inversiones S.A.de C.V. et al.* v. *STET International S.p.A. et al.*[6] observed that, "the purpose of Article 18 is to protect the party from egregious and injudicious conduct by an arbitral tribunal and is not intended to protect a party from its own failures and strategic choices."

The right to due process is also set out in Article V(1)b of the New York Convention, which runs as follows;

Recognition of the award may be refused where the party against whom the award is invoked proves that it was not given proper notice of the arbitration proceedings or was otherwise unable to present its case.

The language of New York Convention is similar to one of Geneva Convention.[7] By ensuring proper notice of appointment of arbitrators and of arbitration proceedings to the parties, Article V (1) b of the New York Convention ensures due process. Requirement of notice offers parties to the dispute an opportunity to present their case.

In the case of notice challenges, beyond the notice, courts have maintained award recognition and enforcement by looking in to the parties' access to and participation in the arbitration. Particularly in cases of parties were informed of a proceeding or hearing, they were able to participate in the arbitral proceedings.[8] Recognition and enforcement has been refused under article V (1)(b) in case of clear proof of complete absence of notice. For example, a Chinese court refused recognition and enforcement of an award as the party was given no notice.[9]

Under Article V (1)(b), procedural irregularities have to be raised and proven by the party objecting to the recognition and enforcement of an award. Courts cannot raise the same *suo motu*.[10]

Some of the other legal provisions providing for due process are as follows;

Article 15(1) of the 1976 UNCITRAL Rules provides for 'a full opportunity' to present their case to the parties 'at any stage of the proceedings. 'Article 17(1) of the 2013 UNCITRAL Rules provide for "a reasonable opportunity to present one's case at an appropriate stage of the proceedings."

Article 24(1) of Model Law provides for oral hearings and states that, "unless the parties have agreed that no oral hearings be held for the presentation of evidence or for oral arguments, the tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party." Another example of procedural fairness is Article 24(3) of the Model Law, which provides that, Any expert report or evidentiary document on which the arbitral tribunal may rely in rendering its judgement shall be transmitted to the other parties, as shall all statements, documents, and other information submitted by a party to the tribunal. Several other provisions of Model Law are aimed at fairness in arbitration for e.g. appointment of odd number of arbitrators,[11] notice to the parties,[12] expert witness[13] etc.

In arbitral procedures, the right to present one's case, often known as the 'principe de la contradiction,' comprises the right of each party to make submissions on evidence produced by its adversary. The right to present one's case is also recognised as a necessary component of the right to a fair hearing included in the major human rights agreements. This principle necessitates both equality of arms and proper involvement of the opposing parties in the procedure, both of which are essential parts of a fair trial. When new material is obtained and the tribunal considers it to be important to its final deliberations, the principle will require the tribunal to give both parties the opportunity to make submissions.[14]

Hence, equal opportunity to present the case can be said to be a foundation of due process. "The parties must be treated equally and that one way that this equality is achieved is through an equal allocation of time to each side during the hearing. The basic structure of the hearing should be such that Claimant present its case, then Respondent present its defense, thereafter, Claimant present its rebuttal and Respondent present its rebuttal; [and] the manner in which each party is to present its case or defense is left to that party…"[15]

DUE PROCESS IN ARBITRATION THROUGH THE LENSES OF JUDICIARY

New Zealand High Court in *Trustees of Rotoaira Forest Trust* v. *Attorney General*[16] summarily discussed the important components of due process which are as follows;

a. "Arbitrators must observe the requirements of natural justice and treat each party equally.
b. The detailed demands of natural justice in a given case turn on a proper construction of the particular agreement to arbitrate, the nature of the dispute, and any inferences properly to be drawn from the appointment of arbitrators known to have special expertise.

[6] 45 O.R. (3d) 183

[7] Article 2(*b*) of the 1927 Geneva Convention states that "[...] recognition and enforcement of the award shall be refused if the Court is satisfied: That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented"

[8] *OOO Sandora (Ukraine)* v. *OOO Euro-Import Group (Russian Federation)*, Federal Arbitrazh Court, District of Moscow, Russian Federation, 12 November 2010, A40-51459/10-63-440

[9] *Aiduoladuo (Mongolia) Co., Ltd.* v. *Zhejiang Zhancheng Construction Group Co., Ltd.*, Supreme People's Court, China, 8 December 2009, Min Si Ta Zi No. 46

[10] *Travaux préparatoires*, Amendments to Articles 3, 4 and Suggestion of Additional Articles (Sweden), E/CONF.26/L.8.

