



# HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA



## E-Newsletter

**CENTRE FOR ALTERNATIVE DISPUTE  
RESOLUTION & PROFESSIONAL SKILLS**

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## NATIONAL NEWS

### **SEBI QUIZZES VC, PES ON RESOLVING DISPUTES**

The Securities and Exchange Board of India (SEBI) has asked several private equity (PE) and Venture Capital (VC) funds about how they resolve disputes and whether they have spelled out their resolution frameworks in the Private Placement Memorandum (PPM). SEBI has also asked funds to share the number of complaints they have received in the past two financial years and the number of complaints that have been directed to the resolution mechanism. Over the past few months, Sebi has been collecting a lot of information on AIFs. In early September, the regulator had asked these funds to disclose their valuation methodologies. This was a significant move since most funds are close-ended vehicles that invest in unlisted stocks. [Read more...](#)

### **THE PERIOD OF LIMITATION FOR REFERRING THE DISPUTES TO ARBITRATION WOULD COMMENCE ONLY ONCE THE PARTIES EXHAUST THE PRE-ARBITRATION STEPS SET OUT IN THE AGREEMENT: DELHI HIGH COURT**

In a recent judgment dated October 10, 2022, titled *Welspun Enterprises Ltd. v. NCC Ltd.*, a Division Bench of the Delhi High Court ("Delhi HC") has held that if the contract between the parties contemplates pre-arbitration steps (such as negotiation, mediation, etc.) before commencing arbitration,

then the period of limitation for initiating arbitration would start only after the parties exhaust such steps. [Read more...](#)

### **APPLICATIONS AND APPEALS UNDER ARBITRATION ACT, EXCEPT INTERNATIONAL ARBITRATION SHALL BE HEARD BY DESIGNATED COMMERCIAL COURTS: SC**

The Supreme Court has held that all applications or appeals arising out of arbitration under the provisions of the Arbitration and Conciliation Act, 1996, other than international commercial arbitration, shall be heard by designated Commercial Courts. The Court was hearing an appeal challenging the decision of Calcutta High Court dismissing the petitions filed against a notification by the State of Civil. [Read more...](#)

### **SECTION 11 ARBITRATION ACT: ONCE THE LIMITATION PERIOD HAS BEGUN, WITHDRAWAL OF CLAIMS HAS NO EFFECT ON ITS RUNNING- DELHI HC**

In this case, a petition was filed under Section 11 of the Arbitration and Conciliation Act, 1996, for the appointment of an Arbitrator. A contract was executed between the parties on 09.10.2000 for construction of an Underground Reservoir and Booster Pumping Station.

The time period for the execution of the contract was extended several times by the Respondent and was finally completed by the Petitioner on 31.01.2005. After the completion of the work, disputes arose between the parties concerning the payments due. A notice was sent by the Petitioner to the Respondent for the appointment of an Arbitrator. Pursuantly, the Respondent appointed a sole Arbitration. Read more...

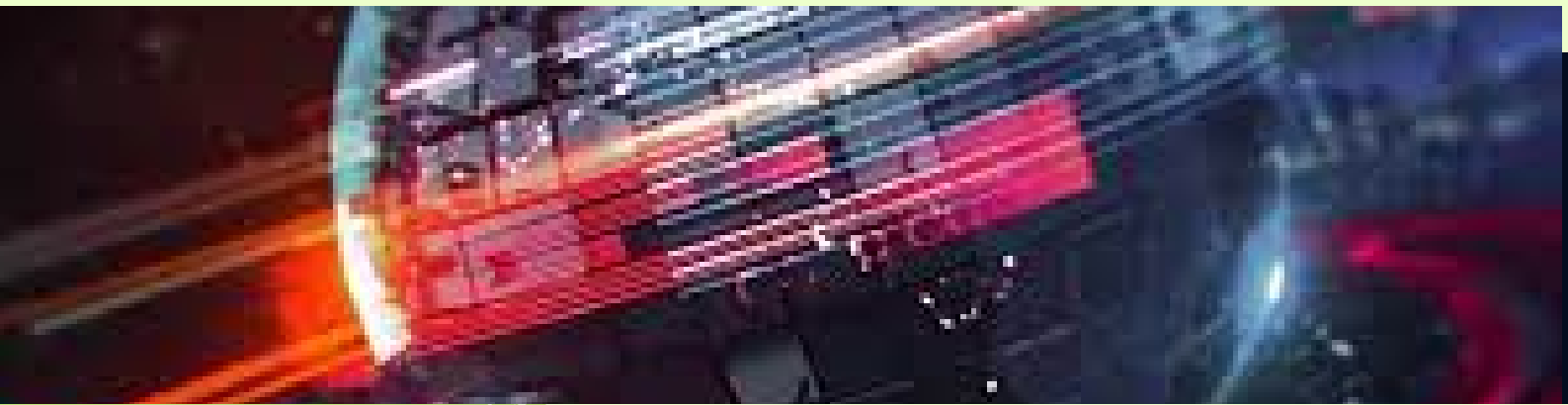
### **SEC 9 ARBITRATION ACT: COMMERCIAL COURT CANNOT PASS DIRECTIONS UNTIL PRE-CONDITIONS UNDER ORDER 38 RULE 5 CPC ARE SATISFIED- SC**

