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TRANSCRIPT OF THE INTERVIEW WITH MR. SAROSH ZAIWALLA

Editor's Note: Mr. Sarosh Zaiwalla graduated from the Government Law College, Mumbai and went on to qualify to practice in London. He founded his own company in April, 1982 which is presently known as the Zaiwalla & Co solicitors in Chancery Lane, London. His company is a London-based specialist international arbitration and litigation law firm. He has previously been a member of the ICC representing India for three terms from 1990 to 2002. He was asked by the Dalai Lama to facilitate a dialogue with the Government of People's Republic of China with a view to finding a peaceful resolution relating to Tibet. He was also invited by the United Nations Secretary General Mr. Ban Ki-Moon for an extensive consultation on issues relating to World Order. Along with these multiple accolades, he is an expert in International Energy, Maritime and Construction Arbitrations.

Editorial Board (EB): You graduated from GLC Mumbai and later began practicing in London by founding Zaiwalla & Co. Having had Indian legal education, what led you to establish your practice in the UK?

Sarosh Zaiwalla (SZ): My father was an English Solicitor and he qualified in England. In those days, Indians used to qualify as a barrister, but he qualified as a solicitor in London and started a very small practice, Zaiwalla & Co in Bombay. In those days, it was very different. There were not many brown faces in England, so I took it as an opportunity. I was encouraged by Cedric Barclay, who was one of the most eminent arbitrators in the world, and he motivated me to stay back in England. I started in 1975 and during those days the firms and courts were comprised only of Europeans, and this continued until about 8 years ago. I was determined that we should change this setting. That's how we started there.

EB: People often prefer working in locations where they know the language, culture and people which would help them in the practice, build connections and clientele. What are your views on this, and does your experience align with this?

SZ: My father had no connections in England because he left in 1924 and had a small practice, and it was a different kind of practice in those days, unlike big law firms. One must have a vision to change the world. When I was a student in India, I formed the first student union in Bombay and I wanted to get into politics and change things for the betterment of the world. If you go to a practice where you have friends, then you will stick to that but you must be open to go higher. A vision of what you want to achieve is very important. If one's vision is confined to one's locality, they remain there. That vision is important and if one is sincere and honest, they can overcome everything and that is the truth.

I decided that I would bring a change by opening a firm in London, which will be the first firm started by a person of colour in the city. Further, coming to England was an advantage as the English people had never seen a person of colour in court. And as a Parsi who could speak reasonably proper English, the judges supported me quite often and they thought of me as unique and that turned out to be an advantage in the long run. Though some people were at times difficult, there were still people who were very supportive, and in England the judges are very honest. If you say what you want courteously and you believe in it, you are respected.

EB: Having worked with different international arbitration centres, what are the most notable practices that, in your opinion, that makes arbitration centres reach greater heights and how can this be adopted in India?

SZ: The most notable practices which makes an arbitration great, examples of which are London and Singapore, is the speed with which the awards are published and the integrity of the arbitration tribunals. In Delhi, I was involved in starting an arbitration centre with Mr. Hansraj Bhardwaj who was the Minister of Law and Justice at that time, but it had not taken off because people and the parties to arbitration including the foreign parties must trust the centre and I think India has that potential.

Arbitration centres are built by reputation. So, we have to perform and tell the world that we are honest, have integrity and we can give quick justice, and that is how arbitration centres are built. One can have Ahmedabad as a centre but people must have confidence in the same because arbitration is a ratio of choice and not compulsion where one has to go. For example, most of the international arbitrations from India are now going to Singapore because Singapore is closer to India, is cheaper and faster. The courts in India must be faster because the problem one faces in India is that it takes years to get judgements and International commercial parties want quick results.

EB: Recently, ICSID and UNCITRAL have come up with a draft code of conduct for adjudicators which states that double hatting must be avoided. What, in your opinion would be the implications of such a code?

SZ: I sit as an international arbitrator, and I act as a solicitor and a counsel. It depends on the party's appointment. In my opinion, there is nothing wrong in doing this, but the most important thing is that the arbitrator/practitioner must be honest, have integrity and remain independent while donning different roles, and in England that is possible. And the professional code of conduct would not have much of an effect on the status.

At the same time, the practice now is getting more and more popular because arbitration fees are so high that many practitioners have left practice from the Queen's Counsel, given up their practice, and are going for arbitration and becoming arbitrators. This is not very good because when I started my firm in 1982, most of the retired arbitrators were ex-retired commercial giants. They were directors, maritime owners and had no interest in earning money. They just wanted to do justice and fairness. Though when one has a professional resolve to earn money and live on that, you need very high standards. This is my honest answer.

EB: You have been involved in many mediation proceedings like that of the Tibet dispute. What has been your experience as a mediator and how do you see mediation benefitting India?

SZ: yes at the personal request of the Dalai Lama made at a personal one to one meeting which Dalai Lama had requested I had obtained green signal from the Chinese government in Beijing to start a dialogue with Dalai Lama to find a resolution over Tibet but after two initial meetings China told me that they were discussing the same issues with Dalai Lama's brother and so I should close the dialogue.

I think mediation, especially for India, is extremely important and India is trying to build in mediation. I qualified for the CEDR (Centre for Effective Dispute Resolution) mediation. It was the first mediation centre opened and I had to pass a two-day exam for the same to become a qualified mediator. To become a mediator, the first thing is that you do not suggest any solutions to the parties. You ask questions and make them think as the solution must come from them and that is the important principle and a qualified mediator can resolve it. Statistically in England, I was told by CEDR that 80%-85% of the cases are settled in mediation and mediation can last for 2-3 days or even 3 hours. Even from the balance of 15%, 7-8% are settled in the next few weeks and only 5%-6% for

the courts. I'll give you an example, we had the biggest mediation case in England which involved *The Bank Mellat of Iran v. the UK Government* listing under the Iran nuclear sanctions. We won in the Supreme Court which said that the British government acted unlawfully and irrationally. Bank Mellat was Iran's biggest private bank and then we had a huge claim of 1.6 billion pounds against the UK government and it was in the mediation that we settled it. It took 3 days and the mediation charges were already made but we managed it.

