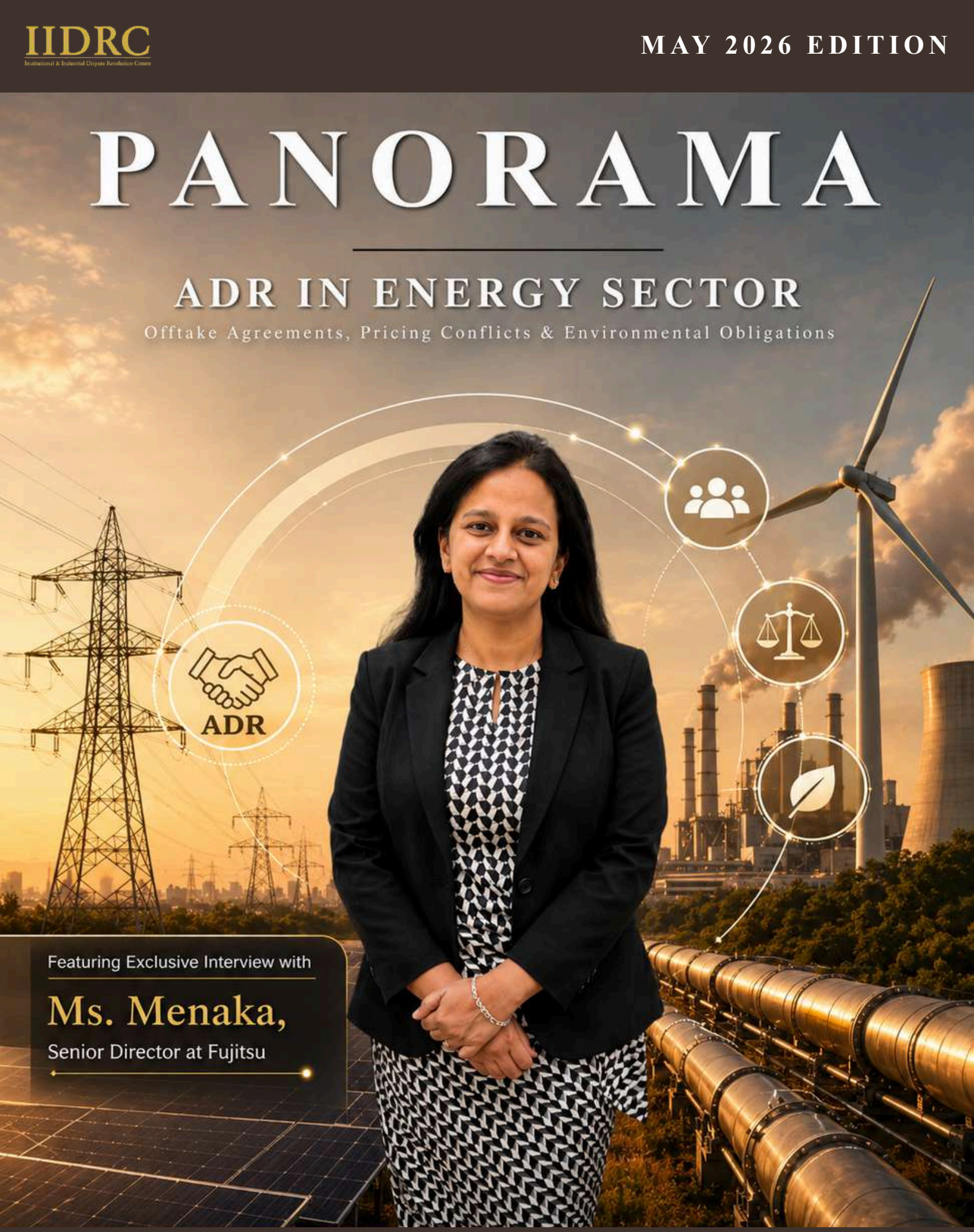
IIDRC
Institutional & Industrial Dispute Resolution Centre