A Supreme Court Bench of Justice MR Shah and Justice Krishna Murari heard an appeal against a judgment passed by the Gujarat High Court by which the High Court had confirmed an order passed by the Commercial Court through an application of Section 9 of the Arbitration and Conciliation Act, 1996. The Supreme Court held that the appeal must succeed, and the order passed by the High Court and Commercial Court was quashed and set aside. To protect the interest of the parties, the Court directed the Appellant to furnish an undertaking backed by the Resolution of the Appellant's company before the Commercial Court that in case any award is passed by the Arbitrator in arbitration proceedings, the same shall be paid/honored by the Appellant subject to the challenge before the higher forum. Read more...

### **COURT SHOULD HOLD PRELIMINARY INQUIRY ABOUT ARBITRABILITY OF ISSUE BEFORE APPOINTING ARBITRATOR- SC REITERATES**

The Supreme Court has reiterated that if a clause stipulates that under certain circumstances, there can be no arbitration and they are demonstrably clear, then the controversy regarding the appointment of an Arbitrator has to be put to rest. The Court placed reliance on its Judgment in Oriental Insurance Co Ltd. Vs. Narbheram Power and Steel (P) Ltd. (2018), where it had observed as aforesaid. The Court observed that the High Court did not appreciate and consider the fact that in case of dispute, as mentioned in Clauses 3, 6, and 9 for enforcement of the Agreement, the dispute is not arbitrable at all. Therefore, the Court set aside the judgment and order passed by the Delhi High Court appointing the arbitrators. Read more...





## INTERNATIONAL NEWS

### **ELEVENTH CIRCUIT REAFFIRMS DISTRICT COURT DECISION THAT NON-SIGNATORY PARTIES MAY ENFORCE ARBITRATION CLAUSES UNDER THE NEW YORK CONVENTION**

Outokumpu filed a lawsuit against GE Energy in Alabama state court. GE Energy moved to federal court to dismiss and compel arbitration. The district court granted the motion to compel arbitration, relying on an arbitration clause in the agreements covering “all disputes arising between both parties in connection with or in the performance of the Contract.” Read more...

### **ARBITRATORS SHALL DECIDE ON WHETHER OR NOT THE ARBITRATION CLAUSE IS VALID IN CASE OF BANKRUPTCY OF A PARTY**

Superior Court of Justice (“STJ”), which is the highest court in Brazil for non-constitutional matters, has recently decided that a party under bankruptcy cannot submit a dispute under a contract subject to the arbitration clause directly to the judicial courts so that the issue on whether the bankruptcy adversely affects the validity and enforceability of the arbitration clause shall be first resolved in arbitration. Read more...

### **ACCESS TO ARBITRATION AND THE RECOGNITION / ENFORCEMENT OF AWARDS EXEMPTED FROM EU SANCTIONS**

On 21 July 2022, the Council of the EU (the “Council”) adopted a seventh package of sanctions against Russia. In a previous package of EU sanctions from March 2022, transactions with certain “publicly controlled or owned” Russian entities were prohibited. Various voices within the International Arbitration community expressed concerns about the impact of this prohibition on the administration of arbitrations involving sanctioned entities. Read more...

### **SWISS SUPREME COURT DENIES ENFORCEABILITY OF ARBITRAL AWARD BECAUSE OF LACK OF DEBTOR’S JOINT LIABILITY**

The dispute at stake originated from an arbitral award rendered in an investment arbitration between two investors and the Czech Republic before the Permanent Court of Arbitration Read more...





## **ARBITRATORS SHALL DECIDE ON WHETHER OR NOT THE ARBITRATION CLAUSE IS VALID IN CASE OF BANKRUPTCY OF A PARTY**

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## **CLIMATE FINANCE UNDER THE GREEN CLIMATE FUND**

The adoption of the Glasgow Climate Pact on 13 November 2021 put the spotlight once again on climate change and the efforts taken by government and non-government parties towards adaptation and mitigation of the effects of climate change. The pact consists of a range of agreed items, including strengthened efforts to build resilience to climate change, curb greenhouse gas emissions, and provide the necessary finance for both. [Read more...](#)

## **SINGAPORE CONVENTION WEEK: MIDNIGHT CLAUSES AND S.M.A.R.T. SETTLEMENT AGREEMENTS**

How does one make the most of "midnight clauses" so that they're not simply added as a last-minute afterthought, and what are the key principles and tips to bear in mind when drafting settlement agreements, which are quite often done at a late hour? [Read more...](#)

## **MISSED REQUEST FOR CLARIFICATION PRECLUDED APPLICANT FROM ANNULMENT**

The Austrian Supreme Court (Oberster Gerichtshof, "OGH") dealt in its decision under the docket 18 OCg 1/19z with an application to set aside an arbitral award issued by an ad hoc arbitral tribunal under the UNCITRAL Arbitration Rules. The OGH dismissed the invoked violation of procedural public order. It held that the applicant was precluded from relying on defects in the arbitral tribunal's reasoning because it did not file a request for clarification. [Read more...](#)





## **PONDERING**

### **BBR (INDIA) PVT. LTD v. SP SINGLA CONSTRUCTIONS PVT LTD.[1]**

BBR (India) Pvt Ltd (Appellant) and SP Singla Constructions Pvt Ltd (Respondent) had entered into a contract dated June 30, 2011 wherein the Appellant was required to supply, install and undertake stressing of cable strays for constructing a cable-stay bridge.

