

# Arbitrators

AT 24 LINCOLN'S INN FIELDS

## Gourab Banerji, SA



Gourab was called to the Bar in England and Wales in 1990 and also developed his practice before the Supreme Court of India as Senior Counsel with an emphasis on commercial matters, and particularly commercial arbitration. He also has experience of competition, along with other aspects of corporate transactions like mergers and acquisitions and private equity. He is a Senior Advocate practising primarily in the Supreme Court of India and specialises in domestic and international arbitration. He read law at Cambridge University where he was a Bundy Scholar and won the Norah Hunter Dias Prize, eventually graduating with First Class Honours. He was designated a Senior Advocate in 2003 and has served as the Additional Solicitor General of India from 2009 to 2014.

He was recognized as a leading Senior Advocate in the category of 'Dispute Resolution, Supreme Court of India' by Chambers and Partners in 2021 and has appeared in several high stake and complex matters, including commercial and investment treaty arbitrations, and has also been appointed as an arbitrator in various international commercial arbitrations seated in India and abroad, including most recently by the Supreme Court of India.

He has appeared in cases involving the scope of a court's power while appointing an arbitrator, scope of a court's interference with an arbitral award, levy of interest on arbitral awards, validity of multi-tier arbitral clauses, territorial jurisdiction in enforcement of arbitral awards, and validity of emergency awards, among others.

He is often asked by the Supreme Court to assist as amicus in diverse areas. He was recently appointed the amicus curiae by a Constitution Bench of the Supreme Court in *NN Global Mercantile Pvt Ltd. v. Indo Unique Flame*, C.A No.3802-03 of 2020, on the issue of enforceability of arbitration agreements contained in an unstamped contract. He had also been appointed amicus curiae by the Supreme Court in *Union of India v. Vedanta Ltd* [(2020) 10 SCC 1] which related to the enforcement of a foreign

award in India. Presently, he is assisting the Supreme Court on the issue of viva voce interviews in public employment.

A National Correspondent of India for the UNCITRAL CLOUT system and the Vice Chairman of the UNCITRAL National Coordination Committee for India, he is presently a Member of the Chamber of Arbitration of the India International Arbitration Centre set up under the India International Arbitration Centre Act, 2019. He has also been nominated as a member of the Ministry of Law & Justice's expert committee for examining the working of arbitration law in India and recommending reforms in the Arbitration and Conciliation Act, 1996.

## Recent Arbitrator Experience

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Gourab has also appeared in numerous arbitration proceedings. Some international commercial arbitration proceedings in which he has participated in recent years are:

- Presently acting as a sole arbitrator in a multi-jurisdictional LCIA arbitration.
- Recently appointed as a sole arbitrator by the Supreme Court of India in an international commercial arbitration seated in New Delhi.
- Represented the Republic of India in certain Bilateral Investment Treaty arbitrations.
- Represented an Indian PSU as the lead counsel in an arbitration concerning a dispute arising between the parties under the Contract of Affreightment, where the PSU was the charterer.
- Represented an English company against an Indian textile manufacturer in respect of disputes arising out of a finance agreement.
- Represented an Indian oil company in a major international arbitration dispute pertaining to charter-hire of a drilling vessel.
- Represented a consortium of foreign companies against a public sector undertaking, in a construction dispute regarding the construction of New Delhi's new underground metro rail.
- Instructed on behalf of an Indian firm against a multinational drilling company in a dispute arising out of an indemnity clause for customs duty liability.
- Instructed on behalf of the State Government of Andhra Pradesh to defend a claim for damages arising out of the termination of three power project contracts.
- Instructed as lead counsel along with English counsel and solicitors on behalf of a public sector insurance company in an arbitration pertaining to a multi-million dollar claim arising out of cyclone damage to an oil refinery. This arbitration involved the first 'advance loss of profits' claim to be adjudicated in relation to India.
- Represented an Indian company in a major arbitration dispute for non-payment of "Take or Pay" charges under a Gas Sale agreement.
- Represented a Norwegian company in relation to disputes arising out of contracts for exploring and producing hydrocarbons in India and overseas.
- Represented an Indian company in a multi-million dollar arbitration dispute pertaining to an Engineering Procurement Contract for Power Generation and Distribution System and Integrated Balance Works.
- Represented a public sector undertaking in a series of arbitrations for non-payment of "Ship or Pay" charges.