MAY 2026 EDITION

PANORAMA

ADR IN ENERGY SECTOR

Offtake Agreements, Pricing Conflicts & Environmental Obligations



Featuring Exclusive Interview with

Ms. Menaka,

Senior Director at Fujitsu

Manaar Tower, 3rd Floor, Sector 132,
Noida, Uttar Pradesh, India 201304

iidrcedge

info@iidrc.com

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CEO'S MESSAGE

Nobody thinks about electricity until it stops. You flick a switch a thousand times without a flicker of gratitude, and then one evening the room goes dark and the power company becomes the most important institution in your life. Dispute resolution works the same way. Nobody reads the arbitration clause when the deal is signed and everyone is shaking hands for the camera. They read it much later, usually at night, usually in a panic, usually after the relationship has turned the colour of a bad invoice. This issue is about what happens when those two worlds collide. We have handed it over to the energy sector, which, if you think about it, is the most dramatic place a contract can possibly go wrong. Energy disputes have a real talent for ambition. An offtake agreement gets signed for twenty years by people who cannot reliably predict next Tuesday. A pricing formula drafted in one decade meets a war, a pandemic, or a carbon tax in the next, and reacts badly. Add force majeure, which used to be the clause nobody expected to use and is now the clause everybody fights over, and you have a sector that keeps arbitrators in steady and genuinely interesting work. The serious argument our contributors make this month is that energy cannot afford the slow lane. A solar project does not wait politely while a five-year court case decides who was right. The grid moves on. The climate clock moves on. Arbitration, mediation, and expert determination are not the gentle option here. They are the only option fast enough to keep the lights, and the projects, on. There is more in these pages than megawatts. We sat down with Kevin Nash, Director General of the LCIA, to ask where arbitration is heading and how quickly. We took our EDGE programme to Galgotias University, where over fifty students learned that writing an arbitration clause is easy and writing one that survives contact with reality is not. We ran a POSH session at Patiala House, on the unglamorous but essential principle that a safer workplace starts with people who know their rights exist. And quietly underneath it all, our ESG writers raise an awkward question I suspect will define the next ten years of corporate life. It is one thing to call yourself green. It is quite another to prove it when a regulator, a customer, or a court politely asks you to show your work. The gap between the claim and the receipt is where the disputes of tomorrow are already taking shape. That is enough from me. The articles are better company than my introduction to them. Read them, argue with them, and if one of them changes your mind, do not tell me. Tell the person you were arguing with.

Hamid

CEO, IIDRC

SECTION ONE · WELCOME NOTE 01

Every Contract Has a Hormuz

Hamid Baig
CEO, IIDRC

My son ordered a keyboard last month and has been waiting for it ever since with the quiet dignity of a man wronged by the universe.

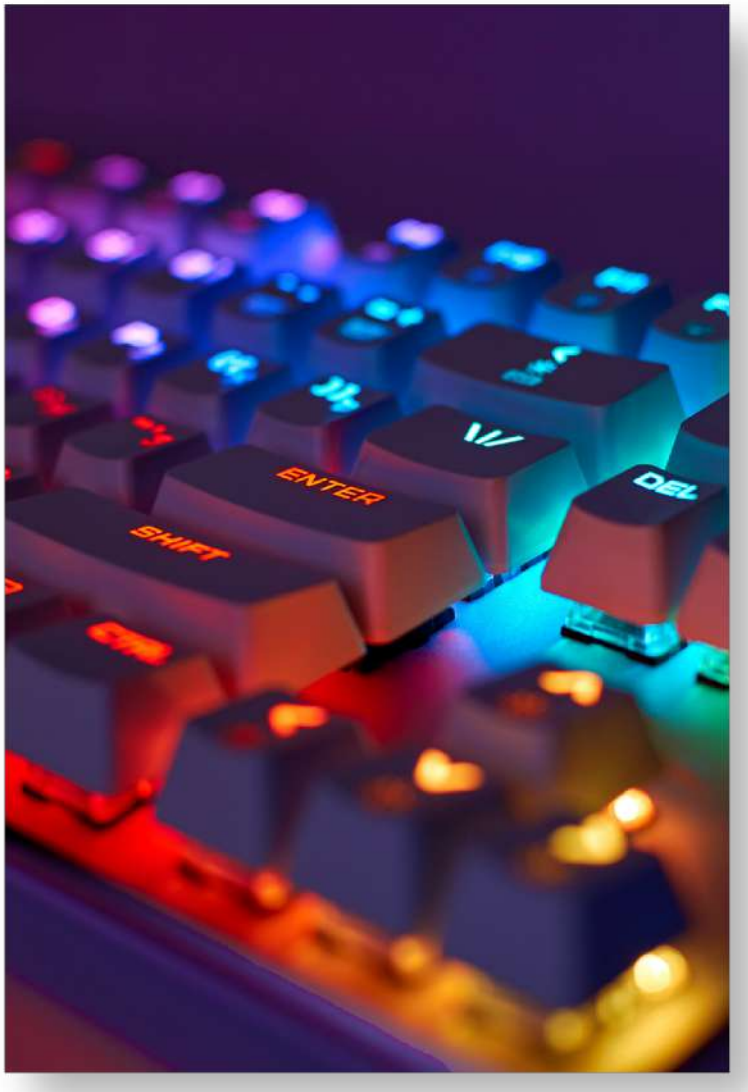
It was a good keyboard. The kind that lights up in colours no keyboard needs, built for games I am reliably informed I would not understand, which is true. He bought it from an American website, which made him feel sophisticated and international. It was, of course, shipping from China, a detail he discovered later and took almost as personally as the delay itself. The little tracking bar moved hopefully for a few days and then stopped, frozen somewhere over an ocean, and there it has remained.