As disputes arose between the parties, the matter was referred to arbitration, and Justice (Retd.) NC Jain was appointed as the sole arbitrator. After first sitting, the arbitral tribunal held that the venue of the proceedings would be Panchkula, Haryana. Thereafter, Justice (Retd.) T.S. Doabia took over as the sole arbitrator and an order stating that the venue of the proceedings would be Delhi was passed. After the passing of the award, two proceedings were initiated. Singla filed an application for interim orders under Section 9 of the Arbitration and Conciliation Act, 1996 before the Additional District Judge, Panchkula, on 7th May 2016. BBR filed a petition under Section 34 of the Act before the Delhi High Court on 28th April 2016. Hence, the parties invoked the jurisdiction of two different courts. Punjab and Haryana High Court set aside such order with the finding that the courts of Delhi did not have the jurisdiction to entertain the objections under Section 34 of the Act.

It further recorded that the agreement between the parties was silent as to 'the seat' of the arbitration proceedings, and second arbitrator Justice (Retd.) T.S. Doabia, had not determined Delhi to be the 'seat of arbitration'. This order of the high court was challenged before the top court by BBR.

Top Court relied on Section 2 (1) (e) of the 1996 Act, which defines the term 'court'; Section 20 on the 'place of arbitration'; as well as Section 42 which deals with jurisdiction. A bench of Justices Ajay Rastogi and Sanjiv Khanna noted that if the arbitration proceedings were held throughout in Panchkula, there would have been no difficulty in holding that Delhi is not the jurisdictional 'seat.' The bench further noted that once the arbitrator fixed 'the seat' in terms of sub-section (2) of Section 20 of the 1996 Act, the arbitrator could not change 'the seat' of the arbitration, except when and if the parties mutually agree and state that the 'seat of arbitration' should be changed to another location, which was not so in the present case. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held.' In view of the aforesaid observations and findings of the Supreme Court held that the Courts in Delhi do not have the jurisdiction as the 'seat of arbitration' is Panchkula, Haryana and thus dismissed the present appeals due to lack of merit.

**OIL AND NATURAL GAS CORPORATION v. AFCONS GUNANUSA JV [2]**

In 2009, the Oil and Natural Gas Corporation Limited (Petitioner), and Afcons Gunanusa JV (Respondent) entered into a contract for the construction of an ICP-R Platform which is alleged to have been completed in December 2012. The respondent invoked arbitration in July 2015 due to ongoing disputes and differences between the parties. Justice Gyan Sudha Mishra and Justice Mukul Mudgal were appointed as the arbitrators by the Petitioner and the Respondent respectively. The arbitrators appointed Justice GN Ray as the presiding arbitrator. The arbitral tribunal, vide its orders in August 2016 and May 2018, directed the parties to deposit 25% of the arbitrators' fee and finalize a fee respectively to the tune of INR 1,50,000/- for each arbitrator for each sitting of a three-hour duration; reading fee or conference fee to be indicated at a later stage. ONGC filed an application before the arbitral tribunal for modifying its order issued in May 2018 and the same was rejected as the tribunal held that the fee was set based on the amount paid in arbitrations of such nature. However, the tribunal agreed to reduce the fee of each arbitrator to INR 1,00,000/- per sitting. Thereafter, ONGC filed a petition under Section 14, read with Section 15 of the Arbitration Act, before the Hon'ble Bombay High Court for the termination of the mandate of the arbitral tribunal and the substitution of a fresh set of arbitrators. The Bombay High Court dismissed ONGC's petition in 2021, following which ONGC approached the SC.

The Hon'ble Supreme Court of India, comprising of Justice D.Y. Chandrachud, Surya Kant, and Sanjiv Khanna, JJ, determined the following issues:

1. Can arbitrators unilaterally hike their fee during the arbitration process?
2. Should claims and counterclaims be considered jointly to determine the sum in dispute?
3. Does the ₹30 lakh limit on fee under the Fourth Schedule apply to the entire fee or the variable component?
4. What process must the arbitrators follow to increase a pre-decided fee?

