TRANSCRIPT OF THE INTERVIEW WITH MS. RUBY SINGH AHUJA

Editor's Note: Ms. Ruby Singh Ahuja is a senior partner at Karanjawala and Co. and a distinguished advocate in alternate dispute resolution. With almost 2 decades of experience in litigation and dispute resolution, she is highly regarded in the disputes practice in New Delhi. She represents clients before the Supreme Court, National Company Law Tribunal (NCLT) and various high courts. She was involved in various landmark cases such as the Essar Steel Insolvency case and the recent Aryan Khan case before the Bombay High Court. She advises on various matters including commercial disputes, shareholder, insolvency-related disputes as well as freedom of speech matters.

Editorial Board (EB): ***As law students, we often find ourselves with a perpetual dilemma on how to kickstart our careers. Could you please shed some light on this by sharing your personal experiences?***

Ms. Ruby Singh Ahuja (RSA): The best way to kickstart one's career is through internships. Doing internships that are relevant to your areas of interest is integral. As an intern, you must attempt to make your mark and learn simultaneously. I have found that especially in the case of a profession like litigation which has a long gestation period, working with individual lawyers will teach you a lot more than working for big law firms, where you can sometimes get lost because of sheer numbers. To be a good litigator, it is very important to understand the procedures adopted by various courts and since in India the dispute resolution is not entirely area or sector-specific, it is very important to try and do internships in as many fields as possible.

Second, while doing relevant internships is important, one must also attempt to diversify their internships. A variety of internships ensures clarity and creates clear goals, as what is of utmost interest to you.

Third, it is very important to remember that the concept of work-life balance does not exist in this profession especially during this gestation period. In terms of litigation, this stands even more true. Therefore, it becomes even more important to have a hobby, outside the law to keep one's free hours enriched.

Fourth, always keep your focus and don't waver from your path, since there are no miracles. One must work hard to achieve their goals and the biggest hurdle for most in this path, is the constant

struggle within the self. Will I succeed or not, this question comes to mind, often. But one needs to carry on since this profession needs more hours and importantly patience.

EB: ***You were one of the three women lawyers who helped resolve India's biggest bankruptcy case (Essar Steel case). How far have we come in pushing the boundaries of patriarchy from 1993 when you started your career? What is your advice to aspiring female litigators?***

RSA: I truly think that we have a come long way in pushing the boundaries of the patriarchy, but we still have a long road to cross. The main problem today is that women don't practice as much in smaller towns as they do in bigger and urban cities. This diversity is found in the smaller cities and courts, can help in breaking the patriarchy.

My advice to all women lawyers would be to not get disheartened, irrespective of the hardships. Sometimes women need to prove themselves more than men but, that is fine. As long as your work shows effort and skill, don't get affected by this.

Additionally, for all female litigators, it is very important to make sure you conduct yourself with grace and poise, given the nature of the profession.

EB: ***Recently, the Kababl-Ji case saw an increased reliance on the law governing the contract to determine that of the arbitration agreement. Much of the legal issues, in this case, arose due to the inadvertently drafted arbitration agreement. In light of that, what are some of the things that the contract parties have to keep in mind while drafting their arbitration agreement and avoid post-contractual concerns?***

RSA: Three things should be kept in mind. First, the contract should clearly state the institutional arbitration the parties intend to follow and the appropriate procedure. Second, the seat, venue, and jurisdiction of the arbitration often is a point of the contest. The agreement must specify this in no uncertain terms to make arbitration efficient in terms of time and cost.

EB: ***Given your extensive experience in the field, what would be a change that you envision in the Indian arbitration regime to improve its quality and credibility?***

RSA: Foremost, I want India to take very basic and simple steps in this regard. The Arbitration Act, should be amended, to ensure that arbitration does not take place over weekends. There is an

impression that when it comes to arbitration, it is not given priority by litigators in India. We need to overcome this impression so that the world sees the Indian system as an arbitration-friendly destination, where arbitrations are conducted in a time and cost-effective manner. Disallowing weekend arbitrations would ensure that practitioners do not treat it as a secondary option and it is given the same treatment as a court hearing.

Second, the cost of the arbitration should be prescribed by the legislation with no discretion to charge more under any circumstances this shall ensure that arbitration is not a costly process, which is one of the reasons many clients do not opt for the same.

Thirdly, it is important to increase centres and venues for arbitration to reduce the cost of the entire process. We lack such infrastructure, even in Delhi, this makes people opt for expensive venues which makes the whole process expensive. If India has to become an arbitration hub, it has to close all these loopholes.

Fourthly, the Court interference has to be reduced to minuscule in arbitration because if that is not done then the whole exercise of arbitration becomes futile. Our latest amendments have restricted the grounds to challenge an arbitration award and the Courts must respect that and be very vary of interfering in an arbitration award. Unless there are some lacunae in the arbitration award which satisfies the grounds of challenge, as prescribed under the act, the award should not be set aside.

