Editor's Note: Mr Vikas Mahendra is a partner at Keystone Partners, Bengaluru and a specialist arbitration practitioner. He is admitted as an Advocate in India and as a Solicitor in England and Wales and has experience in handling investment treaty and commercial arbitrations, both ad hoc and institutional, in various countries, including India, Europe, and the UK. He is a member of the Chartered Institute of Arbitrators. Before joining Keystone Partners, he had worked for more than six years in the arbitration and litigation department of Herbert Smith Freehills. He is also the Co-Founder of the Centre for Online Resolution of Disputes (CORD).

Editorial Board (EB): ***Could you narrate your journey from your time at NLS Bangalore to becoming a partner at an esteemed firm like Keystone Partners? What are the challenges and key lessons you would like to share with us?***

Mr Vikas Mahendra (VM): The journey from NLS to Keystone has taken me to many places. Ultimately, being a partner in a litigation setup is a very different place to be, compared to a big firm or being a student in master's. What makes you a proper litigation lawyer is the ability to be grounded and know the pulse of the ground, understand what's happening in your system, know what's happening in your court, and know what kind of arguments work or don't work for a particular person. Learning these things will make you a good litigator. I started moulding myself for that in 2015 when I came back to Bengaluru after the stint at Herbert Smith Freehills, and I started working independently and doing Trial Court Advocacy which means starting from the ground. I told myself that I would do whatever a lawyer does in the first 3-4 years of litigation, and by that time, I had already spent eight years in the profession. But I started from ground zero; I would go to the registry to do a new filing, know where the office objections are raised, know what kind of problems are faced, and identify the roadblocks in the entire journey. I believe that only if you reach that position will you be able to advise a client what is possible, what is not possible, and the limitations. At the end of the day, litigation is not just the 5-10 minutes that you argue before the court; those 5-10 minutes are a crescendo, it's the culmination of everything you have done, but the bulk of the work starts even before a client comes to you. This may sound strange, but you have built your relations, built your rapport, and have a fantastic clerk. Having a good relationship with the court staff is essential. Once you have that groundwork done and the client comes to you, you tell them what's possible and what's not possible. There are times when we have filed the matter in the morning, moved it the same day, argued it in the afternoon, and we had the order in the evening. There are matters where it's possible, but there are also matters where

we could not get interim orders even after six weeks on an ex-parte basis. This is because there are different kinds of issues and sub-issues; there are various courts that function differently. Therefore, what one must understand about the work profile of a partner in a litigation setup is that unless the person has a good understanding of the entire process across all of the courts and forums where the matter stands, there cannot be a case strategy for the client, because strategy involves knowing every tiny detail not knowing the law. Knowing the law is essential, but it is not even close to being the most important. Everything else that makes up the chain makes you a suitable partner in a litigation firm.

EB: ***While working as a graduate solicitor at HSF, what influenced your decision to return to India? What are the key differences that you noticed in the working cultures in the UK and India? What can these cultures learn from each other?***

VM: The move back is something I constantly keep evaluating until now, whether it was the right thing to do. I will tell you what my thinking was back then, and it still holds. HSF was great; I worked in their London Office, Paris Office and then eventually in their Singapore office for an extended period. The professionalism I witnessed there is something to aim and strive for, and I say that with a fair bit of scepticism. When you are at a firm like that, you are handling no more than 3-4 matters, and the extent of depth you get into those matters is only aspirational. You devote your life to that matter. If you have an arbitration matter, I think about nothing else for weeks leading up to that submission or trial. You can put in that amount of thought and energy necessary that matches the scale in size. Because these are invariably multi-billion-dollar businesses, there is a lot of document crunching. So you have to work on very voluminous documents, you have to go through them, digest them, re-read them and that ability to focus on those small sets of matters and give it the intensive amount of effort that those matters need is something that these firms price themselves for. So, they will make sure that you don't have to worry about anything. You will have a secretary to take care of your administrative jobs and paralegals to take care of little things ranging from research to document preparation, bundling or whatever is necessary to give effect to the work product you have been working on. So, that support network is there, so the partners' role was more Advisory in HSF. They will be like; I want this, this is the broad strategy, and this is what our objectives will be. Go out and figure out how we achieve that. You will have a fair bit of autonomy and support, focusing on what needs to be delivered.