The SC, while referring to *Union of India v. Singh Builders*[2], *Mithilesh Kumari v. Prem Behari Khare*[3] and LCI 246th Report[4], held that:

- Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their fees.
- The term — 'sum in dispute' in the Fourth Schedule of the Arbitration Act refers to the sum in dispute in a claim and counter-claim separately, and not cumulatively.
- The ceiling of INR 30,00,000 in the entry at Serial No 6 of the Fourth Schedule is applicable to the sum of the base amount (INR 19,87,500/-) and the variable amount over and above it.
- Consequently, the highest fee payable shall be INR 30,00,000; and this ceiling is applicable to each arbitrator, and not the arbitral tribunal as a whole. Also, a sole arbitrator shall be paid 25% over and above this amount under the Note to the Fourth Schedule.





**BABANRAO RAJARAM PUND VS. M/S. SAMARTH BUILDERS & DEVELOPERS & ANR.[3]**

The issue revolved around the relevance of the words “final and Binding” in an arbitration agreement, the bench has held that when the arbitration agreement clearly discloses the intention and obligation of the parties to be bound by the decision of the tribunal, the lack of express mention of the words “final and binding” does not legitimise the annulment of the arbitration clause.

The Supreme Court held that the deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes and hence cannot legitimise the annulment of arbitration clause. Going through the other parts of the arbitration agreement, the Court noticed that the intention of the parties was surely to refer the disputes to arbitration. Hence, in the absence of specific exclusion of any of the attributes of an arbitration agreement, the Respondents’ plea of non- existence of a valid arbitration clause, is seemingly an afterthought.

The Court stressed on the fact that UNCITRAL Model Law on International Commercial Arbitration, 1985 from which the Arbitration and Conciliation Act, 1996 originated, envisages minimal supervisory role by courts. It was, hence, observed that it is imperative upon the courts to give greater emphasis to the substance of the clause and that the intention of the parties flows from it and must be given due weightage.

**SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION VS. POWER MECH PROJECTS[4]**

The appellant, SEPCO Electric Power Construction Corporation (SEPCO) was a Chinese entity awarded contracts of various coal-based power projects in India.

In one of its projects, subsequent to the execution of works, a dispute arose between SEPCO and one of its subcontractors, Power Mech Projects Limited (Power Mech). The dispute was referred to arbitration and an award was made in favour of Power Mech and Power Mech filed an application under Section 9 of the Arbitration Act seeking the Court’s direction to secure the award amount. The Court in its order dated 12-2-2019 directed SEPCO to furnish a bank guarantee within six weeks and “further, the bank guarantee in the sum of Rs 30 crores will be that of a scheduled bank located in India”. Thereafter, a bank guarantee of Industrial and Commercial Bank of China Limited (ICBC) for a sum of INR 30 crores was produced by SEPCO. Power Mech filed an interim application seeking a bank guarantee of a “Scheduled Indian Bank” rather than ICBC as per the order of the Court and thereafter, SEPCO filed another interim application seeking acceptance of the ICBC bank guarantee, which was refused. Against this refusal order, SEPCO filed an appeal under Section 37 of the Arbitration Act.

While deciding on the maintainability of the appeal, the Court held that the order of the Court which was appealed was an order granting interim relief under Section 9 of the Arbitration Act, directing SEPCO to furnish a bank guarantee issued by a Scheduled Indian Bank. It was clarified that though SEPCO is not aggrieved from the direction of furnishing a bank guarantee, it is aggrieved from the direction, that the bank guarantee be of a Scheduled Indian Bank only. The Court concluding on the maintainability of the appeal, held that the said direction “would be covered within the meaning of an order granting ‘any’ measure under



Section 9, within the meaning of Section 37(1)(b) of the Arbitration Act and within the meaning of 'judgement or order' of a Commercial Division of a High Court within the meaning of Section 13(1-A) of the Commercial Courts Act". The Court therefore held that although the order is not final, it is nevertheless an order under Section 9. This is yet another decision which expanded the scope of what is treated as a Section 9 order and thereby the nature of a Section 9 direction order that would be appealable.

#### **EXTRAMARKS EDUCATION PRIVATE LIMITED v. SRI RAM SCHOOL[5]**

The petitioner was seeking appointment of an arbitrator to adjudicate upon the disputes that were stated to have arisen with the Sri Ram School from Agreement dated 02-05-2014 related to the sale, implementation and installation by the petitioner of certain hardware and multi-media system accessories along with software for the purpose of setting-up 24 Smart Learn Classes at several schools run by the respondents, Anup Jairam Bhambhani, J., held that the petitioner's claim against the respondent is ex-facie time barred while observing that once it is found that the claim is time-barred by Limitation Act, 1963, and arbitration cannot be invoked even by consent of parties.

The Court remarked that "limitation bars a legal remedy and not a legal right, the legal policy being to ensure that legal remedies are not available endlessly but only up-to a certain point in time."

