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## **GOURAB BANERJI**

Senior Advocate & Barrister

### ***CURRICULUM VITAE***

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

Call to the Bar in 1990 (Lincoln's Inn)

Practising before the Supreme Court and High Courts of India since 1989

Designated a Senior Advocate (equivalent of a Q.C. in England with similar restrictions)  
in December 2003.

### ***NATURE OF PRACTICE***

- Gourab has developed his practice mainly before the Supreme Court of India as a Senior Counsel with an emphasis on commercial matters, and particularly commercial arbitration.
- He has appeared as counsel in a large number of domestic and international commercial arbitrations in India and abroad. His practice and expertise in arbitration has resulted in him being a constituent of several committees set up in relation to Indian arbitration law.
- Currently a private legal practitioner, Gourab has also been a government legal officer, both at the Federal and Provincial levels. While Additional Solicitor General for the Union of India, Gourab represented the Government of India in a number of sensitive cases. A recent noteworthy case is the landmark case of *Republic of Italy v Union of India* [2013] 4 S.C.C. 721 before the Supreme Court of India. The Supreme Court held that India had concurrent jurisdiction to prosecute the Italian marines accused of shooting Indian fishermen within the Exclusive Economic Zone of India.
- While as a government legal officer and in private practice, Gourab has also successfully represented his clients before the Supreme Court in several civil and commercial cases including *MECL v AK Diskbit* Civil Appeal No 10697/2014 judgment rendered on 3<sup>rd</sup> December 2014, *BHEL v Tata Projects Ltd* [2014] 10 SCALE 23, *UPSC v Arun Kumar Sharma* [2013] 14 SCALE 31, *Three Cheers Entertainment v Calcutta Electricity Supply Co* [2008] 16 S.C.C. 592 and *Vijay Industries v*

*NATL Technologies*, [2009] 3 S.C.C. 527.

### **IMPORTANT PRACTICE AREAS**

#### ▪ ARBITRATION LAW & PRACTICE

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

- (i) *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).
- (ii) *Smita Conductors v Euro Alloys* [2001] 7 S.C.C. 728 (Enforcement of Foreign Awards in India)
- (iii) *Sanshin Chemicals Industry v Oriental Carbons & Chemicals*, [2001] 3 S.C.C. 341 (Seat of Arbitration)
- (iv) *Thyssen Stahlunion GmbH v Steel Authority of India*, [1999] 9 S.C.C. 334 (Applicability of the new Arbitration & Conciliation Act 1996)
- (v) *Sumitomo Heavy Industries v Oil & Natural Gas Corporation*, [1998] 1 S.C.C. 305 (Applicable law/Choice of Law in Arbitration)
- (vi) *Venture Global Engineering v Satyam Computer Services* [2008] 4 S.C.C. 190 (Challenge to a foreign award in India)
- (vii) Gourab is currently appearing for a foreign party before the Delhi High Court in a case that is concerned with the hotly debated issue of jurisdiction of an Indian Court to set aside a foreign award published outside of India.

Gourab has also appeared in numerous arbitration proceedings. Some international commercial arbitration proceedings in which he has represented parties in recent years are –

- (i) Represented an English company against an Indian textile manufacturer in respect of disputes arising out of a finance agreement.
- (ii) 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.
- (iii) Represented an Indian Oil Company in a major international arbitration dispute pertaining to charter-hire of a drilling vessel.
- (iv) 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.

- (v) 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.
- (vi) Instructed as lead counsel along with English counsel and solicitors on behalf of a public sector insurance company in a recently concluded 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.

#### ▪ 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 incidental to contractual disputes and relating to the invocation of bank guarantees, letters of credit, tenders and termination of contract.

Some instances of cases in this field that Gourab successfully argued before the Supreme Court of India are *BHEL v Tata Projects Ltd* [2014] 10 SCALE 23, *Air India Cabin Crew Association and Ors v Union of India and Ors* [2012] 1 S.C.C. 619, *Oil & Natural Gas Corporation v City Industrial Development Corporation*, [2007] 7 S.C.C. 39, *Ojas Industries v Oudh Sugar Mills* [2007] 4 S.C.C. 723, *Panchanan Dhara v Monmatha Nath Maity*, [2006] 5 S.C.C. 340 and *Food Corporation of India v Babulal Agrawal* [2004] 2 S.C.C. 712.

#### ▪ INSURANCE

Gourab represents Indian 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 currently the Indian counsel for insurers in a domestic arbitration concerning disputes arising out of damage due to a fire at a paper manufacturing facility.

#### ▪ 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, specialized Tribunals as also arbitral tribunals. The disputes cover a wide range of oil and gas related issues including exploration, pricing, supply and transportation of oil as well as gas. He is currently instructed on behalf of a leading sponge iron manufacturer in the steel industry to appear in the Supreme Court in a dispute pertaining to deficiencies in supply of gas by the Indian Ministry of Petroleum and Natural Gas.

#### ▪ 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 S.C.C. 101 (As Additional Solicitor General of India)
- (iii) *Liberty India v Commissioner of Income Tax*, (2009) 9 S.C.C. 328 (As Additional Solicitor General of India).
- (iv) *Commissioner of Trade Tax v Kajaria Ceramics*, [2005] 11 S.C.C. 149
- (v) *Tata Iron & Steel Company Limited v. State of Jharkhand*, [2004] 7 S.C.C. 242
- (vi) *Tata Iron & Steel Company Limited v. State of Jharkhand*, [2005] 4 S.C.C. 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*).

#### ▪ 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

Gourab recently 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.

- 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 S.C.C. 683; *ANZ Grindlays Bank v Union of India*, [2005] 12 S.C.C. 738; and *Bharat Heavy Electricals v B.K. Vijay* [2006] 2 S.C.C. 654.

## ***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.*

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

- Former 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.*

- Part of the Attorney General's Committee set up in 2010 to suggest changes to the Indian Arbitration and Conciliation Act, 1996.

- Government of India's representative at the UNCITRAL Working Group on Arbitration in Vienna in October 2011.

- Member, National Legal Services Authority (NALSA), New Delhi, India

*NALSA is the apex body constituted to lay down policies and principles 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

- Author of 'Halsbury's Laws of India, *Business Associations*'.

NOTE:

- Gourab is a sole practitioner. Though he was called to the Bar from Lincoln's Inn in 1990, he is not registered with the BSB. Rather, he was enrolled as an Advocate with the Bar Council of Delhi in 1989 and his name was entered in the roll of Advocates under the Indian Advocates Act, 1961 with the roll no. D/374/1989.
- He was subsequently designated as a Senior Advocate under Section 16(2) of the Indian Advocates Act, 1961 w.e.f. 19<sup>th</sup> December 2003.
- Under the Indian Advocates Act, 1961, his practice is regulated by the Bar Council of India. There is no requirement under the Indian applicable law for taking out professional indemnity insurance.