[11] Art. 10, UNICITRAL Model Law, 1985

[12] Art. 24 (2), UNICITRAL Model Law, 1985

[13] Art. 26 (2), UNICITRAL Model Law, 1985

[14] *Fraport AG Frankfurt Airport Services Worldwide* v. *Republic of the Philippines (I)*, ICSID Case No. ARB/03/25

[15] *Glamis Gold, Ltd.* v. *United States of America*, NAFTA/UNCITRAL, Procedural Order No. 12 (Aug. 28, 2007) 10

[16] [1992] 2 NZLR 452 at 463

c. As a minimum, each party must be given a full opportunity to present its case.
d. In the absence of express or implied provisions to the contrary, it will be necessary that each party be given an opportunity to understand, test and rebut its opponent's case; that there be a hearing of which there is reasonable notice; that the parties and their advisers have an opportunity to be present throughout the hearing; and that each party be given a reasonable opportunity to present evidence and argument in support of its case, test its opponent's case . . . and rebut adverse evidence and argument.
e. In the absence of express or implied agreement to the contrary, the arbitrator will normally be precluded from taking into account evidence extraneous to the hearing without giving the parties further notice and opportunity to respond.
f. The last principle extends to [her or] his own opinions and ideas if these were not reasonably foreseeable as potential corollaries if those opinions and ideas that were expressly traversed during the hearing.
g. On the other hand, an arbitrator is not bound to slavishly adopt the position advocated by one party or the other."[17]

The due process under Article V (1) (b) of the New York Convention requires that "an arbitrator must provide a fundamentally fair hearing." Generica Ltd., 125 F.3d at 1130. "A fundamentally fair hearing is one that `meets "the minimal requirements of fairness" adequate notice, a hearing on the evidence, and an impartial decision by the arbitrator.'" Id. "[Parties that have chosen to remedy their disputes through arbitration rather than litigation should not expect the same procedures they would find in the judicial arena." Id. Essentially, in exchange for the convenience and other benefits obtained through arbitration, parties lose "the right to seek redress from the court for all but the most exceptional errors at arbitration." *Dean* v. *Sullivan*, 118 F.3d 1170, 1173 (7th Cir.1997).[18]

In, *BIVAC* v. *Paraguay*,[19] rejecting the request by the respondent, tribunal held that, "the Tribunal explained that the decision was motivated by the need to strike a balance between the constraints of the parties and the obligation to conduct the proceedings in reasonable speed and bring them to an end within an expedient and efficient period of time. The Tribunal reiterated that the requirements of due process had been complied with, that both parties had been fully involved in the process, including in the setting of the timetable and agenda for the hearing on jurisdiction."

Hence, the principle of due process not only casts the duty on arbitral tribunal to conduct arbitration in fair and reasonable manner, but also expects the parties to the arbitration to cooperate and comply with all the directives and process of arbitration. It expects fairness and justness in conduct of both tribunal and parties to the Arbitration.

CHALLENGE ON GROUND OF DUE PROCESS AND REFORMATIVE APPROACH BY COURTS.

The promise of arbitration is shattered when a party who loses an arbitration ruling adopts a never-say-die attitude and continues the issue through the courts without an objectively reasonable conviction that it would succeed. Arbitration is praised and used as preferred method of dispute settlement mainly because of its finality of decision. The more cases like this one where the arbitrator is merely the first stop on the route, the less arbitration there will be. The parties must be able to trust that the arbitrator's judgement will be honoured sooner rather than later if arbitration is to be a viable alternative to litigation.[20]

Violation of Due process/Natural Justice has been recognized as a ground for challenging the arbitral award by almost all the statutes. However, the same has been misused for delaying the enforcement of arbitral award. The reformative and pro arbitration approach adopted by the courts of various states in recent times has provided a much needed deterrence to such ill practices.

In *AKN and another* v. *ALC and others*,[21] Chief Justice Sundaresh Menon of Singapore Court of Appeal outlined the common arguments that are usually advanced when contending a breach of natural justice. His Lordship held as follows;

> *"39. In the light of their limited role in arbitral proceedings, the courts must resist the temptation to engage with what is substantially an appeal on the legal merits of an arbitral award, but which, through the ingenuity of counsel, may be disguised and presented as a challenge to process failures during the arbitration. A prime example of this would be a challenge based on an alleged breach of natural justice. When examining such a challenge, it is important that the court assesses the real nature of the complaint. Among the arguments commonly raised in support of breach of natural justice challenges are these:*
> *(a) that the arbitral tribunal misunderstood the case presented and so did not apply its mind to the actual case of the aggrieved party;*
> *(b) that the arbitral tribunal did not mention the arguments raised by the aggrieved party and so must have failed to consider the latter's actual case; and*
> *(c) that the arbitral must have overlooked a part of the aggrieved party's case because it did not engage with the merits of that part of the latter's case."*

The aforementioned commonly raised arguments highlighted in *AKN* underlines the need to be cautious when considering breach of natural justice arguments.