#### **ESHA KEDIA VS. MILAN R. PAREKH & ORS.[6]**

In a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an independent and impartial arbitrator for adjudication of disputes,

the Hon'ble High Court of Delhi expounded upon the concept of "Group of Companies." The court held, as per the principles of contract law, an agreement entered into by one of the Companies in a group, cannot be binding on the other members of the same group, as each Company is a separate legal entity which has separate legal rights and liabilities. However, in certain exceptional circumstances, an arbitration Agreement can be binding on non-signatories. The said doctrine, irrespective of the distinct juridical identity of each of its members, rests on the concept of a 'Single Economic Reality'. In other words, the doctrine states that a group of companies constitutes one and the same economic reality of which the arbitral tribunal should take account when it rules on its own jurisdiction. The issue whether a non-signatory can be referred to Arbitration has been exhaustively dealt with by the Delhi HC in Shapoorji Pallonji & Co. Pvt. Ltd. v. Rattan India Power Ltd., (2021) 281 DLT 246. It was observed that a non-signatory can be bound by an arbitration agreement on the basis of the "Group of Companies" doctrine where the conduct of the parties evidences a clear intention of the parties to bind both the signatory as well as the non-signatory parties. Courts and Tribunals have invoked this doctrine to join a non-signatory member of the group, if they are satisfied that the non-signatory company was by reference to the common intention of the parties, a necessary party to the contract.

#### **HDFC BANK LIMITED VS. RITU AUTOMOBILES PRIVATE LIMITED[7]**

The National Company Law Tribunal (NCLT), Mumbai Bench, declared a moratorium under section 14 of I&B Code with consequential directions.



The bench prohibited the following:

- 1.The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- 2.Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- 3.Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
4. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

It was also observed that the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

#### **PANASONIC INDIA PVT. LTD. v. SHAH AIRCON[8]**

The Hon'ble High Court of Delhi decided on the dispute of appointment of an arbitrator under S. 11 of the Arbitration and Conciliation Act, 1996. The Court held that the Arbitration Agreement between the parties indicated consensus. The interpretation of an arbitration clause must be interpreted upon construction of the contract as a whole and no particular word or phrase should be unduly emphasized to negate the clause of its true meaning. The word "can" indicates an option while the word "shall" is mandatory. "can" signifies either party, which binds the other party as well. The Clause in the Arbitration Agreement indicates that the parties intended a mandatory reference

to arbitration in terms of venue of arbitration, language of arbitration, applicability of the Act, requirement to give reasons and the procedure for appointment of an arbitrator by reference to Court. Clause XXIV of the Arbitration Agreement confers exclusive jurisdiction on the Hon'ble High Court of Delhi in case of a dispute, with special reference to arbitration proceedings and the appointment of an arbitrator.

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[1] Civil Appeal No. 4130-4131 of 2022

[2]Petition for Arbitration (Civil) No.5/2022)

[3] 2022 SCC OnLine 1165

[4] (2022) 1 SCC (Civ) 107

[5] 2022 SCC OnLine Del 3123

[6] 2022 SCC OnLine Del 3244

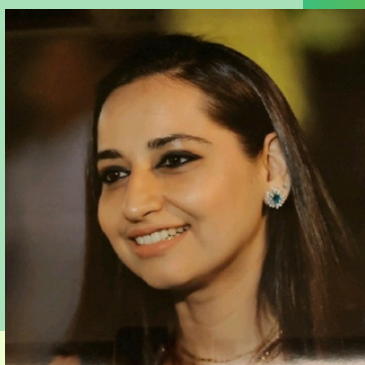
[7] 2022 SCC OnLine NCLT 273

[8] 2022 SCC OnLine Del 3288





## **TETE- A- TETE - MS. RADHIKA BISHWAJIT DUBEY**



Independent  
Counsel,  
Accredited  
Mediator &  
Arbitrator,  
Former Partner  
at Cyril  
Amarchand  
Mangaldas

### **MS. RADHIKA BISHWAJIT DUBEY**

**First of all, we thank you for being an assessor, in the final rounds, of the national mediation competition. I hope you had a great time assessing the round. What do you think about the growing trend of ADR competition in India?**

Being amongst law students, and seeing their zeal and enthusiasm is a wonderful experience, and it gives me hope that we have a bright future ahead. So it is always a pleasure.

These competitions are a necessity; it gives law students practical insight into how to present their case to an extent. It may be slightly different from how it is presented in these competitions, but it gives you an idea to see how to implement the subjects learnt practically. In law schools, you learn things in theory, right?

But to put it to use, how to implement what you've learnt in your law school through different subjects is very different. So at least these competitions give you a great platform.

Additionally, you get to meet many people, which is very important for our profession. You get to interact; you get to learn and lead students to introspect on "what I could have done better?" The craft you learn through these practical competitions, I think it's great and I think you should have more of these. And through these competitions, we meet the law students and the brighter lot. So, it's a plus.

**Your grandfather and your father were advocates as well. So how did that influence your choice of profession?**

It did play a role in my decision-making when choosing law as a career. As a child in school, I remember having arguments with my father about various social issues. He used to give me a perspective with which I would mostly not agree. So I was that argumentative rebel child. I would also participate in debates and extempore competitions. Even at home, I would have battles. So, my father and grandfather had great roles to play in my choosing law as a career.