He is thirteen. He has spent the better part of that month appearing in my doorway to deliver the same instruction. "Dad. Just call them. Make it happen."

He says this with total confidence, because he has watched me resolve disputes for a living and concluded, reasonably enough, that his father keeps some sort of hotline to the sea. That one phone call from me could reach across continents, locate his keyboard, and personally walk it to the door. I have not had the heart to tell him this is not how any of it works. So instead I tried to explain why the keyboard was stuck, which is how I came to explain the Strait of Hormuz to a thirteen-year-old who would much rather have been on Roblox.

I told him to picture a juice box, and just the straw. Imagine every drop of juice in the world had to come up through one thin straw, and one morning somebody pinched it. The juice is still there. The box is full. Nothing moves, and everyone who was thirsty is now also furious.

He considered this for a second and said, "Oh. So it's a chokepoint." I had spent a full minute on the juice box. He had a better word in four seconds, because in his games there is always one bridge or one tunnel everybody has to cross, and whoever holds it holds everything. Yes, I said. It is exactly a chokepoint. The world has a handful of them, and one of the most important is a strip of sea barely twenty miles wide called Hormuz, through which about a fifth of the world's oil has to squeeze to get anywhere useful. For most of history nobody thought about it, the way nobody thinks about a straw. Then some grown-up trouble began in that part of the world, the kind we are not going to get into, and the chokepoint got



pinched. Ships stopped. Some got stuck. The insurers quietly cancelled everyone's cover and went home. Prices climbed. And somewhere in the enormous traffic jam of things that were suddenly not arriving was one keyboard that lights up in colours no keyboard needs.

He stared at me. "That's so broken," he said.

He meant it the way his generation means it, as in unfair, badly built, rigged. But he was more right than he knew, because broken is the exact word for what happens next, and it is the word I use at work all day long.

A contract, you see, is just a promise written down so nobody can pretend later that they did not mean it. I will send you this, you will pay me that, by this date.

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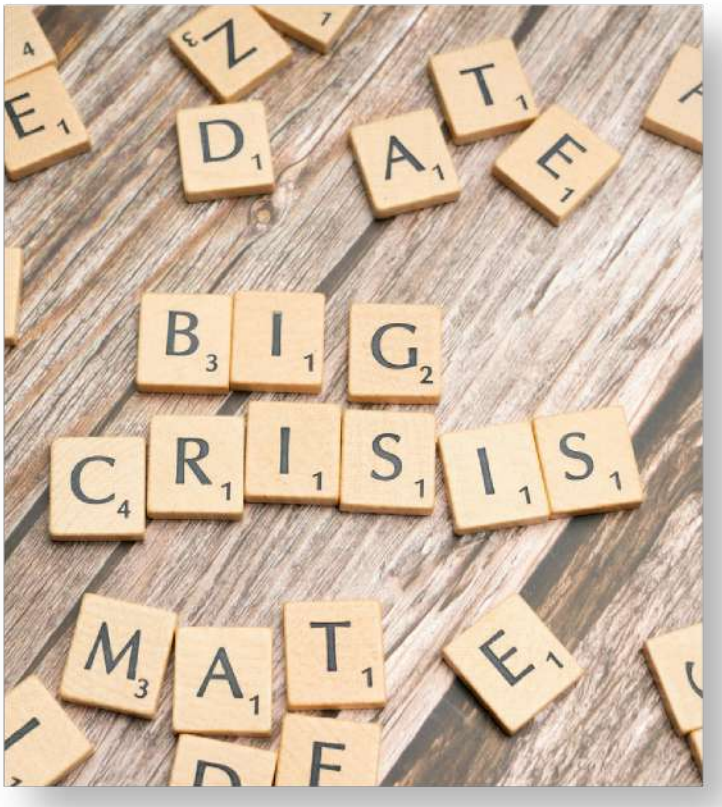
Most promises are kept and nobody reads the contract again. It sits in a drawer doing nothing useful, like a fire extinguisher. And then, once in a while, the building catches fire.

Tucked into almost every contract is a clause written for that exact moment. The lawyers call it force majeure, French for "a superior force," which is a dignified way of saying "what if something completely mad happens that nobody could have stopped." A war. A flood. A pandemic. A pinched strait. The clause is meant to settle who carries the loss when the impossible turns up uninvited and makes itself at home.