> In *Trustees of Rotoaira Forest Trust* v. *Attorney-General*,[22] the High Court of Auckland observed that,
> "An arbitrator is not bound to slavishly adopt the position advocated by one party or the other. It will usually be no cause for surprise that arbitrators make their own assessments of evidentiary weight or credibility, pick and choose between different aspects of an expert's evidence reshuffle the way in which different concepts have been combined, make their own value judgments between the extremes presented, and exercise reasonable latitude in drawing their own conclusions from the material presented."

[17] *Ibid*
[18] *Consorcio Rive* v. *Briggs of Cancun*, 134 F. Supp 2d 789
[19] *Bureau Veritas, Inspection, Valuation, Assesment and Control, BIVAC B.V*. v. *Republic of Paraguay*, ICSID Case No. ARB/07/9
[20] *B.L. Harbert Int'l, LLC* v. *Hercules Steel Co.*, 441 F.3d at 913. In this case a challenge to an arbitration award was solely on the grounds that the award reflected a "manifest disregard of the law."
[21] [2015] 3 SLR 488; [2015] SGCA 63
[22] [1999] 2 NZLR 452

Similarly, the Malaya High Court in *Allianz General Insurance Company (Malaysia) Berhad* v. *Virginia Surety Company Labuan Branch*[23] observed that,

> *[35] …the Tribunal was not obliged to repeat and regurgitate all the arguments of the Plaintiff when arriving at their finding. Not only would it be a cumbersome exercise but it also means that the Tribunal would be embarking on a repetition of the arguments and expressing their disagreement on each and every point raised by the Plaintiff. If that was required of the Tribunal, it would merely be an elaborate tick boxing exercise by the Tribunal of all arguments raised by the Plaintiff.*

The decision of High Court reflects on the pro arbitration approach (affirming discretion of Arbitral tribunal) adopted by Malaysian Courts.

In, *Geogas S.A* v. *Trammo Gas Ltd.; The Baleares*,[24] the English Court of Appeal through Steyn LJ stated;

> *"…the arbitrators are the masters of the facts and there is a need for the Court to be constantly vigilant to ensure that attempts to question or qualify the arbitrator's findings of fact, or to dress up questions of fact on question of law are carefully identified and firmly discouraged."*

Hence, from aforementioned judicial precedents, it can be concluded that, it is the duty of every Court before which an award is challenged on the ground of breach of due process, to exercise caution and to not to end up wrongfully setting aside the award of tribunal. The curial intervention of court shall be used cautiously and keeping in mind the notions of arbitration as expressed through Article 5 of UNCITRAL Model Law.[25] Award shall be set aside only if there has been unreasonable non observance of principles of natural justice/ due process resulting in loss or violation of rights and patent injustice to parties to arbitration.

China Machine New Energy Corp v. *Jaguar Energy Guatemala*[26]: *a Case Study*

While expressing concerns over *cynical misuse of due process and natural justice complaints*, Supreme Court of Singapore discussed some of the important components of Due process in arbitral proceedings which are as follows;

Right to be heard (Principle of *Audi alteram partem*)

While Article 18 of the Model Law provides for each party to be given a "full" opportunity to present its case,[27] the *travaux preparatoires* clearly show that the drafters of the Model Law were primarily concerned with placing limits on the right to be heard, so as to prevent its abuse by unscrupulous parties seeking to delay and prolong proceedings.[28]

While commenting on exception to this rule, court observed that, a party's right to be heard is impliedly limited by considerations of reasonableness and fairness. It does not require the tribunal to sacrifice all efficiency in order to accommodate unreasonable procedural demands by a party.[29]

Natural justice does not require that a party get responses to all submissions and arguments made; rather, only right to be heard is paramount.[30]

Reasonable opportunity

Stressing on the principle of opportunity to be heard, Singapore Supreme Court further observed, "The best rule of thumb to adopt is to treat the parties equally and allow them reasonable opportunities to present their cases as well as to respond. What constitutes a reasonable opportunity is a contextual inquiry that can only be meaningfully answered within the specific context of the particular facts and circumstances of each case."