**So do you think it's any different being a student in an NLU and being a student and any other law college?**

I'm not a national law school pass-out, so I don't measure someone's capabilities as per the law school one belongs to; I think it depends upon the individual. Each one's capabilities can be measured to some extent through the kind of focus and attention he has paid, the kind of work on subjects that one has done. And that's got very little to do with the law school you're in, but having said that, if you are in one of the national law schools, the people graduating from those schools have an edge. They get better opportunities, especially with placements and internships. But who says life is fair? I mean, that's, again, the reality, you know. So, I would rather advise students to approach it in a way so as not to look at the negative aspect of it, crib about it or have a victim mentality; rather, approach it in such a way to figure out how you could make your situation better. What could you do to improve the situation that you are in?

**Can you share a bit about your law school experience as well?**

Law school is fun and if I have to put it in one word, it is phenomenal. I was unsure if I wanted to attend a regular college or graduate somewhere. As I said, I had that clarity at least about pursuing law. In your twenties, you have that zeal; you want to bring about a change in society. I wanted to pursue human rights, I feel very strongly about some of the social issues which I still do and my family was all protective Punjabi family; they insisted that I pursue my studies in Delhi.

In fact, IP University is the only entrance test that I had taken. I had filled out no other college forms. So essentially, I had no plan B, but God was kind and has been kind in fact, I cleared the entrance, I got a free seat. Though I would not advise the students to do the same, you should have alternatives planned for yourself.

If I have to go back and discuss my law school experience, I think studying in Delhi has its advantages. Being part of a law school in Delhi gave me an edge over other law students, as I could continue with long-term internships at the High Court and the Supreme Court. I worked with the Law Commission of India, some NGOs, the United Nations, and law firms which would not have been possible if I had studied law from somewhere outside.

Plus, grades have been very important to me since school. I was active in extracurricular activities, which continued through law school through moot court conferences and seminars. So I was active that way. The law school also challenged me in many ways I had never imagined. So, it also gave me the kind of exposure I never had. I learned life skills and very important character traits, which remain with me today. So, overall, it was quite enriching.

**You have been a professional in ADR. When you worked in Dubai as an associate, could you also share a bit about that? How was that moving out from Delhi and going to Dubai to work?**

I finally convinced my father that I've grown up and I'm not a child anymore and that I can handle things. So, Dubai came in as that. I hadn't planned it. I have not planned anything so far in my career of 15 years, it may just shock to you, but I just knew that there's something I like,





and I would like to take steps in that direction, and the rest of the path was just chalked out automatically. Since you asked, Dubai happened because I wanted to pursue human rights in law school. This is the reason why I chose law in the first place. So, I planned my career to get a scholarship. I had represented Delhi State in swimming in the national level competitions. So I was aiming for Rhodes at that time, and I wanted to pursue my master's, so someone suggested, what if you don't get the scholarship? What would you do? What is the Plan B? so, the Plan B was Dubai. So, I just got to know through friends that there are people who had come down for recruitment and I applied for it. So plan B was that in case I didn't get a scholarship, I'm going to rely on this for one year, I'm going to work in Dubai and earn money for myself. So I applied, got through it, and went to Dubai to financially support my master's, which eventually never happened. I didn't even apply for it. Dubai gave me exposure at some other level because, as a young person in your 20s, you don't have inhibitions; you have fewer fears. So I would just go out and talk to people, and network; Dubai is one place which taught me how to do business development. How to engage with clients. Dubai overall was a great exposure. It's a land full of opportunities.

**Ma'am, you spoke about networking. So what would you advise young law students on how to improve networking or how to make healthy connections for the future?**

For me, one thing led to another, I worked with NGOs, and my senior there loved me. She helped me connect to some of the people working with the United Nations office on drugs and crime. At United Nations, one of the events assigned to me was to organise a film screening on illegal

which connected me to some of the judges' offices at the Delhi High Court. I still remember I had applied to Justice Sikri but he had no vacancy, but he was kind enough, he liked my CV, and he sent it to Justice Kaul, who called me for an interview, and I was in, and then Dubai happened, and then after Dubai, I had to struggle. There was a lean period, but you know, things happen. You have to have faith. So in my case, one thing led to another but coming back to a question of networking.

Find or create opportunities in your present circumstances; take your time but don't wait for things to happen to you that's not going to happen. You should know what you want to do or at least have some idea. What interests you? And then, find opportunities where and how and don't have these fears about what will happen? What is he going to think of me? And so on, just go out there, and be yourself. Make efforts.

**So you spoke about these ups and downs in your career. So, first of all, you worked as a judicial clerk, then you worked in Delhi and finally, you got into a law firm and stayed there for a long period. Could you talk about your time at Cyril Amarchand Mangaldas?**

I have spent almost 12 years at the firm. It's been more than fulfilling, it gave me a platform to showcase my skills. So I'm grateful for that. Many people don't get that kind of platform. Some of the associations that I have made through this are lifelong, including the team that I worked with. I'm in touch with most of them. When I decided to move on and start my independent practice, the management was more than supportive. And, to the date and on and off, they keep checking on me, on my well-being, which I remain grateful for. So my experience has been wonderful at the law firm.