Some important cases (with subject matter in parentheses) pertaining to Indian Arbitration Law in which Gourab has appeared are –

- Jaiprakash Associates Limited v Tehri Hydro Development Corporation Limited (2019) 2 SCALE 718 (Levy of interest on arbitral awards)
- Represented a judgment debtor successfully in K. Kishan v M/s Vijay Nirman Company Pvt. Ltd. (2018) 10 SCALE 256 where an award was held to be a disputed debt under the Insolvency and Bankruptcy Code 2016.
- S.B.P & Co v Patel Engineering [2005] 8 S.C.C. 618 (Jurisdiction of courts and arbitral tribunals to adjudicate on the nature, scope and validity of arbitration clauses. This case was decided by a Constitutional Bench).Smita Conductors v Euro Alloys [2001] 7 S.C.C. 728 (Enforcement of Foreign Awards in India)
- Sanshin Chemicals Industry v Oriental Carbons & Chemicals [2001] 3 S.C.C. 341 (Seat of Arbitration)
- Thyssen Stahlunion GmbH v Steel Authority of India [1999] 9 S.C.C. 334 (Applicability of the new Arbitration & Conciliation Act 1996)
- Sumitomo Heavy Industries v Oil & Natural Gas Corporation [1998] 1 S.C.C. 305 (Applicable law/Choice of Law in Arbitration)
- Venture Global Engineering v Satyam Computer Services [2008] 4 S.C.C. 190 (Challenge to a foreign award in India)

## What others say

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- Chambers & Partners (2023)

*“... is highly regarded by peers for his work in the Supreme Court. He is well versed in construction disputes and also advises on international arbitration.”*

## Career

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- Designated a Senior Advocate (equivalent of a Q.C. in England with similar restrictions) in December 2003
- Called to the Bar of England & Wales: 1990
- Practising before the Supreme Court and High Courts of India since 1989

## Education

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- Barrister; M.A. Cantab (Law Tripos), 1st Class (Year)
- Bundy Scholar, Norah Hunter Dias Prize in law (Year)
- Magdalene College, Cambridge University (Year)

## Notable Cases

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### ■ CIVIL & COMMERCIAL LITIGATION

Civil and commercial disputes arising out of contract form a significant component of Gourab's practice. In addition to contractual disputes generally, Gourab has been instructed in quite a few cases arising out of contractual disputes and relating to the invocation of bank guarantees, letters of credit, tenders and termination of contracts.

Some instances of cases in this field that Gourab successfully argued before the Supreme Court of India are *BHEL v Tata Projects Ltd* [2015] 5 SCC 682, *Air India Cabin Crew Association and Ors v Union of India and Ors* [2012] 1 SCC 619, *Oil & Natural Gas Corporation v City Industrial Development Corporation*, [2007] 7 SCC 39, *Ojas Industries v Oudh Sugar Mills* [2007] 4 SCC 723, *Panchanan Dhara v Monmatha Nath Maity*, [2006] 5 SCC 340, *Food Corporation of India v Babulal Agrawal* [2004] 2 SCC 712 and *Ahmedabad Municipal Corporation v GTL Infrastructure Ltd. and Ors.* [2016] 12 SCALE 1002.

### ■ OIL & GAS

Gourab has considerable experience in the oil and gas sector and has represented both private parties as well as public sector undertakings in disputes in the Supreme Court of India, various High Courts of India, specialised tribunals as also arbitral tribunals. He is consistently engaged by various public sector undertakings for arbitral proceedings that cover a wide range of oil and gas related issues including exploration, pricing, supply and transportation of oil as well as gas.