Fair procedure

Commenting on the procedure of Arbitration, Court held that, "The overarching inquiry is whether the proceedings were conducted in a manner which was fair and the proper approach a court should take is to ask itself if what the tribunal did (or decided not to do) falls within the range of what a reasonable and fair-minded tribunal might have done in those circumstances."

In undertaking this exercise, the court must put itself in the shoes of the tribunal. This means that:

a. the tribunal's decisions can only be assessed by reference to what was known to the tribunal at the time;
b. it follows from this that the alleged breach of natural justice must have been brought to the attention of the tribunal at the material time; and
c. the court will accord a margin of deference to the tribunal in matters of procedure and will not intervene simply because it might have done things differently.

However, Court also rightly stressed upon the prerequisite of raising the objection to procedural unfairness before tribunal (competence competence). It observed that,

> *If a party intends to contend that there has been a fatal failure in the process of the arbitration, it must intimate this to the tribunal at the relevant time*. This would ordinarily require the complaining party, at the very least, to seek the suspension of proceedings until the alleged breach has been satisfactorily remedied. It cannot simply reserve its position until after the award is issued and then decide whether to take up the point, depending on whether the result turns out to be palatable.

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[23] Summons No. WA-24NCC(ARB)-13-03/2018

[24] [1993] 1 LLR 215

[25] Article 5. Extent of court intervention in matters governed by this Law: No court shall intervene except where so provided in this Law.

[26] LLC [2020] SGCA 12

[27] At first sight, the word 'full' can be misleading: it conjures visions of a party having an entitlement to present as much argument and evidence as it sees fit. However, the term 'full' must be given a logical interpretation in this context, and it appears doubtful that a national court would overturn an award where the tribunal took a clearly reasonable and proportionate approach to limiting the scope of evidence that a party desired to present. Most modern arbitration rules now specifically state that a party must only be given a "fair opportunity to present its position," which should encourage arbitral courts to strike a balance between opportunity and efficiency when deciding proper arbitral procedures. See, *Redfern and Hunter on International Arbitration* (Oxford University Press, 6th Ed, 2015) observe as follows (at para 6.14)

[28] *Id*, para 94

[29] *Id*, para 97

[30] See *TMM Division Maritima SA de CV* v. *Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972

Courts decision is guiding set of principles in case of due process, beneficial for both arbitral tribunal and judiciary. If adhered to, these principles by the Supreme Court of Singapore will certainly help in avoiding 'due process paranoia.'

DUE PROCESS PARANOIA

A increasing point of concern in international arbitration is tribunals' perceived hesitation to act decisively in some instances for fear of the award being overturned because a party did not have a full opportunity to state its case (also called as "due process paranoia").[31] The Survey by Queen Mary University of London and White & Case defines Due process paranoia as, "*a perceived reluctance by* [arbitral] *tribunals to act decisively in certain situations for fear of the award being challenged on the basis of a party not having had the chance to present its case fully.*"

There appears to be a combination of three components at the heart of the concept of due process paranoia;

"First, one or more case management decisions by an arbitral tribunal that appear overly attentive to due process considerations. These decisions are often, but not always, made to protect the interests of the respondent in the arbitration.

Second, component is a belief on the part of the tribunal that such a cautious stance is rendered necessary by the risk that the tribunal's award may otherwise be set aside and/or refused enforcement (the "Enforcement Risk").

Finally, the third element (without which there would be no paranoia but, instead, only sensible risk-averseness) is the erroneous character of the tribunal's belief that this level of caution is warranted –erroneous belief which is caused by an inflated perception of the Enforcement Risk." [32]

Commenting upon role of courts in determining the due process requirements, Court in *China Machines...*[33] held that, Deference is accorded in recognition of the fact that,

(i) the tribunal possesses a wide discretion to determine the arbitral procedure, and

(ii) that discretion is exercised within a highly specific and fact intensive contextual milieu, the finer points of which the court may not be privy to.

It has therefore been said that the court ought not to micromanage the tribunal's procedural decision-making, and will instead give "substantial deference" to procedural decisions of the tribunal.[34]

The cautious and pro arbitration approach of judiciary indeed will help in minimizing the due process paranoia on part of tribunal.