Here is the slightly embarrassing secret of my trade. Most people write that clause badly. They write it in calm weather, in a good mood, quietly certain the mad thing will land on somebody else. They copy it from an old document, never read it, and file it beside the fire extinguisher nobody has checked since 2019. Then the fire starts, they reach for it, and it turns out to be the wrong shape entirely.



My son, who had begun drifting back toward his screen, paused for the question that turns out to be the whole point.

"Okay but the keyboard guy," he said.

"The seller. Who does he call?" It is a thirteen-year-old's question and it is the most important one in the house. His entire model of the world is that every problem has a someone you call. A delay has a supplier. A supplier has a manager. Somewhere up the chain sits an adult who can fix it. And for him, and frankly for me, that is roughly true. We have people to call.

The small trader on the other end of a broken deal usually does not. Picture not the giant company but the little one. A trader with a container sitting off the coast of somewhere, a buyer who has stopped answering the phone, savings thinning by the day, and no idea at all who to call. The giants are fine. They have lawyers on retainer, contracts drafted by people who actually read them, and a clear plan for where to take a fight. The small trader assumes the only option is a court, has heard courts are slow and expensive and possibly in another country in another language run by people who have never met him, and so, beaten before he begins, simply swallows the loss and says nothing. The crisis hit everyone the same. It only bankrupted the ones who could not afford a lawyer to explain their own rights to them.

This is the part of my work I have never quite made peace with. The help exists. It is faster than courts and cheaper than courts, and a decision reached through it can be enforced in more than a hundred and seventy countries, which matters enormously when your problem sits in one time zone and your money in another. It is called arbitration and mediation, and it was built precisely for cross-border messes like a pinched strait.

The tragedy is not that the door is missing. It is that the people who need it most were never told it was there.

I gave my son the short version, in his own terms. The seller does have someone to call. He just may not know the number exists.

Then I told him the thing that actually matters, the part that outlasts both the keyboard and Hormuz.

This is not the first chokepoint to get pinched, and it will not be the last. A few years ago a ship the size of a building turned sideways in the Suez Canal and corked world trade for a week while the entire planet watched it like a comedy with a very large budget. Before that, a virus shut every factory on earth at once. Before that, something else. Before the next thing, this. The cause changes each time. The plot never does. Every few years the world reaches into the same drawer for the same fire

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Every Contract Has a Hormuz

extinguisher, and every few years a great many people discover, too late, that theirs was never going to work.

We are not living through unusually dramatic times. We are living through the only times on offer. And the one sane response to a world that keeps pinching chokepoints is to write your promises as though the chokepoint will close, because one day it will, and rarely when it is convenient.

That means three deeply unglamorous things, none of which require a war to be worth doing. Write the what-if clause as though you will genuinely need it one day, because you might. Agree, in advance and in writing, on a fair and fast referee, so that when the trouble arrives you are not also fighting about where to have the fight. And understand, before you ever reach for it, that a fair decision can cross borders to find your money even when the person who owes it would much rather it stayed lost.

Decide who the referee is before the game turns ugly. Not after the whistle. Not in the car park. Before.

The keyboard, since you ask, still has not arrived. My son has reached the acceptance stage of grief and gone back to the old one, with the air of a man making do in hard times. But I keep thinking about that frozen tracking bar, and how it quietly tied a strip of sea he will never visit to a small disappointment in our house, and onward to a seller somewhere who lost a great deal more than a keyboard and never found out who to call.

Every contract has a Hormuz.

A narrow point where, if the world squeezes hard enough, everything you were counting on gets stuck behind it. You cannot stop the world from squeezing. That part was never up to you. You can only decide, while the weather is still good and the drawer is still shut, what you intend to do when it does.

The chokepoint always gets pinched eventually. The only real question is whether you wrote your promise expecting it.

