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NATIONAL JUDICIAL ACADEMY

NATIONAL SEMINAR ON ARBITRATION AND STRESS MANAGEMENT FOR DISTRICT JUDICIARY

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Dr. Amit Mehrotra & Dr. Sumit Bhattacharya

Faculty, National Judicial Academy

The National Judicial Academy organized two-day "**National Seminar on Arbitration and Stress Management for District Judiciary"** on **4th & 5th March 2023**. The objective of the seminar was to provide a platform to discuss holistically on the rapidly evolving regime of Arbitration in India in both domestic and global contexts alongside the best approaches and techniques for identifying personal and professional reasons for stress in the everyday lives of judicial officers. The seminar facilitated deliberations on pertinent topics ranging from the scheme of Arbitration to bottlenecks in the implementation of Arbitration proceedings in Indian Courts. Through the interactive discussions the emphasis on techniques for the judicial officers to overcome stress due to demanding circumstances and maintain an optimum work life balance was undertaken by sharing of practical insights from judges and domain experts.

SESSION 1:
FUNDAMENTALS AND SCHEME OF ARBITRATION: SETTING THE CONTEXT

The first session on ***Fundamentals and Scheme of Arbitration: Setting the Context*** commenced with a discussion on tracing the History of Arbitration in India. Highlights of the Arbitration and Conciliation Act, 1996 (Arbitration Act) in light of recent amendments and landmark judgments were underscored. Timely conduct of proceedings, completion of written submissions and relaxation of time limits in light of Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996 was stressed upon. It was stated that The Arbitration Act 1940 which was made effective from 1 July 1940 was enacted in India to consolidate and amend the law relating to arbitration. It was emphasized that to deal with domestic arbitration, the Arbitration Act of 1940 was enacted but under this Act, judicial intervention was required at all the three stages of arbitration-

- before referring the dispute to the arbitrator tribunal
- during the proceedings
- after the award was passed.

It was delineated that the Government of India constituted the Arrears Committee known as Justice Malimath Committee. The Committee submitted its report in the year 1990 with certain recommendations for adopting alternative modes of dispute resolution with

arbitration, conciliation and mediation. The Committee also submitted a proposal for enacting a new Act.

In 1996, the Parliament enacted Arbitration and Conciliation Act of 1996 repealing 1940 Act. It was structured and muddled on the line of the UNCITRAL Model Law. The object and purpose of the 1996 Act is to encourage arbitration as a cost effective and quick mechanism for settlement of disputes through domestic and international commercial arbitrations. It was highlighted that The Act of 1996 has been brought on the same lines to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. Important provisions of The Arbitration and Conciliation Act, 1996 that include general provision, arbitration agreement, composition of arbitral tribunal, jurisdiction of arbitral tribunals, conduct of arbitral proceedings, making of arbitral award, recourse against arbitral award and finality and enforcement of arbitral award were discussed. In the light of the *Bharat Sewa Sansthan v. U.P.Electronics Corporation Ltd*., (2007) 7 SCC 737, it was highlighted that the photocopy of an agreement can be taken into record for ascertaining the existence of an arbitration agreement. With reference to the judgment *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.,* (2011) 5 SCC 532 , six categories which are not arbitrable are underscored that includes:

(*i*) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;

(*ii*) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;

(*iii*) guardianship matters;

(*iv*) insolvency and winding-up matters;

(*v*) testamentary matters (grant of probate, letters of administration and succession certificate); and

(*vi*) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

Highlights of the recent developments along with the landmark judgements forms the part of the discussion.

SESSION 2:

BOTTLENECKS IN IMPLEMENTATION OF ARBITRATION REGIME IN SUBORDINATE COURTS.

The Theme for the second session was ***Bottlenecks in implementation of Arbitration regime in Subordinate Courts.*** It was expressed that the Statement of Objects and Reasons notes that one of the objects of the Act is to "minimise the supervisory role of Courts in the arbitral process." It was emphasised that courts should intervene only where there are provisions in the Act that permit court intervention. Section 8 of the Arbitration and Conciliation Act 1996 was deliberated upon. It was stated that a party can apply to the "judicial authority" to refer a pending legal proceeding to arbitration and there is no discretion with the Courts to decline the request if the conditions of Section 8 are met. It was highlighted that the intention of the statute is that arbitration matters must continue without interference from courts. Some landmark Judgments on Section 8 that includes *P. Anand Gajapathi Raju v. P.V.G. Raju*, (2000) 4 SCC 53, *Smt. Kalpana Kothari v. Smt. Sudha Yadav* (2002) 1 SCC 203 and *Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums*, (2003) 6 SCC 503 were discussed. The nuances of the Sections 13 and 16 of the 1996 Act was deliberated upon. It was stated that arbitral tribunal vests wide powers to decide all jurisdictional challenges, including the constitution of the tribunal, validity / existence of the Agreement etc.