I noticed a couple of things that we could all learn from. So, if someone says something will come to you on Date X, it will go to you on Day X or Day X-1 no matter what happens. Whether committed to the client, tribunals or the other side, Deadlines are firm deadlines, which means that you work towards them. That professionalism requires you to ensure that you plan things, so it's not a question of seeking extensions. So, 99% of the time, I will not request an extension. Everything is read-re-read, proof-read, thorough-read; at least 4-5 eyes should look at it. If I had prepared a 30-page pleading, it would return as a 15-20-page document after the partner's round of review. This is because the idea is to be crisp, to the point, precise and clear about your argumentation and not to ramble about and go on and on about things. Much emphasis was placed on the degree of clarity, who you are addressing, and what kind of tone you need to adopt for them. A couple of examples as a sub-set of these is that in Indian Litigation, you may use words like "fraudulently", "maliciously", and "outrageous adjectives", and all of that fancy language. If I use the word "malice" in an International Arbitration, I better be able to back that up with solid evidence. I can say you did not act in good faith, and even that is a little harsh. You will not say it until you are 100% sure. This is just because every word in the pleading means something, and I should be able to back it up, and that is the confidence I want to give to the tribunal. When the tribunal is placed with two parties, one is balanced, and the other uses words like "intentionally" or "fraudulently", the tribunal knows how much weight to give to which pleading. They know that everything in the pleading is not valid, and until this point, we have not even taken the merits of the case.

The other thing is about ethics. It's not something that is absent in India, but the extent you would go to preserve that is slightly different. We had a case where a witness testimony was provided. The witness testimony was under the assumption that specific tests were not conducted, and based on the existing tests, the matter went through pleadings, and the witness statements of both sides were exchanged. Cross-examination of one day has happened, and on the second day of cross-examination, the witness says that this document is there; I don't know whether that is required. We said that we had made a disclosure and presented it in court despite the embarrassment that our case had to handle. We combed through that document with a fine toothcomb and gave it despite it not being particularly helpful to our matter.

We had another high-billing matter with a disclosure request, and our client was hesitant to share some documents. Our firm gave up on that matter because we would be compromising our values and ethics if we continued to represent them. Something showed me that it's not about the money; it's about the brand you build and your opinion in the world.

This is something we do at Keystone as well. We don't ask for an adjournment as a rule in the firm unless the sky has fallen. We go prepared for every hearing with all the cases, ready to argue whichever person is available. Of course, there are times when a particular resource is required for a matter, and they are busy in another matter, so you have to find manoeuvring time. Such things do happen when you are handling about 400-500 cases. We explore every possibility; we only look at the senior and junior resources if none of that works out. As a blanket rule, we don't take an adjournment simply because we are not prepared.

Our client had gone to the other side of the bench, and we gave up the matter the next day. While there have been some difficult decisions that we had to make in terms of pure procedural issues, we have maintained a stance that no matter how trivial, there will be no influence from us in terms of outcome or substantive input, and we do our best to avoid grease payments. We take the moral high road, and we don't take those matters whose reputation precedes them. We play fair and do the best we can.

EB: ***Indians are amongst the top nationalities to arbitrate at international arbitral institutions like SIAC and ICC. However, India continues to play catch-up where Singapore and Hong Kong have established themselves as leading arbitration jurisdictions. Do you see this changing with efforts such as the latest budget announcement to create the Indian arbitration centre in the GIFT city and the setting up of the International Centre for Alternative Dispute Resolution in Hyderabad?***
What more could the legislature and the executive create the right environment to make India an attractive international arbitration hub?