### ■ INSURANCE

Gourab currently represents insurance companies in a wide variety of claims, mostly before arbitral tribunals and before the National Consumer Disputes Redressal Commission (a specialized Tribunal set up for resolving consumer/product liability disputes). He is also routinely consulted on matters involving Indian insurance law and has advised on a matter pertaining to whether

a port's physical damage and business interruption claims pursuant to an unexpected weather event were payable by the reinsurers to the insurer under several reinsurance policies.

Currently, Gourab is counsel for insurers in a domestic arbitration concerning disputes arising out of damage due to a fire at a paper manufacturing facility. He is also currently representing a foreign insurance company in another dispute which pertains to the methodology of calculation of loss of profits under a 'fire loss of profits' policy.

Recently, Gourab has successfully impugned an arbitral award passed against an insurance major in *Indo Rama Synthetics India Limited v Iffco Tokio General Insurance Co. Ltd.* in FAO (OS) 156/2015 decided on 15.2.2019 before the Delhi High Court. A Special Leave Petition against the Delhi High Court judgment is presently pending before the Supreme Court of India where Gourab is appearing for the Respondent.

- **ANTITRUST**

Gourab has appeared before the Courts, before the Competition Commission of India and before the Competition Appellate Tribunal (a specialized appellate Tribunal set up under the Competition Act, 2002) for the purpose of representing clients across several fields in matters pertaining to Indian competition law. He was engaged by, and represented, a cement company accused of cartelization in the Competition Appellate Tribunal

- **TAXATION (Income Tax, VAT, Sales Tax, Excise, Customs)**

Gourab has a considerable amount of expertise in the fields of direct taxation and has extensively represented the Union of India as lead counsel in direct and indirect taxation litigation while Additional Solicitor General of India. Some judgments pertaining to taxation argued by Gourab in the Supreme Court include:

- (i) *Commissioner of Customs v N.I. Systems*, (2010) 256 E.L.T. 173 (As Additional Solicitor General of India).

- (ii) *Commissioner of Central Excise v Gujarat Narmada Fertilizer Corporation*, (2009) 1 SCC 101 (As Additional Solicitor General of India)
- (iii) *Liberty India v Commissioner of Income Tax*, (2009) 9 SCC 328 (As Additional Solicitor General of India).
- (iv) *Commissioner of Trade Tax v Kajaria Ceramics*, [2005] 11 SCC 149
- (v) *Tata Iron & Steel Company Limited v. State of Jharkhand*, [2004] 7 SCC 242
- (vi) *Tata Iron & Steel Company Limited v. State of Jharkhand*, [2005] 4 SCC 272
- (vii) Successfully defended a challenge to the constitutional validity and vires of certain provisions of the Assam Agricultural Produce Market Act before the Gauhati High Court (reported in *Assam Roller & Flour Mills Association v. State of Assam*, 2008 (4) G.L.T. 366).
- (viii) Gourab was instructed in a case challenging a significant demand of sales tax against a government-owned oil company before the High Court of Orissa. (*HPCL v State of Orissa*).
- (ix) Gourab successfully represented a local body before the Supreme Court of India in its levy of statutory cess in *Vasant Chemicals Limited v Managing Director, Hyderabad Metropolitan Water Supply and Sewerage Board and Others* (2019) 4 SCC 592.
- (x) He was appointed by a leading international law firm as an expert to opine on a complicated issue pertaining to tax laws in India in a matter before the Eastern Caribbean Supreme Court.

- **INTELLECTUAL PROPERTY AND SECURITIES**

Gourab regularly appears before the Courts in intellectual property disputes. Gourab has represented, amongst others, Unilever, in a dispute pertaining to comparative advertising and malicious falsehood before the Delhi High Court *Reckitt Benckiser v Hindustan Unilever* (2008) 38 Patents & Trademark Cases

139. The judgment in *M/s P.K. Overseas Private Limited v. M/s KRBL Limited* FAO No. 317/2018 is presently awaited where Gourab has argued for the Appellant.