The judgments *The Empire Jute Co. Ltd. v. The Jute Corporation of India Ltd*. 2007 (4) ARB LR 74(SC), *Aurohill Global Commodities v. M.S.T.C. Ltd.* (2007) 7 SCC 120 and *GAIL v. KETI Constructions* (2007) 5 SCC 38 were discussed in the light of Sections 5, 16 of the Act & on the non-intervention principle. It was iterated that Arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. A party must raise the plea against improper constitution/jurisdiction of the tribunal at the initial stage before the tribunal itself. The judgement *Essar House Pvt Ltd vs Arcellor Mittal Nippon Steel India Limited* 2022 SCC OnLine SC 1219 12 was highlighted in which it was held that while granting interim relief the court is not bound by the strict rigors of Civil Procedure Code. The Apex court further held that the procedural safeguards, meant to advance the cause of justice cannot be interpreted in such a manner, as would defeat justice. The Court should not withhold equitable relief sought by the parties just on the basis of mere technicality.

It was emphasized that various High Courts acknowledged that interim measures may be granted against third parties if they derive their rights from, or claim under, a party to the arbitration agreement and in this light the judgements *Shoney Sanil v. Coastal Foundations (P) Ltd.,* AIR 2006 Ker 206, G*irish Mulchand Mehta and Durga Jaishankar Mehta v. Mahesh Mehta and Harini Cooperative Housing Society Ltd.,* 2010 (1) Bom CR 31 and *Value Advisory Services v. ZTE Corporation*, 2009 (3) Arb LR 315 (Delhi) were referred.

It was iterated that a domestic arbitral award can be challenged on the ground that making of the award was induced by fraud or corruption. It was highlighted that the enforcement of an award shall have to be unconditionally stayed by the court if there is a prima facie case that the (i) arbitration agreement (ii) underlying/principal agreement or (iii) the making of the award has been affected by fraud or corruption.

It was underscored that historically and traditionally, arbitrations are considered to be private in nature and not open to the public, so that parties may resolve their disputes through a trusted mechanism without public exposure. Section 42A of the Act was highlighted that reads as follows: *Notwithstanding anything contained by any other law for the time being in force, the arbitrator, the arbitral institution, and the parties to the arbitration agreement shall maintain confidentially of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.* It was deliberated that the leading Arbitration Institutions have addressed the issue of confidentiality in their Rules in different ways. The ICC Rules do not declare arbitration proceedings to be per se confidential. On the other hand, the SIAC & the LCIA Rules adopt the per se approach but acknowledge certain exceptions to the general rule. Significantly, no arbitral institute or statute prescribes confidentiality in absolute terms. It was emphasized that the Indian legislative effort is perhaps driven by a desire to ensure that India is seen as an arbitration friendly jurisdiction.

SESSION 3:
STRENGTHENING ARBITRATION AND ITS ENFORCEMENT IN INDIA

The third session was on ***Strengthening Arbitration and its Enforcement in India***. It was iterated that the High Court appoints arbitrators in domestic arbitrations and The Supreme Court appoints arbitrators in international arbitrations. Arbitration agreements do not take away the jurisdiction of civil courts. Suits can be filed in a civil court contrary to the arbitration clause. However, defendant/despondent can apply to the civil court to refer the matter to arbitration and in that regard following requisites should be fulfilled:

- A copy of the arbitration agreement must be filed
- The person applying must be a party to the arbitration agreement or any person claiming through or under a party to the agreement
- Subject matter of the arbitration agreement must cover the subject matter of the suit
- Application must be made before filing the first statement on the substance of the dispute.

It was emphasized that the court shall refer the matter to arbitration unless the court finds "*prima facie* no valid agreement exists". However, the matter must be within the arbitration agreement and should not be excluded by the arbitration agreement. Non-stamping and non-registration of arbitration agreement was discussed. It was explained that non-stamping or non-registration of the underlying agreement does not affect the validity of the arbitration agreement.