VM: I think we are barking at the wrong tree. I don't think it's even aspirational. When you ask people why they like arbitrating in Singapore, the first reason they will tell you is neutrality. Neutrality means that the disputing parties are not from there, and therefore they believe that the legal system will support them and are likely to treat both at an arm's length distance. The very fact that you said that India is one of the highest users means, as a corollary, they are not neutral in the wide variety of disputes. If you end up telling people to use an Indian Arbitral

institution, you are thrusting it upon them without them being exceptionally comfortable about it. It's not a limitation in the Indian system; there are many. So far as that International Arbitration place is considered, it's a lot faf; it sounds excellent and rosy trying to attract all international arbitrations to India. Do you think a Singaporean person fighting a dispute with a Chinese person will come to arbitrate in India? No matter how fancy a centre you have? That doesn't mean there is no place for an excellent arbitration institution. What you are missing while focussing on international arbitration is domestic arbitration. Domestic arbitration is in shambles in India for a number of reasons. It is imperative among them that you have a limited pool of arbitrators that you are using. You have the retired judges of the High Courts, Supreme Court, and District Courts. There are some good, some bad, and some ugly. They are operating with zero oversight and operating like masters of their own. Everything that is happening in the judiciary is an attempt to insulate them. We will not review/re-look your judgements; you charge whatever you want. We will hold them in contempt for a party who tries to ask how much the tribunal asks. That's how much you are trying to insulate them. In recent times, I have been thinking about writing on arbitrators' accountability and not the immunity of arbitrators, and that is where a good institution has a very prominent role. Institutions like ICC and SIAC are suitable because their rooms are reasonable and have rules. Their rules are not made out of gold and silver; they are good because they are simple. It is also commendable what they are as an institution and the amount of supervision they can exercise in a particular case. The fact that they have been able to pull out good arbitrators from the bad and have been able to pull up the bad arbitrators and hold them accountable to timelines and costs is another factor in why they are preferred. That is what makes them a good institution, which is desperately needed in the context of India. We need some excellent, professionally-run, independent institutions. I use the word "independent" consciously because most domestic arbitrations are government-based, hence the need for the element of neutrality I was talking about. Domestic arbitrations are not as much about nationality as the distance between the Government and the private sector. So, unless you have institutions like that, I don't think you will improve the arbitration landscape in India. So, you are barking up the wrong tree looking at international arbitration, but I don't think you are barking up at the wrong tree by ensuring that there are good arbitration institutions. What you need to do with international arbitration institutions is bring in that element of professionalism and accountability, which makes a good institution and makes that pool of arbitrators wider.

People have cried themselves hoarse making that point. Bombay has recently taken a step ahead by appointing arbitrators from the advocate community. Delhi has taken a step in that direction by widening its panel of arbitrators. The vast majority of courts are still in a dark cage, Karnataka High Court, for instance, but they still have a limited pool. Talking about GIFT, it's not enough that you make infrastructure. Arbitration is 2% of what building you are in. It's not the physical infrastructure, it's what goes behind it, and the Courts have also overlooked this. So, if you want to make a proper suitable arbitration centre, firstly, get a good set of rules, a good set of arbitrators and an independent board which is able to exercise supervisory control and guide that vision in as professional a manner without fear or favour and equally put it in a place where you have taken an active effort to get the judiciary up to scratch both at the commercial court level and the appellate level for them to understand arbitration, because at the end of the if you might have a fantastic fancy arbitration centre, but its ultimately if it's going to a district judge who understands no arbitration, you are not achieving anything.

EB: ***You are the co-founder of the Centre for Online Resolution of Disputes (CORD), which offers online dispute resolution (ODR) services. ODR is referred to as the future of dispute resolution in India.***

What are the specific challenges such services face in India based on your personal experience in establishing and managing CORD? What, in your opinion, can be the solution for such challenges?

VM: While starting CORD, the idea was to understand the image that comes to people's minds when they hear of arbitration. Mostly, this image conjures five-star hotels, expensive arbitrators, senior counsels etc. and matters of international arbitration or Indian arbitral with very high stakes. However, the high-value issues may represent a big chunk of the judicial bodies' time, but there are crores of cases that are relatively simple cases with low monetary value and outnumber the former. If you want arbitration to be the preferred alternate dispute resolution mechanism, you must look beyond these high-value matters. People do not prefer the arbitration path as it is expensive and lacks accessibility. A simple, straightforward dispute regarding the default of a bank loan worth merely rupees five lakhs, when referred to arbitration, would still require an average fee of fifty thousand to be paid to the appointed arbitrator. This is where the revolution has to begin, where we start looking at things from an inverse perspective and try to cater to the lowest-value disputes.

