



Shardul Amarchand Mangaldas



Binsy Susan

Partner

Dispute Resolution

Binsy Susan is a Partner in the Dispute Resolution and Arbitration practice group in the New Delhi Office. She has almost two decades of rich and diverse experience in handling corporate and commercial litigations and arbitrations.

She started her career in Disputes with the Firm in 2009, after she returned to India with an LL.M. degree from New York University School of Law, New York. Prior to that, she was pursuing transactional practice with AZB & Partners since 2005.

She is a well-known name in the arbitration field. She routinely handles international and domestic commercial arbitration and litigation matters in complex cross-border disputes for a diverse clientele in construction, information technology & telecom, oil & gas, and infrastructure sectors. She has been representing clients in arbitrations conducted by various international institutions (such as ICC, SIAC, LCIA, AAA and CAM-CCBC), as well as various international and national *ad hoc* tribunals across jurisdictions including New York, London, Singapore and Brazil.

She has been at the forefront of cutting-edge matters concerning data privacy, data protection, and cybersecurity for social media companies like Facebook, WhatsApp, and Instagram before various judicial fora, including the Supreme Court of India and High Courts across India.

In recognition of her expertise, she has been included in the 'Top 40 Dispute Lawyers' list of 2022 by Asian Legal Business. She has been consistently ranked by Benchmark Litigation as the 'Litigation Star' in 2023 and as the 'Future Star' Commercial and Transactions in 2022. She has also received the 'Litigator of the Year' award India and Middle East by ALB women in law awards, 2023.

She writes frequently on various topical issues relating to contracts and arbitration. She has contributed to various guides and handbooks including the Global Arbitration Review (GAR) for the India Chapter on Construction Arbitration (through the years 2019 – 2023), Financier Worldwide's publication on Litigation and Alternative Dispute Resolution 2023, India-CRUX construction dispute causation series on unforeseen conditions 2022 and the India Chapter of Chambers and Partners Global Practice Guide on "Product Liability & Safety".

Location

- Delhi

Education

- B.A.LL.B (Hons.), National Law Institute University (2005)
- LL.M., New York University School of Law, (2008)

Practices

- Dispute Resolution

Professional Memberships

- Bar Council of Delhi, India
- Supreme Court Bar Association (SCBA)

Awards Recognitions

- **Litigation Star** by Benchmark Litigation Asia-Pacific, 2023
- **Litigator of the year** - India and Middle East by ALB women in law awards 2023
- **Litigation star** for Commercial and Transactions by Benchmark Litigation, 2023





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She is a core member of the Steering Committee of the Young Leaders Group of the Society of Construction Law, India. She is also an active member of Arbitral Women, an organisation of leading women arbitration practitioners across the globe. She also serves as a core member of the Legal Committee of the YWCA India.

Speaking Engagements:

- Panel discussion on “*Role of AI in Arbitration and Mediation*” the Singapore Convention Week, August 2023, AAA-ICDR event during the Singapore Convention Week;
- Fire-side chat with Mr. Harish Salve KC on the latest trends in the Indian legal market in May 2023 at the London International Disputes Week 2023, as a Moderator;
- Conference organised by the Indian Embassy on “*Litigation and regulatory risks for investors in India*”, December 2022, as a Speaker;
- Panel discussion on “*The Changing Landscape of Arbitration in India*” at the ALB Japan In-House Legal Submit 2022 in Tokyo, June 2022;
- Training session on “*Contours of Public Policy in India*” at Institute of Law, Nirma University, March 2022.

Publications:

- Publication of Arbitral Award: Balancing Confidentiality and Transparency in Arbitration, Indian Arbitration Law Review, Vol. 4 (2022)ⁱ
- Authored India-CRUX construction dispute causation series part III: Unforeseen Physical Conditions.ⁱⁱ
- Authored the India Chapter of Global Arbitration Review (GAR) “Knowhow on Construction Arbitration” for years 2019 - 2021.
- Authored the India Chapter of Chambers and Partners Global Practice Guide on “Product Liability & Safety”, for the years 2019 and 2020.
- How to trump a ‘No Claims Certificate’ in Arbitration, Asian International Arbitration Journal, Volume 14, Issue 2 (2018) ⁱⁱⁱ.
- Court’s Assistance in Conduct of Arbitral Proceedings, Indian Journal of Arbitration Law, Volume 6, Issue 2 (January 2018) ^{iv}.
- Tracing the assets – Key for enforcement of awards, Bi-Monthly Newsletter of the Nani Palkhivala Arbitration Centre, Volume 4, Issue 4 (August 2021).
- NTPC v. Voith – Force Majeure Clause v. Impossibility under Section 56?, Mondaq, dated 23 August 2019^v .
- Specific Relief (Amendment) Bill 2017: step towards new jurisprudence, International Law Office – Litigation Newsletter, dated 19 June 2019^{vi}.
- New Delhi International Arbitration Centre: Building India into a Global Arbitration Hub, Kluwer Arbitration Blog, dated May 4, 2018^{vii}.
- Arbitrability of Lease Deed Disputes in India – The Apex Court Answers, Kluwer Arbitration Blog, dated February 19, 2018^{viii}.