DUE PROCESS IN VIRTUAL ARBITRATION

The pandemic of COVID 19 has forced the arbitral institutions to reform their rules to promote virtual arbitration. The ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic ("ICC Note")[35] allows the tribunals, to adopt different approaches to establish procedures suitable to the particular circumstances of each arbitration and "*fulfills their overriding duty to conduct the arbitration in an expeditious and cost-effective manner*". The Note further provides that, the COVID-19 pandemic should not necessarily delay tribunals' deliberations or their preparation of draft awards, as these activities can be conducted remotely.[36]

In ensuring effective case management during post pandemic arbitration process, ICC has recommended few suggestions, some of them are as follows;

- "Identifying whether the entirety of the dispute or discrete issues may be resolved on the basis of documents only, with no evidentiary hearing;
- Considering whether site visits or inspections by experts can be replaced by video presentations or joint reports of experts;
- Using either audioconference or videoconference for conferences and hearings where possible and appropriate etc."[37]

The COVID 19 pandemic has forced parties worldwide to shift to virtual mode of arbitration. Ensuring procedural fairness in virtual arbitration has posed a challenge to the tribunal as well as to the parties to arbitration. Particularly, the job of tribunal in ensuring procedural fairness in virtual arbitration is critical. Ensuring the access and use of IT tools in arbitral proceedings by the parties is a challenge which both parties and tribunal has to work upon. Whereas, ensuring equal treatment to parties, in access and use of technology in virtual arbitral process, along with full presentation (as stipulated u/Art. 18 of Model law) will be the primary responsibility of tribunal in maintaining virtual due process. Measures such as, digitally signed documents, simultaneous communication to parties and tribunal through email or creating a cloud storage accessible to both parties and tribunal, video conferencing for meetings and witness examinations must be adopted to ensure procedural fairness. In case of international arbitration having parties from two corners of globe, managing participation from different time zones is another challenge in virtual arbitration and requires better cooperation and coordination between parties and members of tribunal.

Observing the expressions in cross examining a witness plays a vital role in any judicial process as it may help in checking the truthfulness, impartiality and fairness of deposition. In order to record such micro expressions, technological tools based on

[31] *2015 International Arbitration Survey: Improvements and Innovations in International Arbitration*, Queen Mary University of London. Available at, http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf

[32] Remy Gerbay, *Due Process Paranoia*, Kluwer Arbitration Blog, 6th June 2016. Retrieved from, http://arbitrationblog.kluwerarbitration.com/2016/06/06/due-process-paranoia/

[33] *Supra note* 11, at para 103

[34] *On Call Internet Services Ltd* v. *Telus Communications Co* [2013] BCAA 366 at [18]

[35] Available at, https://iccwbo.org/content/uploads/sites/3/2020/04/guidance-note-possible-measures-mitigating-effects-covid-19-english.pdf

[36] *Ibid*, para 5

[37] *Ibid*, para 8

artificial intelligence may be taken help of by the parties.[38] Free or low cost availability of high definition video conferencing tools such as Microsoft teams, Web ex, Zoom, Google Teams etc. have helped a great deal in transformation of arbitral procedures from physical (sitting across the table) to virtual. Capability of these platforms allowing multiple participants to participate and share documents helps in multi-party virtual arbitrations. Feature of recording the meetings and their possible use by tribunal after meeting will give virtual arbitration an edge over the traditional arbitration and determine the dispute in much fairer manner. The technology assisted faster justice delivery will ultimately play a vital role in ensuring due process in virtual arbitration.

CONCLUSION

In arbitration proceedings, arbitral tribunal often end up completing party's procedural request under the fear of challenge to arbitral award on the grounds of due process/natural justice. However, the emerging pro arbitration approach by courts of various nations have provided a hope to arbitral tribunals. The decision of Singapore Court of Appeal in '*China Machine…*' case has provided a sound guidance in ensuring the due process by the arbitral tribunal and court. The decision of the Court will certainly help the tribunal in overcoming the 'due process paranoia.' Practitioners and parties to arbitration shall therefore exercise a caution while using the weapon of 'due process' for challenging the award.

While the components of due process have been clearly set out in most of the international and national statutes, and also been laid down in various judicial pronouncements, for time and again, awards are frequently challenged either due to lack of awareness or with an ill intention of delaying the enforcement arbitral award. Law itself shall provide a deterrence to such practices in order to have speedy enforcements of awards passed after following due process. To sum up, adherence to due process principles laid down by judicial precedents is the only solution to ensure due process in all forms of arbitral procedure.

[38] *See, Solutions to Keep Business in Motion During COVID-19*, Epiq, https://www.epiqglobal.com/en-us