Procedures are constantly tested when they are under strain due to little money. This is why CORD has started dealing with such disputes and setting legally compliant processes to provide due process concerns while making it affordable. However, we set the benchmark that satisfied both the parties and arbitrators. The parties will not be happy if they have to shell out a lot of money, and the arbitrators will not be satisfied if they are not paid the minimum wage they deserve. So, our threshold is approximately Rs—2000 per hour, which is a decent amount of money. However, achieving the same and making arbitration affordable is a challenge. This challenge can be taken on by bringing about efficiencies in technology by transferring the maximum amount of admin role that the arbitrator was doing to the institution. Simple tasks like issuing notices, communicating to the parties, conducting hearings online, maintaining documents and order sheets, etc., can be tracked from the beginning of the dispute to supplement the order rendered at the end. As most of an arbitral award is procedural, most of the information will be available in a consolidated manner, and the arbitrator can fill in the blanks. It will also help streamline the operative portion of the order and bring down the effort of arbitrators in terms of the time spent.

On the element of due process, we ensure that we reach out to the parties through every means of communication in vernacular through case managers who act as intermediaries. Urging parties to communicate in any language they want without any expectation of them knowing legal provisions will help the arbitrator understand their side. In less than half a decade, such procedures might lead to the arbitration process, and awards are in the vernacular and within reach of common people. This will speed up the process and foster trust. CORD approaches young arbitrators for simple cases and then gives them more complex cases involving principles of accountability and the like.

EB: ***You have been part of various committees constituted by the Government. Can you provide an insight into the working of such committees and indicate your thoughts on how receptive the governments are to the suggestions put forth by such committees?***

VM: I have been in two committees so far, and they both were polar opposites in terms of my satisfaction in being in them. One was a high-powered committee for considering the institutionalisation of arbitration in India, and the other was for the digitisation of courts. The first one was a closed-door session where there was a proper interaction with the Government, and it was receptive towards the same as it made consolidated notes. This eventually materialised into the Law Commission Report that preceded the 2015 Amendment. This was satisfying since it went from engagement with the public to a report affecting legislation.

However, I did not agree with parts of it, like the changes made to the Arbitration Council of India, which many people working with me did not recommend or approve. There were still noticeable improvements that made the whole process fruitful. The second committee had a very unstructured manner of working and consisted of people that, despite having a wealth of experience, did not have the time to give holistic solutions and inputs.

The committee I am currently working with has been entrusted with coming up with expert advice on the digitisation of courts by the High Court of Karnataka. I am glad to work with an entity organisation like Agami India that collates feedback, converts it into a report and presents it in a digestible tablet to the stakeholders. There has been a couple of sessions where we have deliberated solutions and the way forward. We are hoping that it will lead to something.

EB: ***Mental health is often sidelined in the legal field. What are some things that you do to de-stress yourself and maintain a balance between your personal and professional commitments? What are some of the practices that Keystone Partners adopts to ensure the healthy work-life balance of its employees?***

VM: I will start by saying life is tough for lawyers in litigation due to factors that are not in anyone's control, especially in a place like Bangalore. An average litigator is in the court most of the day, trying to be productive. However, arguing in court is only the crescendo that makes up 5-10% of the actual work they are supposed to do. Therefore, they are supposed to do the remaining 80% of the work that culminates in argumentation, like researching, drafting, attending client meetings, etc. The remaining 20-40% of the time after spending most of their day in the court. It is very tough for lawyers in Bangalore because the High Court of Karnataka releases the list at 8 PM and does not give dates in advance. With such a hectic day, litigators do not get the time for themselves at all. The practice of litigation makes it very difficult to address the issue of mental health.