Mediation is the best alternative and I think India is trying to bring mediation back but it must have qualified mediators. It is most important for the mediator to not be like a friend. A mediator must give no suggestions as to which way anybody should go but he or she must be able to ask questions and bring the parties together. Mediation has a great future because of the backlog of cases. Mediation must be encouraged by the Supreme Court and high courts and cases should only go to the courts after the mediation fails, and mediation need not be expensive. There are young students who have just qualified, and they have come to the district court and they do a fantastic job.

EB: With several common law jurisdictions being hotbeds for arbitration to flourish, specifically the UK, how do you believe the recent embargo on legal assistance to Russian clients envisaged by the government in your home country impacts such arbitral mechanisms?

SZ: It's not that you can't give legal assistance to Russian clients, but that you require a license to do so because law is available to everyone there and the license is a restriction. To make the centre popular, there must be a reputation built that there is quick result, integrity, honesty and that the Courts are going to enforce it but if it is like India, where the Awards are challenged, and it will take five years, then nobody is going to approach it.

EB: What was your experience representing Mr. Bachchan in a suit connected to the sensational Bofors case?

SZ: It was both great fun and a challenge having Mr. Bachchan as a client, and I got very well known in India after my firm's success for Bachchan. I will tell you how I got involved and I have not previously disclosed this. There was the Asian Games in Delhi and Rajeev Gandhi, the son of Indira Gandhi, who at the time was the Chairman of the Asian Games Federation. There was a dispute where the Federation was a party and I was engaged in London, and we won the matter. We got our jurisdiction, and Mr. Gandhi was very pleased. So, when the Bofors case came, I suppose he

encouraged the Bachchans to come to me and we were first formally introduced at the Gopi Hinduja's place. I got to know there was an immigration issue with Ajitabh Bachchan in Switzerland and he wanted to stay in England. Then I met Amitabh in Bombay, and I said if you can find a newspaper that can publish this allegation then we can sue for libel. We have to be innovative, so I appeared before the libel judge and we worked very hard on this case and succeeded.

V.P. Singh's Government came to power, and we had a fall out with the Indians. I met V.P. Singh later at the request of the Governor of Bombay, Alexander and he was such a nice man. I respect him and he was so open with me. He gave me justification that he was a finance minister, Rajeev was Prime Minister and I got a message from the ambassador in Berlin that their marines were purchased from Germany, and it had some political kickback, and I went to Prime Minister and he said that he will handle it. Later I got a message from my Swedish ambassador from Sweden and then I could not stay quiet and that led to a lot of things that led to Rajeev Gandhi's resignation and there was the re-election where Congress lost.

In my career, the Bofors actually taught me never to get involved in a case where Indian politics is involved.

EB: In Michael Beloff KC's memoir, 'A Life Within and Without the Law', he mentions one such instance where any Queen's Counsels had opined that there is no solution to the issue, and you came up with a creative argument that the judge accepted. So, it goes without saying that you are well-known in the legal community for some ingenious and "out of the box" arguments. What would you suggest on how a lawyer's approach should be while facing such issues, where the lawyer wants to proceed with an argument that has no preceding authority or popular acceptance?

SZ: A very important question because 90% of the lawyers are young and are hesitant in trusting themselves. Michael Beloff's case was an example and one of the first cases where I had a problem. Beloff's case was one where Indian Oil were facing a claim of 18 billion dollars from a company called Coastal Bermuda. One of the three arbitrators was a very eminent Queen's Counsel called Gordon Pollock QC. The award went against India but Pollock in his typical style, a very nice man, wrote a postscript saying that Indian Oil had a better case which could have succeeded if the legal issues were formulated effectively but that means effectively saying Indian Oil legal team which was led by some other English solicits firm was incompetent. That worried everyone and in effect Mr. Ramachandran who was the chief legal advisor, who anxiously came to me and said "*Sir we must do something*". He said

“we don’t mind losing, but with this comment our heads will be chopped”. They came to me under the English Arbitration Act, but both the parties had agreed to not appeal the award. Still, we took it on. Michael Beloff was an excellent immigration counsel and soon he became very eminent. The case came before Justice Evans who finally ruled that *“law is for justice and not justice for law. Finality is good but justice is better”*.

If you look at the Law Reports, all of them are new issues for law but you need to have a mind set to do justice and not just apply the law. I feel the younger generation has a lot of untapped talent, and their curious mind requires rigorous exercise. They need to focus on justice rather than finding a solution and concluding an issue. To do this, they need to read a lot, think beyond the books and have faith in themselves.

EB: What is your advice to a young litigating lawyer who wishes to establish an independent practice? What are the essential skill sets one should develop, and how should one prepare while starting an independent practice?

SZ: They must have a vision. They must have a vision to succeed. I believe in the power of prayers. It is very unusual, but I believe very firmly in a pure, kind and radiant heart (in other words righteous conduct) and the power of prayer. If a client is dishonest, I will not act for him. I will also say read. Read and read cases, books, commentaries, and law reports and then do the right thing. And be honest. A lawyer does not have to lie, we must be fair. You can get it wrong, but you cannot lie.