Interim relief from the court pending arbitration proceedings forms the part of discussion. It was stated that the court has extensive powers to grant interim protection. The scope for relief is more flexible than the corresponding provisions of Civil Procedure Code. The court may be guided by Civil Procedure Code but is not bound by it. It was further emphasized that the arbitral tribunal also has corresponding powers to grant interim measures under section 17 of the Act 1996 and the same can be exercised after the tribunal gets constituted. However, it was stressed that the court can exercise powers of interim relief even after the constitution of the arbitral tribunal if the remedy under section 17 granted by the tribunal is not effective. The court can exercise these powers after completion of the arbitration proceedings but before the award is enforced.

It was enunciated in reference to the recording of evidence the arbitral tribunal or a party at the instance of the arbitral tribunal can apply to the court for assistance in taking evidence. It was stated that the court has a competent jurisdiction to decide the dispute regarding the removal of the arbitrator. It was stated that there is no appeal against the award, however the award can be challenged before the court as per section 34 of the 1996 Act on limited grounds. It was further underscored that an arbitration award will be enforced as a decree of the court and order 21 CPC applies to it.

SESSION 4:

MAINTAINING THE BALANCE: JUDICIAL STRESS AND WELLNESS.

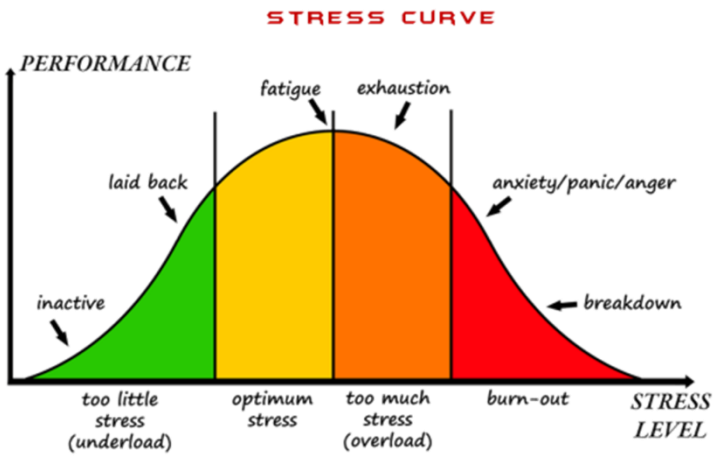
The fourth session was on ***Maintaining the Balance: Judicial Stress and Wellness***. The session was kicked-off with the proposition that striving for work-life balance is a myth. The jargon is a typical management punchline. Rather imbalance is the truth and omnipresent. Striving to attain a balance is an endeavour which is either automatic, as in the case evident in hormonal and chemical balance within the body to maintain homeostasis, or attained by practice *viz.* floating or swimming, tight rope walking, cycling, or simply scaling of weight in a balance. Connecting "stress" with imbalance it was explained that, it need not necessarily be bad. *Eustress* was distinguished from *distress*. Distress was attributed to mind-set. Choice of thoughts and words were said to matter a lot in determining one's mind-set e.g. the same stimulus can be perceived a one as "it is my abilities which determines everything" as opposed to another "my efforts and attitude determines everything". A brief account of the anatomy and physiology of the brain, particularly the operation of the "*Hypothalamic Pituitary Axis*" in the brain was pictorially demonstrated and explained. A few tools to detoxify and de-stress oneself to enable better control over life, in order to strike a balance between profession and person included: Yoga, Exercise, *Vipassana,* Prayers, Music etc It was advised to the participants that practicing Smiling, Greeting, and Listening could be adopted as perennial *mantras* to drive peace, respect and an atmosphere of tranquillity in a person while engaging both in professional and personal interactions. Attaining the status of "equanimity" (preached especially in Buddhism) is of great import and the same could be attained only with persistent practice of mindfulness. It was reiterated that "balance" is "a feeling of fulfilment" of one's important roles. Dispelling the myth, it was narrated that it is not about what we do, but the fulfilment and meaning one discerns from what (s)he does, drives balance in walks of life. It was underscored that "equanimity" and "work life balance" must not be considered as a state of mathematically scaled balance statistically depicting equals *viz.* scheduling equal number of hours (time) to work or entertainment, or relaxation, or family, etc. It is rather about experiencing a sense of achievement and satisfaction on the priorities leading to fulfilment in the myriad important engagements. It's about adding value to the ends achieved on chosen or reposed engagements. It's about finding a rhythm rather than juggling in pressure or fear of failure for a miss-out.

