

INTERNATIONAL ARBITRATION SUMMIT 2019



BGS is an international organisation having a direct presence in 90 countries. BGS stands for unlocking intelligence and human capital and is composed of outstanding attorneys educated at UC Berkeley, USA diffusing innovative analysis from around the globe. We ideate, incubate and inspire through our network of events and opportunities. On 16th November, 2019, BGS in association with Taxortium Consultants LLP hosted International Arbitration Summit at India Habitat Centre, Delhi, India. This magazine includes highlights of the event from the start of the event until closing speech and message of thanks to our supporters and contributors.



The summit commenced with **Adv. Rajnish Pathiyil**, Senior Standing Counsel/ Special Public Prosecutor, Madras High Court presenting a bouquet to the Chief Guest Hon'ble **Justice V. Ramasubramanian**. He then introduced the Hon'ble Judges and each panellist comprising of jurists, bureaucrats, academicians and experts. After the introduction of respected chief guest and panellists, he discussed about the Arbitration Council and 2019 amendments in The Arbitration and Conciliation Act, 1996. He later went on to shed light on the most significant changes that the 2019 amendments has brought in The Arbitration and Conciliation Act, 1996 including appointment of arbitrators in Arbitral Institutions of India and the Arbitration Council of India.

Mr. Aubin Gonzalez Lapos is the Chairman of BGS. He addressed the summit by introducing the aim and proposal of BGS and highlighted the challenges for the next generation and the arbitration topics that are to be acknowledged with values. Firstly, to face changes courageously and without fear even if it is changes in technology and secondly, to be humble and to venture on understanding the truth. He continued with aspects of huge importance in commercial arbitration that is to attract and welcome investors to establish confidence on safety of the investment and lastly, the vital aspect of maintaining business to business relationship in the commercial sector.



“FUTURE IS NOTHING BUT WHAT THE PAST HAS CREATED FOR US”

His Lordship established the scope of the conference and the emerging trends in the arbitration by referencing to ‘Law and Colonial Cultures- Legal Regimes in World History, 1400-1900’ by Lauren Benton, an American historian. Furthermore, His Lordship described the extent to which the arbitration law has changed in India. Historically, how religion and moral authority dictated the law which was later replaced by political authority. Today, it is neither religious, moral nor political authority that dictates the law but the authority of trade, commerce and free market economy that determines the law. His Lordship highlighted the case findings of *White Industries Australia Limited vs Coal India Limited* and further enlightened the summit with two interesting developments that recent changes in arbitration law has brought, that is, firstly, changes relating to accountability of arbitral tribunal and secondly, changes relating to vent effective and speedy justice.

– V. Ramasubramanian
Judge of Supreme Court of India

The first panel was moderated by **Mr. Justice M.M. Sundresh** and the topic of discussion was ‘**India as a Hub of Institutional and International Arbitration**’. Discussion began with **Mr. P.S. Narasimha** mentioning advantages of ad-hoc arbitration that are flexibility and approachability. He later continued with requirements to establish an arbitration institution in India and how support from government and regulatory and statutory support too is required for the same.



The discussion was continued by **Mr. Lomesh Kiran Nidumuri** where he talked about how governmental interference takes the success of such legal authorities and arbitration institutions backwards. He stated multitude of factors required in establishing institutional arbitration in India that includes a legislative regime, judicial interpretation of what that legislative regime is and attitude of parties and lawyers towards the regime. **Mr. Christoff Kauffman** added to the discussion with an engrossing question of problem with separation of powers between executive and judiciary. The panel ended with questions from the audience.

The second panel was moderated by **Justice Vibhu Bakhru** and the topic of discussion was ‘**Arbitration in Intellectual Property and Technology Disputes Sector**’. His Lordship commenced the discussion by raising the question of what is *in rem* and *in personam* continued with if human rights can be an arbitrable issue or not. The discussion was continued by **Mr. Gaurav Pachnanda** referencing the leading judgment of the Supreme Court in the case of *Booz Allen & Hamilton Inc vs SBI Home Finance Limited & Ors* (2011). Adding to the discussion, **Mr. Ganesh Chandru** contributed by discussing findings of the survey conducted by the Queen Mary University of London and highlighting importance of World Intellectual Property Organisation based in Geneva.



Furthermore, comparisons were drawn between different international jurisdiction like Singapore, Hong Kong and Switzerland. **Mr. Numa Isnard** later added focus on disputes in telecommunication aspect and the vital role arbitration hold for contract issues in telecommunications sector. The discussion was concluded by **Mr. Alexander Kirschstein** focusing on issues with international technology arbitration and struggle of arbitral tribunal to keep the procedure in check.

The third panel was moderated by **Justice Rajiv Shakdher** and the topic of discussion was **‘Assessing Damages, Tax Implications and Tax Incidence on Arbitral Awards’**. His Lordship’s observations in *Glencore International AG vs Dalmia Cement (Bharat) Limited* set the tune of the panel discussion along with his contributions on Double Taxation Avoidance Agreement (DTAA) subsisting between India and Switzerland. Later, **Mr. Kamlesh C. Varshney** submitted that the business income can be taxed only if there is a permanent establishment. Adding that DTAA allows interest, royalty, fees for technical services and dividend to be taxed without a permanent establishment.



The discussion was continued by **Mr. Ajay Wadhwa** on the issue of taxability of compensation and whether consideration on the legal aspect should be given at the time of execution of the award and whether there should be a law that establishes rule to decide the legal issue of the taxability. The discussion was concluded by **Mr. Sherry Oommen** stating comparisons between international jurisdictions like Canada, France and Venezuela and domestic tax laws.

The final panel of the summit was moderated by **Justice A.K. Jayasankaran Nambiar** and the topic of discussion was ‘**Taxation Carve- outs in Bilateral and Multilateral Investment Treaties**’. The discussion started with His Lordship observations on how accounting aspect is unavoidable when it comes to taxation. His Lordship stated difficulties when it comes to an arbitral tribunal interfering with taxation policies of a state and how traditionally, states are reluctant to allow judiciary forum to go in aspects of taxation. Continuing the discussion, **Dr. Prabhash Rajan** further shed light on importance and sensitivities in taxation matters and how India has addressed these sensitivities in the Indian Modal Bilateral Treaty.



Further **Mr. Rajat Bansal** added to the conference by discussing general types of non-tax agreements and types of tax agreements. Later, **Dr. James Nedumpra** submitted that taxation to be carved out or not and maintaining the balance is an issue for the government to decide. The discussion was concluded by **Dr. R.J.R Kasibatla** stating the balance between regulatory regime and investment regime by referencing to an interesting teaching from *Chanakya's Arthashastra*- collection of tax by the governing body should be like the relation between a flower and a honeybee.

We also extend thanks to all the staff members and students for their extensive cooperation within the organisation of this summit.



We would like to take this opportunity to show deepest sense of appreciation to our sponsors, without them this summit would not have been successful. Huge thanks to our global partners Osborne Clarke, Siemens Gamesa, Latest Laws and Mario Rusk TRDP Group for their vast support.

- Lovekesh Aggarwal
Excutive Director, BGS