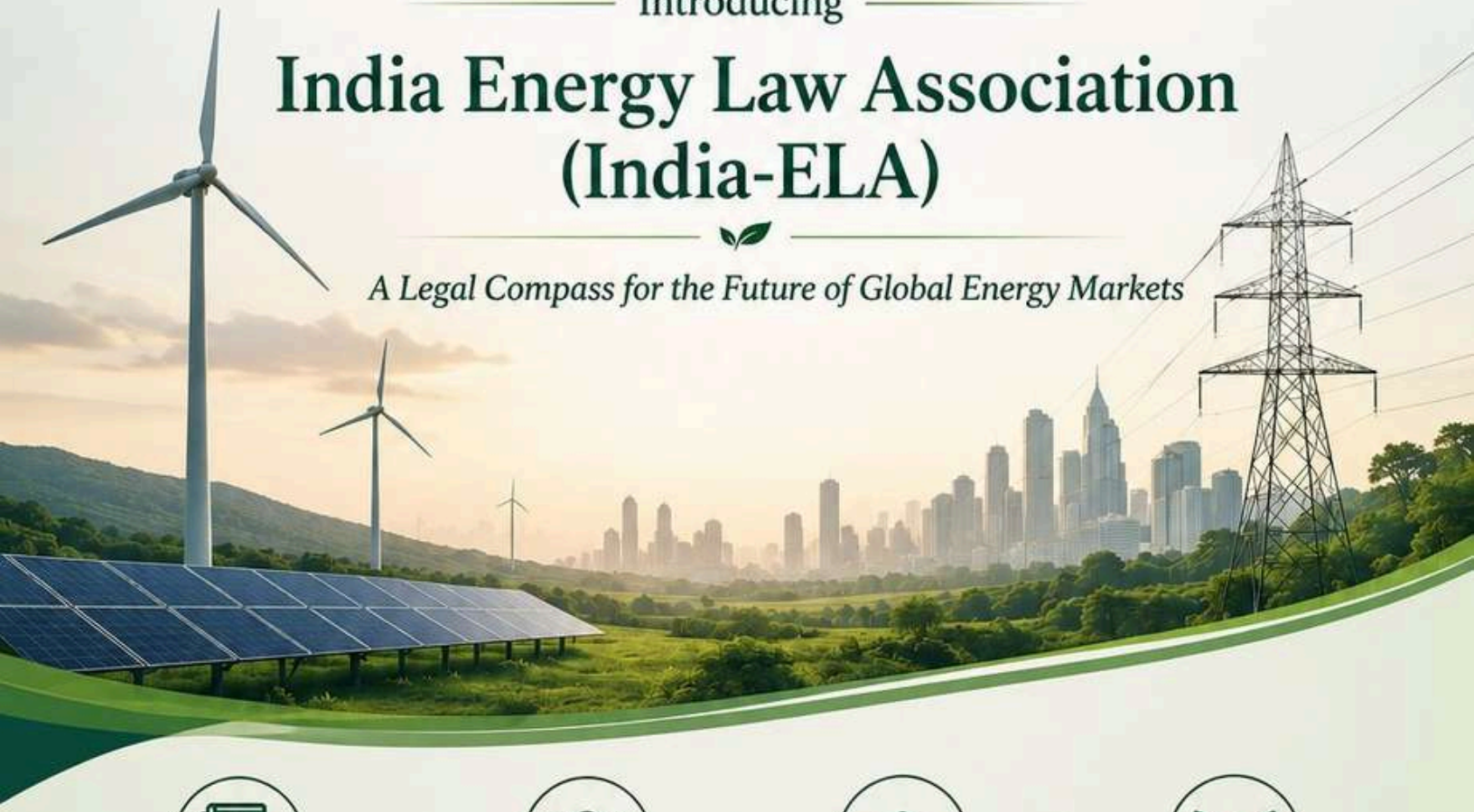
India Energy Law Association

Shaping the Legal Architecture of India's Green Future

Introducing

India Energy Law Association (India-ELA)

A Legal Compass for the Future of Global Energy Markets



RESEARCH & POLICY

Conducting high-quality studies to strengthen energy law and policy frameworks.

DIALOGUE

Providing a neutral forum for policymakers, regulators, and industry leaders to collaborate.

CAPACITY BUILDING

Offering structured training and mentorship from domain experts, alongside fellowships for the next generation.

DISPUTE RESOLUTION

Fostering arbitration best practices to reinforce investor certainty.

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INSTITUTIONAL COLLABORATION

IIDRC marks another significant milestone in its ongoing journey of building a formidable dispute resolution ecosystem. This month has seen the institute forge powerful new alliances across the legal and corporate landscape, with a fresh series of Memorandums of Understanding (MoUs) that further cement IIDRC's position as a leading force in promoting Alternative Dispute Resolution (ADR) across industries.

On the legal front, the institute has proudly onboarded esteemed law firms and legal practices, including Jurisvista LLP, Saaki Legal, Major Kavish Law Chambers, Law Office of Paromita Majumdar & Associates, Vikas Malik Law Firm, and WHITE TAB PARTNERS LLP Advocates and Associates each bringing with them a wealth of litigation expertise, legal acumen, and a strong commitment to integrating ADR into their professional practice.

Equally significant is IIDRC's expansion into the corporate and institutional space. Dynamic and forward-thinking organisations such as Absolute Professional Solutions, Energy Law Association, Livemax Realtors Pvt Ltd, Poineer Global Educational Services Pvt Ltd, and YA Prime Foods have joined the IIDRC network that reflecting the institute's growing appeal beyond the legal fraternity and its deepening relevance across diverse industries and sectors.