If all this can be done, I am sure in times to come, the arbitration will be the first choice for dispute resolution in India especially when it comes to commercial litigation and issues arising out of contractual disputes.

EB: ***Are there any scenarios where the arbitral award can be challenged on account of procedural infirmities, or otherwise being violative of the public policy of India?***

RSA: It is not easy to challenge the award on the grounds of procedural infirmity. Innocuous procedural infirmity will be very difficult to be challenged especially since the trend is changing as Courts are respecting the awards by the arbitration panel. One will have to remember that most arbitration panels consist of esteemed retired judges and they are cautious when it comes to procedural compliances. The order can be challenged if the scale and consequence of the infirmity are proved to fit into grounds like bias or are violative of public policy.

EB: ***In your trajectory towards becoming a Senior Partner, do you, in hindsight, recognize some steps you would've taken differently to reach your current position that you advise aspiring lawyers should be cognizant of?***

RSA: I was blessed to be in a place that valued women and gave me opportunities to be what I am. I have a lot to be thankful for. However, I have observed in my journey that people who practice in law firms, at times, despite spending years at the bar, do not get the recognition which is given to an arguing counsel of same or less seniority. This is a hurdle we are yet to cross.

EB: ***Do you believe India presents a favourable image as a pro-arbitration jurisdiction? Do you believe there is still a lot of room for development or that we are on the right track?***

RSA: Yes, we are on the right track. Many clients are going towards arbitration. It is faster compared to litigation. If some of the loopholes can be closed, people will see it as a preferred choice. We tend to give step-motherly treatment to arbitrations, including the practitioners. The mindset has to change from the practitioner's side, from the client's side as well as from the arbitrator's side. It is equal to a court and an effective dispute resolution process. The word alternate here means either you go to court or opt for arbitration. It is a dispute resolution process and it should be given the importance it deserves. So, I think if we change this mindset we will reach there. We should not forget that our Commercial Courts Act, 2015 has brought us some fine judgments in commercial law which also helps since many issues of commercial law arise in arbitration proceedings. Wherever there were some problems in interpretating judgments pertaining to arbitration law or commercial law, Courts have clarified the same so there is certainty and stability in this field. This helps in making the awards less vulnerable.

EB: ***Do you think it is fair to say that Indian parties involved in international economic disputes prefer arbitration over litigation?***

RSA: Yes, it is. I hardly see any contract without any arbitration clause.

EB: ***From a practitioner's perspective, do you agree with the Supreme Court's ruling in NHAI v. M Hakeem whereby the court eliminated judicial power to modify arbitral awards? Does it make commercial sense to have such power? If so, in what capacity and to what extent?***

RSA: I agree, and I think it is a fine ruling. The moment you start wavering and modifying the awards then there is no end. Awards must have finality and should be interfered only in extreme circumstances, like the issue of public policy and bias, where they should be set aside.

At the moment, you say that there should be 18% interest instead of 24% interest. Then, where do you end? What is the purpose of having an award? You can't treat it as an appellate jurisdiction coming from trial court to an appeal court, where sometimes Courts waive certain conditions in exercise of their appellate courts. Awards must be treated as final and if it has to be interfered with, then they should fit into those grounds which the legislation has enacted. Once it fits into those grounds, modification will not fit. The urge to modify has to go away. If the compound interest has been given by the arbitrator after checking all the evidence, then that should be accepted. Either set aside or let the award stay as final, the moment you choose the mid-way of modifying this award then you make it very subjective and the sanctity is gone.

EB: ***What are your suggestions to freshers who will start working soon, and what skills should the current students develop to be better equipped to face the real working world of law?***

RSA: Firstly, you all have the advantage of the latest judgements to keep yourself abreast with the law. There is no parallel to the detailed reading of the judgment. Even, if you don't want to be a litigator, you should spend 2-3 years in litigation practice as it will help you in non-litigation practice. Remember every agreement is finally tested in court. You must have some knowledge of court practice and procedures. Try to work/intern in 2-3 different areas of law before you decide the scope of practice you want to excel in. India is not one practice centric. I also want to caution that don't restrict your practice to one tribunal, because experience has taught us that practice in one tribunal booms for some time only. After all, you are also here to earn, so focusing on just one tribunal and leaving all the other tribunals out of your practice as a litigator would leave you without work if there is no work in that tribunal or if that tribunal is wound up. You may find yourself at a loss because you don't have experience with anything else. So, focus and specialize for sure but don't close other avenues. Lastly, if you are starting your independent practice as a litigator, be available for your client, weekend or no weekend! Client's trust is of utmost importance.