- **SECURITIES MARKET**

Gourab has successfully represented the Indian securities market regulator Securities and Exchange Board of India in a litigation before the Allahabad High Court challenging the regulations that have been issued by SEBI for the purpose of regulating the entry, licensing and business of stock exchanges throughout the territory of India in *UP Stock Exchange Brokers' Association v Security and Exchange Board of India* 2014 [7] ADJ 548. He has also successfully represented SEBI in *SEBI v Rakhi Trading and Others (2018) 13 SCC 753* where the Supreme Court has clarified the definition of *market manipulation* in the Futures and Options segment of the National Stock Exchange.

- **LABOUR & EMPLOYMENT**

Over the past fifteen years, Gourab has argued a number of cases relating to labour and industrial employment including *State of Uttaranchal v Dinesh Kumar Sharma*, [2007] 1 SCC 683; *ANZ Grindlays Bank v Union of India*, [2005] 12 SCC 738; and *Bharat Heavy Electricals v B.K. Vijay* [2006] 2 SCC 654, *Ritu Bhatia v. Ministry of Civil Supplies, Consumer Affairs and Public Distribution* in Civil Appeal No. 1467 of 2019.

- **INFORMATION TECHNOLOGY AND DATA LAWS**

Recently, Gourab has advised overseas clients on laws relating to information technology and data privacy and the compliance exercises to be carried out by them.

## **PROFESSIONAL APPOINTMENTS**

- Additional Solicitor General for the Union of India at the Supreme Court (2009-2014).

*The Constitution of India provides for Law Officers at the Federal and Provincial levels of Government. At the Federal level, the Union of India is represented by the Attorney General for India, the Solicitor General for India and a team of eight Additional Solicitors General.*

- Vice Chairman of the UNCITRAL National Coordination Committee for India (UNCCI); one of the only three UNCITRAL National Coordination Committees constituted world over under the mandate of the United Nations.
- Vice-Chairman of the Permanent Court of Arbitration India Conference Committee (of which Mr. Fali S. Nariman is the Chairman).
- Part of the sub-committee of experts on Investment treaties and Investment treaty arbitrations that assisted the Law Commission of India in its 260th report on India's Model Bilateral Investment Treaty.
- Contributed to the Law Commission's 246th report on Amendment to the Indian Arbitration and Conciliation Act, 1996.
- Part of the Attorney General's Committee set up in 2010 to suggest changes to the Indian Arbitration and Conciliation Act, 1996. The Government of India's representative at the UNCITRAL Working Group on Arbitration in Vienna in October 2011.
- Appointed to the Board of ASSOCHAM's (Associated Chamber of Commerce) International Centre for Alternative Dispute Resolution (AICADR), which is formulating an institutional set up for Investment treaty arbitration broadly based on the UNCITRAL Rules.
- Author of the 'India Investment Treaty Know-How' chapter in the Global Arbitration Review in 2016 and 2017.
- Author of 'Halsbury's Laws of India, Business Associations'.
- Author of the India chapter of the Encyclopedia of International Commercial Litigation, soon to be published by Wolters Kluwer.



- Additional Advocate General for the State of Haryana at the Supreme Court (2007-2009).
- Additional Advocate General for the State of Uttarakhand in the Supreme Court (2002-2007).

*Each State/Province is represented by an Advocate-General. Gourab represented the State of Uttarakhand from 2002 to 2007; and represented the State of Haryana as its Additional Advocate General before the Supreme Court from 2007 to 2009.*

- Member, National Legal Services Authority (NALSA), New Delhi (2004-2009)  
NALSA is the apex body constituted to lay down policies for making legal services available under the provisions of the Legal Services Authorities Act, 1987. Its duties include framing effective schemes for legal services, disbursing funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. The Chief Justice of India is the Patron-in-chief of NALSA.
- Nominated as a Delegate by the Supreme Court of India for the Indo Canadian Legal Forum Meet, 2001; in the Indo-US Legal Forum Meet, 2001 and in the Indo-British Legal Forum Meets, 2003 and 2008.