What makes this wave of partnerships particularly noteworthy is the calibre of professionals behind these organisations. Leading voices such as Umang Gangwar, Samyuktha Jayaprakash, Tanvin Anand, Paromita Majumdar, Sudha Reddy, Gagan Pal Singh Thakar, and Prashant Sodhi, among others, now stand alongside IIDRC in its mission bringing domain expertise, professional networks, and a shared commitment to advancing dispute resolution in India. These partnerships are a direct outcome of IIDRC's deliberate and strategic approach to building a multi-disciplinary ecosystem. By engaging stakeholders from litigation, corporate advisory, legal technology, real estate, energy law, and the education sector, IIDRC has successfully created a platform where dialogue, innovation, and the practical adoption of ADR converge.

The institute's growing alliance network is also playing a pivotal role in driving awareness and capacity building around arbitration, mediation, and other ADR mechanisms. Through these collaborations, IIDRC is actively reshaping how dispute resolution is perceived making it more commercially viable, and accessible to businesses and professionals alike.

With each new MoU signed, IIDRC moves closer to its vision of a future-ready dispute resolution ecosystem; one that is synergistic, and built on the foundation of sustainable and effective conflict management. May 2026 stands as yet another chapter of purposeful growth.

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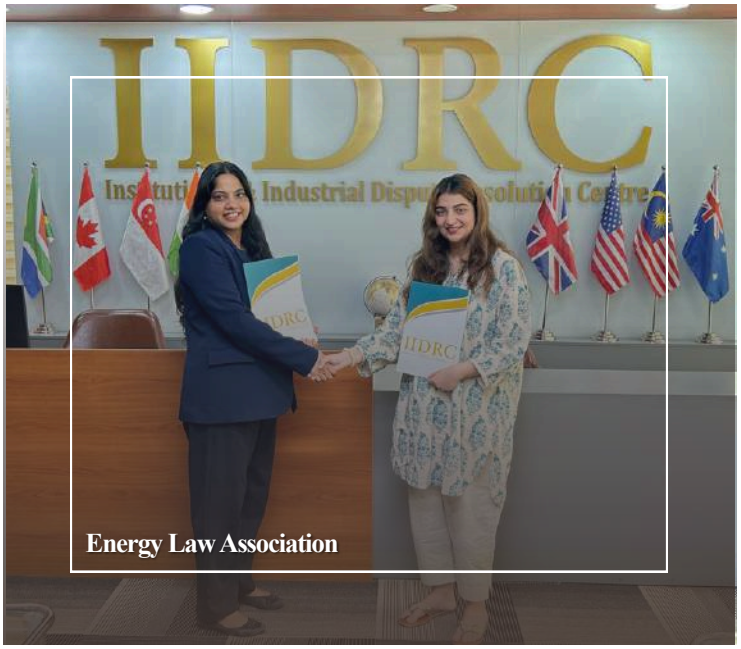
INSTITUTIONAL COLLABORATION



Energy Law Association

Law Office of Paromita Majumdar & Associates

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WEBINAR ON ADR IN ENERGY SECTOR

As part of its monthly webinar series, (IIDRC) hosted an insightful session on "ADR in the Energy Sector: Offtake Agreements, Pricing Conflicts, and Environmental Obligations." The webinar brought together distinguished practitioners and dispute resolution professionals to discuss the rapidly evolving landscape of energy disputes and the growing relevance of Alternative Dispute Resolution (ADR) mechanisms in the sector. The discussion explored the intersection of regulatory frameworks, contractual obligations, ESG compliance, tariff disputes, and international arbitration in modern energy projects. The panel collectively highlighted that as the energy sector transitions towards renewable and sustainable models, disputes are becoming increasingly technical, cross-border, and commercially sensitive. A major point of discussion was the distinction between tariff-related disputes and purely contractual disputes. The panel explained that while tariff determination and regulatory issues generally fall within the jurisdiction of electricity regulatory commissions, disputes involving payment defaults, breach of contractual obligations, force majeure, and delay damages may often be resolved through arbitration. She further emphasised that mediation, conciliation, and negotiated settlements often play a more practical role than adversarial litigation in preserving long-term commercial relationships and ensuring project continuity.

Reflecting on the changing nature of disputes, she observed: "The focus today should not only be on resolving disputes, but on preventing disagreements from hardening into disputes."

Ms. Sudha Reddy discussed the distinction between domestic arbitration, international commercial arbitration, and investment treaty arbitration in the context of energy disputes. She also examined recent judicial developments concerning tariff and non-tariff disputes and highlighted the importance of enforceability and jurisdictional clarity in cross-border disputes. The webinar concluded with a forward-looking discussion on the future of ADR in the energy sector and the growing need for specialised, commercially informed, and sector-specific dispute resolution mechanisms capable of addressing the evolving realities of modern energy projects.