For law students, and this is my opinion again, if you're looking at corporate law, working with the firm is great. But if you're looking at litigation and intend to practice litigation, then spend some initial years with the government counsel or with a small chamber so that your foundation is right. Learning at a law firm is very different from learning in a chamber. There are practical differences and I'm now, talking of only litigation; for example, in litigation, you need to be in court. You will need to understand the temperament of a judge, Court craft which you learn by observing and by being in court.. These are things that a chamber practice will give you, not a law firm, because law firms will give you creamy matters. If your foundation is right, you know how the court functions; these small things help in litigation because litigation is not just about being in court and arguing. There is a lot which goes behind it. On the other hand, a firm will give you the kind of matters which you can't expect working with a chamber. And of course, the money that comes with it and the clientele you will be exposed to while working with a law firm is incomparable. The approach is very different, the training is very different, so that is my advice.

But as far as the students are concerned for joining some law firm, then, they should be focusing on a few things, like amongst others good commercial knowledge and legal acumen, research skills. It's a must-have. I also advise the interns, to go that extra mile to ensure that you do proper research. It shows that you're interested. Then another thing is good communication skills and analysis of how you're looking at a particular problem. Technical proficiency is another important aspect, and soft skills, like collaboration and teamwork because, at a law firm, you will not be able to survive if you don't work as a team, so if you like to play solo, then a law firm is

not the place for you. In any case, the legal fraternity as such requires that collaboration. One more mantra, which is important, is your approach; you should not fear and try to take ownership of the work assigned to you.

### **Would you like to share some key moments or highlights from your career?**

Career-wise, my working at United Nations was among the high. Then during my clerkship, I found my mentor, my guiding light, Justice Kaul. Then, joining one of the country's top-tier law firms. But among this, my best moments were spent as a law clerk. I was growing as a person and as a professional daily. There was something new that I was learning daily. My clerkship is the reason for my addiction to litigation. Each one of us has different things that drive us. I said that at the beginning as well; for me it always was work contentment, which I found the most while working with Justice Kaul. So at 10,000 rupees a salary, I was very happy.

### **Has litigation changed a bit, especially for fresher, female lawyers from law universities?**

So, you know, in a male-dominated profession which is litigation, it is difficult for women to make a mark because it's a hard profession. How will you manage? You know you're to get married then, have kids. So, how will you manage the struggle of, courts day in and day out? But having said that, it's not just true for our profession. It's generally true. The struggle of, a working woman in this country is difficult, but it has improved over time. I would say, it's your passion that will sustain you in the profession. I would also put it this way, it's again your approach to how you focus on things i.e. do you treat yourself as a victim here or you treat it as an advantage that I'm one of those few, so it's going to be easy for me. So it's your approach.



You have to tread your path carefully and safely, you know? And women are intelligent and stronger that way too, to be handling things in a better manner, I feel.

**You are a mental health proponent, as well. So would you like to share a bit about your journey and how other people have influenced you? Or have you influenced someone in that regard?**

I am curious if I have been able to influence others, but there have been many good influences in my life. Those influencers have always told me to follow my heart. So, this topic interested me from the time I saw some of my close work associates struggling with it silently, and I thought this is something which needs to be spoken about. A lot of people advised me against it,, what are you doing? Do you want to be seen as a soft emotional person just talking about this aspect? Lawyers are considered cold-blooded, and mental health just doesn't gel well. Right? You are expected to be superhuman who's distant from emotions. But that's not correct. The statistics speak differently. Lawyers I think are more susceptible than any other professionals to issues related to mental health because it's natural. Every day if you're hearing problems of your clients or of others and you're looking for solutions, then you're bound to get somewhere, vicariously, affected, howsoever strong-willed or mentally strong you may be, right? This is a topic, therefore, which needs to be spoken about, which needs awareness, and the stigma around it needs to go. SCC, and I'm driving this initiative with them. And we are interviewing various stakeholders in the bar because we feel that no one is untouched. Be it judges, be it in house-counsels, independent lawyers, or law students, everyone has different struggles and factors, and I can't judge.

their journey, you can't judge mine. The mind is beautiful and unique in its way, so what are the triggers for you will be different for me. A lot depends on your conditioning, upbringing, and how you perceive or look at a particular thing. And one of the reasons also, the driving factor for me to move on from the law firm was that I needed to do more in life. I've achieved a particular milestone of being a partner at a law firm, but now what? The human rights activist in me awakened, I guess.

**With 15 years of experience in the field of ADR. How do you think the practices in India affect other jurisdictions?**

I think it's coming along really well, I read Mr. Fali S. Nariman's quote somewhere where he said that the future of arbitration is bright because litigation is not. In fact, people are frustrated with the court systems in how our judicial mechanism functions, and its complexity. The problems are complex in their ways. So while we're trying to find solutions there, ADR helps and comes to the rescue, especially for commercial matters, which offers comparatively quick resolution and flexibility. Also, the confidentiality that ADR offers, amongst many things. If law students are looking at the area as a career option, most definitely, it's a yes, but again I advise students generally that in the beginning, you focus and give more time to that subject, but then don't start specializing right at the beginning. I mean, if it happens to you like that and if you are very sure that this is what you want to do, great. But, you know, being the jack of all trades is better in our profession in the initial years and becoming a master of one over time.