Awards Recognitions

- **Top 40 Dispute Lawyers’** by Asian Legal Business, 2022
- **Excellence in International Arbitration – India Award** for 2015 by the Corporate LiveWire Legal Awards.
- **Future Star** for Commercial and Transactions by Benchmark Litigation, 2022
- **Client Choice Award 2015** (by the International Law Office and Lexology) in the Arbitration & ADR category for India among 2,500 nominations made by clients.
- **Senior Associate of the Year** for 2015 by IDEX Legal Awards.





- Deciding the Question of Applicability: Arbitration Amendment Act, 2015, Kluwer Arbitration Blog, dated September 15, 2016^{ix}.

Select Experience Statement

An indicative list of matters that Binsy has recently handled are set out below:

- Representing and advising a multinational Media and Entertainment Conglomerate in a Singapore-seated arbitration under the Singapore International Arbitration Centre (SIAC) rules, against an Indian Media and Entertainment Company. The dispute relates to termination of a merger agreement due to non-fulfilment of certain terms and conditions, involving claims of damages and termination fee. This dispute also involves proceedings before the National Company Law Tribunal (NCLT) regarding non-implementation of the composite scheme of amalgamation.
- Representing and advising a leading Indian IT Services, Solutions & Distribution Company in two ad hoc arbitrations against a statutory authority in relation to one of the largest systems integration contracts in the world (valued at USD 240 million). The disputes relate to validity of a unilateral extension of the contract, payment of dues and unlawful deductions by way of alleged breach of highly technical SLAs related to information security, operations, logistics and biometrics. The Arbitral Tribunal has issued two partial final awards on liability in favour of our client.
- Representing and advising a global telecom conglomerate, a Singaporean entity, and an Indian telecom company in a London seated arbitration under the American Arbitration Association (AAA) rules, with governing law of the state of New York. The matter pertains to alleged breaches of a services agreement for provision of cloud communications platform, its unlawful termination, and tortious claims for alleged disruption of services. The Arbitral tribunal has issued a final award in favour of our client in April 2022 and has directed the opposite party to pay unpaid dues and damages, in respect of which, Binsy is advising the client in enforcement proceedings before the courts of Sao Paulo.
- Representing and advising a Singaporean entity and its Brazilian subsidiary in a Sao Paulo seated arbitration under the Rules of the Center for Arbitration and Mediation of the Chamber of Commerce, Sao Paulo (CAM-CCBC), with Brazilian governing law. This is a corporate dispute with a Brazilian company regarding shareholder rights and majority control. The Arbitral Tribunal has issued a partial award on liability in favour of our client in July 2022.
- Representing and advising a Singaporean entity and its Brazilian subsidiary in litigation proceedings before various courts of Sao Paulo and Brasilia in matters such as criminal complaints, exhibition of documents, enforcement of arbitral awards, annulment of arbitral awards, annulment of shareholders' meeting and request for preliminary injunction.
- Advising a leading Indian textile manufacturer in a class action lawsuit to be filed before the courts of California, USA for violation of California Legal Remedies Act alleging breach of express warranty by misrepresenting the consumers, breach of implied





warranty of merchantability, unjust enrichment, false advertising and unlawful business practices.