Through this session, IIDRC once again provided a valuable platform for meaningful dialogue on emerging legal and commercial developments while encouraging greater engagement with evolving ADR practices in high-growth sectors such as energy.

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POSH SESSION

The genesis of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") can be traced to the gruesome gang rape of social worker Bhanwari Devi in 1992.

Subsequently, a Public Interest Litigation filed by several NGOs highlighted the violation of Fundamental Rights guaranteed under Articles 14, 19(1)(g), and 21 of the Constitution of India, 1950. In response, the Hon'ble Supreme Court of India laid down the landmark Vishakha Guidelines in 1997.

Recognizing the absence of a comprehensive statutory framework addressing sexual harassment at workplaces, the POSH Act was enacted in 2013, thereby replacing the Vishakha Guidelines. In light of the increasing instances of workplace sexual harassment, it has become imperative to sensitize employers and employees regarding the provisions and objectives of the POSH Act.

Keeping in mind the urgent need for safer and more inclusive workplaces, IIDRC conducted a session on "POSH Act, 2013 & Professional Opportunities for Female Advocates" on 15 May 2026 at the Ladies Bar Room Patiala House District Court, New Delhi.

The session was enriched by the insights shared by the expert speakers, Senior Advocate Sonia Mathur and Advocate Aastha Gupta (Treasurer, NDBA). Ms. Gupta discussed the evolution of the Act and elaborated upon key provisions, including the rights and protections available to women, the responsibilities of organizations, and the constitution of Internal Committees. The discussion was further advanced by Senior Advocate Sonia Mathur, who shared her practical experiences and highlighted the role of legal professionals in promoting POSH awareness and compliance.

The session was graced by Mr. Nagendra Kumar (President, NDBA), Mr. Tarun Rana (Secretary, NDBA), Ms. Manpreet Bhalla (Sr. Lady Member Executive, above 10 Years, NDBA), Ms. Anamika Parashar (Lady Member Executive, NDBA) and Mr. A.F. Faizi (Member Executive)

IIDRC believes that safer workplaces begin with informed conversations, and informed conversations begin with awareness. The IIDRC POSH Train the Trainer (TTT) Programme is a significant step in that direction.

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POSH SESSION

LEFT TO RIGHT

Ms. Aastha Gupta
Treasurer, New Delhi Bar Association

Ms. Sonia Mathur
Senior Advocate

Ms. Vediccaa Ramdanee
IIDRC Representative

Ms. Neha Saifi
IIDRC Representative

Ms. Saasha Gandhi
IIDRC Representative

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IN CONVERSATION WITH KEVIN NASH

On 10 May 2026, IIDRC hosted an Insightful Podcast as part of its "In Conversation with…" Podcast Series with Mr. Kevin Nash, Director General of London Court of International Arbitration (LCIA). The format of the Podcast was a conversation between Kevin Nash, Mr. Fahimuddin Ahmed Khan, Ms. Vediccaa Ramdanee and Ms. Kajal Gupta. The conversation explored the evolving landscape of international dispute resolution, commercial strategy, and the future of arbitration.

Arbitration Beyond Borders

With businesses increasingly operating across borders, the discussion highlighted the growing importance of procedural efficiency, enforceability of awards, and flexible dispute resolution mechanisms that align with modern commercial expectations.

A key segment of the podcast focused on the future of arbitration and whether it is becoming faster, smarter, or more expensive. The discussion examined the impact of technology, artificial intelligence, virtual hearings, and procedural innovation on the arbitration ecosystem. Emphasis was laid on how digital transformation is reshaping global dispute resolution while also raising questions around accessibility, costs, and efficiency.

The podcast also addressed the significance of thoughtful contract drafting and dispute prevention strategies. The Director General emphasized the importance of carefully drafted dispute resolution clauses, clear allocation of risks, and proactive legal planning in minimizing commercial conflicts and ensuring long-term business certainty.

Another important aspect of the discussion revolved around dispute resolution for SMEs and emerging businesses. The conversation shed light on the unique challenges faced by growing enterprises in handling commercial disputes, vendor relationships, cross-border transactions, and enforcement concerns.

The need for accessible and efficient dispute resolution mechanisms for smaller businesses was particularly underscored. The discussion further examined the expanding role of legal strategy in commercial decision-making. Legal risk management, dispute preparedness, and strategic planning are increasingly becoming integral components of business governance and corporate growth. The session highlighted how legal advisors today play a much broader role beyond traditional dispute handling.