## **UP-&-COMING**

### **3rd EDITION OF INTERNATIONAL ARBITRAL AWARD WRITING COMPETITION**

The Centre for Alternative Dispute Resolution, RGNUL (CADR) is collaborating with Surana & Surana International Attorneys, headquartered in Chennai, India to organize the 3rd edition of the International Arbitral Award Writing Competition 2022. The competition problem was released on 10th September. The last date to seek clarifications is 10th October and the clarifications will be released on 20th October. The final drafts have to be submitted by November 20th and the results will be declared in January 2023.

### **2nd RGNUL- SHARDUL AMARCHAND MANGALDAS AND CO. NATIONAL NEGOTIATION COMPETITION, 2022 [NOVEMBER 12-14TH, 2022]**

Centre for Alternative Dispute Resolution, Rajiv Gandhi National University of Law, Punjab, India (CADR-RGNUL) is organising the 2nd RGNUL-SAM National Negotiation Competition, 2022 ('the Competition') from November 12 - 14, 2022. The event is to be conducted over a period of three days having preliminary rounds, quarter-final round, semi-final round and the final round.

### **11TH NLIU INADR, INTERNATIONAL MEDIATION TOURNAMENT, 2022**

**[NOVEMBER 4TH-6TH 2022]**

The NLIU INADR Tournament is one of the Asia's oldest ADR Tournament. The competition shall involve 3 participants from each participating team, viz. the Client, the Counsel, and Mediator. Registration is Open from 30th September, 2022 and the Last Date for Final Registration is 20 October 2022.

### **CPR INTERNATIONAL MEDIATION COMPETITION, 2023**

The 2023 CPR IMC will be hosted by Insper at its state-of-the-art campus in beautiful São Paulo (Brazil). The Insper Institute of Education and Research is a private, not-for-profit, higher education and research institution located in the Vila Olympia district close to the new business centre of São Paulo, Brazil. The event will be held on March 30, 31, and April 1, 2023. The applications will open in late September and the selection will be done by the organizing committee.



**30th VIS MOOT 2023**

The event is being hosted by the Moot Alumni Association and will be held in the virtual mode. The problem has been distributed on 7th October, 2022. The deadline for clarifications is 28th October, 2022. the date for memorandum for claimant is 8th December, 2022 and the memorandum for the respondent is 26th January, 2023. The opening ceremony will be held on 31st March 2023. The event is arbitration moot and the registration for the arbitrator ends in January 2023.

**ICC INTERNATIONAL COMMERCIAL MEDIATION COMPETITION 2023**

The ICC International Commercial Mediation Competition is one of the biggest educational competitions worldwide dedicated exclusively to international commercial mediation. For the 2023 edition, for the first time in two years it will return to Paris.

ICC's largest educational event of the year, ICC Mediation Week (#ICCMW), will be hosted in Paris 2023. The ICC Mediation Competition gathers 350+ students and coaches, as well as 150+ professional mediators and academics from across the world and numerous volunteers, sponsors and observers.

During the ICC Mediation Competition, students representing 48 teams will compete to resolve international business disputes through mediation guided by professional mediators under the ICC Mediation Rules. Their performance is evaluated by some of the world's leading dispute resolution specialists who participate as judges.



## HPNLUITES- THE ACHIEVERS

### **Abhavya Rathore - 2nd National Mediation Competition- 'Best Mediator'**

We are delighted to share that a team comprising of Abhavya Rathore and Dakshini of 2021-26 batch, have secured the "Semi Finalists" position and Abhavya Rathore has secured the "Best Mediator" position in the 2nd National Mediation Competition, 2022 of IMS Unison University, Dehradun.



### **Chetana Goud and Shauryaa Singh- 3rd National Mediation Competition - 'Runner up position'**

We are delighted to share that a team comprising of Shauryaa and Chetana Goud of batch 2021-26, have secured the "Runner up" position in 3rd National Mediation Competition, 2022 of IMS Unison University, Dehradun.

### **Arpitha Krishnan and Parakram Sehgal - 3rd GD Goenka Client Counselling Competition- 'Quarter Finalists - Merit Certificates'**

We are delighted to share that the team comprising of Arpitha Krishnan and Parakram Sehgal have secured the Quarter Finalists position in 3rd GD Goenka Client Counselling Competition.



### **Harshali Srivastava and Aditi Kothari - 5th National Client Counselling Competition- 'Semi-Finalist Position - Certificate of excellence'**

We are delighted to share that the team comprising of Harshali Srivastava and Aditi Kothari of the 2021-26 batch, have secured the semi-finalist position in the 5th National Client Counselling Competition, 2022 by IMS Unison University, Dehradun.



# CADR & PS NEWSLETTER

Himachal Pradesh National Law University, Shimla

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**Centre for Alternative Dispute Resolution & Professional Skills**

Himachal Pradesh National Law University, Shimla

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