The session was executed by inviting the participants into a practical experience of clinically exercising a professionally guided meditation. The clinical exercise engaged the participants to experience the true senses of the states of the meandering mind. The guided meditative tour illustrated to individual, a sense of self-awareness of the various points of anxiety, responsibility, and accountability. It was a micro demonstration of self-accounting and prioritising ones (re)actions to be fully aware of ones engagements in life, and discover the fulcrum to strike a right balance to drive peace and a sense of fulfilment, thereby leading to better control of one's thoughts and activities. Eventually enabling better work-life balance. It was emphatically insisted by the clinical psychologists that life emulates a bicycle, to keep ones' balance one must keep moving. The key is to know when we are feeling out of balance, and what works for us to come back in balance. It is an ongoing process of adapting, adjusting, and fine tuning as we go along.

SESSION 5:

LIFE BEYOND DIAS: JUDICIAL STRESS AND WELLNESS.

The fifth session was on ***Life Beyond Dias: Judicial Stress and Wellness.*** The session rolled-out by tracing the evolution & contours of "Judicial Stress and wellness". It was in fact a logical extension of the previous session. The agenda for discussion included identifying the impact on personal & professional spheres *viz.* health issues; unwanted and carryover thoughts and emotional reactions of a judge. Quoting Brian McKenna it was accentuated that "There is no difference between the judge and the Common Man except that the one administers the law and the other endures it: that is all." An attempt to effectively define "stress" was done in the words "Stress is the "wear and tear" our bodies experience as we adjust to our continually changing environment; it has physical and emotional effects on us and can create positive or



negative feelings." More lucidly put, stress is the way one reacts to challenges and changes (both positive as well as negative) around him/her. Hence, it can be bipolar in nature. It is essentially one's response to a stressor (stimulus either internal or external). Exploring the popular notions of causes of stress, it was asserted that "change", "external threat", and "sense of loss of control" are often diagnosed as potential causes. Scaling the impact of stress, it was clarified that stress may not necessarily be detrimental. In fact a mild stress can act as a motivator and energizer. A pictorial bell-curve was illustrated (*see fig. below*) for assimilation of stages of stress and its potential impact.

It was unequivocally emphasized that deal with stress is all about managing it and not eliminating it. Because without a positive or *eustress*, one is unlikely reach his/her full potential. Since, lack of traction encourages creases and disorderliness. The session also discussed about the concept of "wellness wheel". The wheel consists of spokes dividing it into essentially five *pai* pieces namely: *spiritual self, emotional self, physical self, mental self,* and *social self.* The prescription to deal with stress follows diagnosis. First step to which was accounted as "awareness". Next to which was an advice action i.e. to take "charge" of one's own self and the situation. Lastly, the panacea prescribed was to develop a "positive attitude" to systematically and systemically deal with stress.

"Mindfulness" was explained as an art and science. It was underscored that life of a judge is certainly much beyond dias. Intentional process of paying attention, without judgment, to the unfolding of the moment-by-moment experience; being present in the moment, keeping your mind in the being; and openness to being non-judgmental about experience and about oneself were discerned as three key virtues of mindfulness. It was advised to the judicial officers to "log their stress". It would not only keep an account of the stressors, potential triggers, and duration of the stress; but also would enable to plot a matrix of its intensity and frequency of incidences. It would eventually help one to understand and develop self-suited mechanisms to deal with stress. It starts with awareness, and helps in synthesis of tools to manage stress through synergizing internal and external capabilities.

Yet another clinical advisory shared with the participants included the exploring and nurturing of the concept of "Emotional Intelligence" (EI). It was iterated that EI is the intelligence of the heart. It is the ability to understand and use one's feelings to get along well in life. It is all about "being smart with feelings".

"Flexibility" was suggested as the next elixir. While participants were encouraged to build flexibility in their life, the same could be done by done by anticipating of possibilities. It

was suggested that often a proactive “plan B or C” may be a good option to deal with exigent situations in life. Moreover, developing “varied interests” was suggested as a tool to help a person to be able to shift focus from one task to other, as and if required. Openness attracts possibilities, as “there are many ways that can lead to Rome!” when one road gets blocked, explore the others.

The session culminated with a “lasting thought”. It was underscored to uphold one’s integrity at all times and situations. There may be times of corrupted values and loosening morals … what will sets one apart and make him/her a winner in the long run, will be his/her integrity!

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