- Representing and advising a leading French industrial gases manufacturer in USD 530 million (INR 40 billion) dispute against a leading Indian steel manufacturer concerning construction of two cryogenic air separation plants on BOO basis. The Arbitral Tribunal has issued interim partial awards on liability and costs in favour of our client, held termination by the client to be valid and ordered takeover of the facility.
- Representing & advising WhatsApp LLC and Meta Platforms Inc. in a constitutional challenge to the validity of Rule 4(2) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("2021 IT Rules"). This matter is at the intersection of law and technology and will have significant implications for social media platforms/intermediaries using the end-to-end encryption technology.
- Representing & advising WhatsApp and Meta before the Supreme Court in a sensitive public interest litigation relating to circulation of child pornographic and gang rape videos on social media and formulation of guidelines for social media intermediaries to restrict and take down such content. This matter has resulted in various amendments to the IT Rules, and product changes put in place by various companies in order to curb the circulation of child pornographic and gang rape videos on social media platforms.
- Representing & advising WhatsApp and Meta before the Delhi High Court in several challenges pertaining to WhatsApp's update to its Privacy Policy and Terms in 2021. The update, rolled out in 2021, has attracted intense scrutiny globally, and including from Indian government and regulatory authorities, particularly on WhatsApp's data sharing practices with Meta.
- Representing and advising South Asia LPG Ltd. (a joint venture between Bharat Petroleum and Total Holdings India) before the Supreme Court and the National Company Law Appellate Tribunal in a matter relating to abuse of dominance and compensation.

An indicative list of her other relevant experience includes the following:

- Representing and advising an Indian EPC company and its English subsidiary in a litigation before the Technology and Construction Court, London regarding a dispute on the construction of the world's largest LDPE plant.
- Representing and advising an Indian EPC company and the employer in disputes against its contractor, a government owned engineering and manufacturing company regarding construction of 2*600MW thermal power station in India. The claims were to the tune of USD 6 million (INR 450 million).
- Representing and advising a consortium of Indian oil company in a dispute against a natural gas manufacturing company in relation to construction of a standby jetty for South-East Asia's first LNG Receiving and Regasification Terminal before an ad hoc arbitral tribunal.
- Representing and advising a Korean EPC contractor before Dispute Adjudication Board for claims valued at over USD 40 million against an employer arising out of an EPC contract based on the FIDIC conditions of contract. The agreement is an EPC Contract for one of India's largest suspended cable bridge construction projects.





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- Representing and advising India's largest public sector oil and gas exploration and production company in an arbitration arising out of an oil exploration contract in Brazil, which involved complex technical issues concerning drilling operations and sharing of joint operating expenses.
- Representing and advising a large American sewer pipeline rehabilitation company and its Indian subsidiaries in relation to disputes with its joint venture partner. Binsy also represented the company in claims against public sector utilities, municipal authorities, and private parties. This included an ICC arbitration, LCIA arbitration, ad hoc arbitration and challenge proceedings before courts in India.
- Representing and advising one of the world's largest telecommunication company in arbitration proceedings relation to its USD280 million dispute regarding acquisition of another telecom licensee. The dispute was resolved by a favourable settlement for the client for USD 280 million (INR 21 billion).
- Representing and advising a major passive infrastructure company in various rounds of litigation and two separate arbitration proceedings before Arbitral Tribunal against a joint venture of a Norwegian telecom company involving claims of USD 530k (INR 40 million).
- Representing and advising Confederation of Indian Industry (CII) before the Supreme Court of India (a five-judge Constitution Bench) dealing with the Presidential Reference on the method of allocation of natural resources.

ⁱ <https://www.indianarbitrationlawreview.com/copy-of-4-1>

ⁱⁱ https://www.hka.com/india-crux-construction-dispute-causation-series-part-iii-unforeseen-physical-conditions/?utm_source=LinkedIn&utm_medium=social&utm_campaign=Orlo&utm_content=Article+%2F+Thought+Leadership

ⁱⁱⁱ <http://www.kluwerlawonline.com/abstract.php?id=AIA|2018010>

^{iv}

http://www.ijal.in/sites/default/files/IJAL%20Volume%206_Issue%202_Binsy%20Susan%20&%20Adarsh%20Ramakrishnan.pdf

^v

<http://www.mondaq.com/india/x/839444/Contract+Law/NTPC+v+Voith+Hydro+Joint+Venture+Force+Majeure+Clause+v+Impossibility+Under+Section+56>

^{vi} www.internationallawoffice.com/newsletters/detail.aspx?r=37883

^{vii} <http://arbitrationblog.kluwerarbitration.com/2018/05/04/new-delhi-international-arbitration-centre-building-india-global-arbitration-hub/>

^{viii} <http://arbitrationblog.kluwerarbitration.com/2018/02/19/arbitrability-lease-deed-disputes-india-apex-court-answers/>

^{ix} <http://arbitrationblog.kluwerarbitration.com/2016/09/15/deciding-the-question-of-applicability-arbitration-amendment-act-2015/>

and on Mondaq dated 22 September 2016

<http://www.mondaq.com/india/x/529162/Arbitration+Dispute+Resolution/Deciding+The+Question+Of+Applicability+Arbitration+Amendment+Act+2015>