To whatever limited extent, Keystone Partners tries and facilitate that by being open about the issues related to mental health and allowing people to take breaks for a couple of months, too, if they are going through a hard time. Of course, the solution is not to allow mental health issues to get to that point where such a big break is required, and for that, we try and avoid a toxic work culture. Mental health problems can fester due to psychological and physiological, the former is something we can take care of, and we do it by ensuring a healthy work environment, no politics is involved, and no screaming is employed while communicating in the office. There is an open-door policy, and no hierarchy is followed regarding feedback since we do not want to employ a blame-game strategy to deal with problems. However, associates

struggle with mental health problems due to some physiological factors that are beyond our control, but we try and be accommodative of it in the system we opt for. For instance, if a person says they suffer from social anxiety and cannot be in groups, although we try and encourage collegiality through organising dinners with colleagues, we will make sure that person does not have cohesiveness imposed on them. We try to address such issues head-on and do the best we can. On a personal level, I try to leave the office on time and balance my work life with my life at home. Just like students like you are afforded semester breaks, we encourage our employees to engage in physical activity like going out for a badminton game, but not imposing the same.

EB: ***In your opinion and experience, should one opt to do an LL.M right after graduating or after gaining professional experience for a few years? What considerations must one bear in mind when choosing a course and a university from an employability perspective?***

VM: To be very honest, I may not be the best person to answer this question. The LLM that I pursued was not a conscious decision to pursue an LLM in economics. I merely had an interest in law & economics in law school, and I appeared for a scholarship exam where I ended up doing well. Consequently, my opinion on this matter is purely based on my observation. Whether one should pursue the LLM right after graduating or after gaining work experience, there are pros and cons for both. If you are interested in academia or research, pursuing it right off the bat may help. However, practising in that area would give you a perspective that is not easy to understand immediately after graduation. I believe even universities have recognised this and prefer applicants who have a little bit of work experience. Pursuing an LLM would be better after practicing for 2-3 years, but of course, one is open to doing it any time. With respect to the field of litigation, a post-graduate degree would not be of much help. However, an essential aspect of postgraduate studies is that it gives you an opportunity to experience another culture. Further, it would also help one build bridges to different parts of the globe. This is the value that an LLM would offer, and these values would enable an individual to be accepting of a slightly broader worldview.

EB: ***Given your expertise in Construction and Infrastructure Arbitration, what are the challenges that a counsel has to face in arbitration against governmental bodies such as NHAI, Oil India, etc.? What is your experience dealing with the bureaucratic red-tapism while appearing as a counsel for Public Sector Undertakings and other State Instrumentalities in Arbitrations?***

VM: I have appeared for very few public sector undertakings; hence my experience with respect to that specific question is minimal. There is always a challenge in terms of appearing against public sector undertakings. This is because these undertakings do not have the resources to handle arbitrations in terms of adhering to timelines and the sophistications that these arbitrations require. It, in turn, affects the efficiency of the arbitration, and in this respect, the arbitral tribunals are also a tad forgiving in this respect. When you are a private party appearing against these undertakings, it seems frustrating. However, as a lawyer, you must be aware of how things work and understand their shortcomings. Even while arriving at a settlement, it becomes difficult considering that most bureaucrats are unwilling to settle through mediation or negotiation. This is because they are always susceptible to being called out for corruption or red-tapism. These aspects of the system would be frustrating. There are forces in play that are much larger than the individuals that one appears for, and one must accept these challenges as part and parcel of the system.

EB: ***What would be your suggestion for recent graduates entering the profession and, specifically, Alternative Dispute Resolution? What are the need and the scope for entrepreneurship in this area? Could you provide some guiding thoughts for graduates that intend to start their legal practice?***

VM: The ocean that the legal profession offers is vast and keeps expanding. When I was a young lawyer, just the fact that there was corporate law as a fresh avenue was utterly new. There were not so many different opportunities in the legal field. I believe that these avenues will keep expanding as technology starts becoming more entrenched and lawyers become more adept at handling them. For instance, in Online Dispute Resolution (ODR), mediators and arbitrators need to resolve these disputes and are accommodative of this mode of dispute resolution. With respect to becoming such mediators and arbitrators, one must understand that not every disagreement is a matter of interpretation; sometimes, it is about understanding the emotions, the limitations of parties, and the process a little better. Therefore, one cannot acquire the necessary skill set right out of law school. However, it is worth making a conscious effort to develop these skills. One can aspire to become an arbitrator or a mediator at a very young age. The legal profession no longer limits individuals from becoming judges to resolve disputes. There are opportunities in the private sphere in respect of this. These are new additions to the legal field, and I would encourage young lawyers to explore these aspects.