Adding a global perspective to the conversation, the Director General also shared valuable insights from working across diverse legal systems and business cultures. The discussion on cross-cultural experiences emphasized how understanding cultural nuances, communication styles, and international business practices is essential for effective negotiation, dispute resolution, and successful global commercial relationships.

The podcast served as an enriching platform for meaningful dialogue on the future of arbitration and commercial dispute resolution, reflecting IIDRC's continued commitment to fostering global legal conversations and promoting excellence in the field of international arbitration.

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IN CONVERSATION WITH KEVIN NASH

Podcast Out

IIDRC
IIDRC Edge

iidrcedge

Currant Law

LEFT TO RIGHT

Ms. Somayya Ali (COO, IIDRC), Mr. Aashish Gupta (IIDRC Representative), Ms. Kajal Gupta (Senior Associate, Foresight Law Offices), Ms. Adri Kashyap (IIDRC Representative), Ms. Saasha Gandhi (IIDRC Representative), Mr. Ankit Mamgain (Vice President, IIDRC), Mr. Kevin Nash (Director General, LCIA), Ms. Vediccaa Ramdanee (IIDRC Representative), Ms. Neha Saifi (IIDRC Representative), Mr. Fahimuddin Ahmed Khan (CLO, IIDRC), Mr. Yousuf Ali (IIDRC Representative)

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OPEN HOUSE & HIGH TEA WITH IIDRC

A CONFLUENCE OF IDEAS AND EXPERTISE

IIDRC recently had the privilege of hosting a distinguished Open House event at its venue, welcoming two accomplished legal professionals whose contributions to the field of Alternative Dispute Resolution are both noteworthy and inspiring. The occasion brought together Adv. Abhipriya Rai and Adv. Bhawana Mapwal; two well-regarded names in the ADR landscape for an engaging and insightful visit to the IIDRC premises.

The event served as a meaningful two-way exchange. Our esteemed guests were given an in-depth exposure to IIDRC's functioning, its institutional framework, and the various initiatives the institute has undertaken in advancing dispute resolution in India. In turn, IIDRC had the valuable opportunity to witness first-hand the significant work both advocates are contributing to the ADR field enriching the institute's own perspective on the evolving landscape of arbitration and mediation.

The session was marked by candid discussions, the exchange of ideas, and a shared enthusiasm for strengthening the ADR ecosystem in the country. Conversations spanned across key aspects of dispute resolution practice, exploring opportunities for collaboration, professional growth, and the broader integration of ADR into India's legal framework. Attendees brought with them a wealth of on-ground experience, and the diversity of perspectives from litigation practice to institutional work made for an exchange that was as practical as it was forward-looking. There was a palpable sense that the profession is at an inflection point and that platforms enabling such dialogue are more relevant than ever. What stood out was not just the depth of conversation but the genuine intent among those present to contribute meaningfully to how dispute resolution is practiced and perceived in India. These are exactly the kinds of exchanges that move the needle, not just for individual practitioners but for the ecosystem as a whole.

IIDRC looks forward to nurturing these connections further and remains committed to creating spaces where knowledge flows freely, professionals grow together, and the vision of a robust dispute resolution culture in India is collectively advanced.

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TRAINING AT GALGOTIAS UNIVERSITY

There is a well-documented gap in Indian legal education between what arbitration looks like in a textbook and what it demands in practice. The IIDRC EDGE Foundation Arbitration Programme, conducted at the Centre for ADR, School of Law, Galgotias University, Noida, was designed with that gap in view. The one-day intensive programme brought together over 50 law students for 6 hours of structured, practice-oriented training across five sessions. The curriculum moved from the conceptual foundations of arbitration and the Indian statutory framework under the Arbitration and Conciliation Act, 1996, to live drafting work on arbitration clauses and standalone agreements drawn from simulated commercial disputes. The drafting session was the centrepiece. Students were asked not just to understand what an arbitration clause does, but to construct one and, more importantly, to understand what happens when it is defective.

The programme was conducted by Mr. Fahim A. Khan, Chief Legal Officer at IIDRC; Mr. Harsh Singh, Global Operations Director at ADR ODR International; and Ms. Neha Saifi, Relationship Manager at IIDRC. The faculty brought a practitioner orientation to each session, including a candid career conversation in the concluding segment, which addressed professional realities of entering the arbitration field rather than offering a curated version of them. Participants who completed the programme received the IIDRC Certificate in Foundational Arbitration Practice. IIDRC acknowledges the support of Prof. (Dr.) Aditya Tomer, Dean, School of Law, Galgotias University, and the coordination of Dr. Mansi Jain Garg in making the programme possible.

The programme is part of IIDRC EDGE's broader initiative to build practical ADR literacy at the law school level, where the profession's next generation is still forming its relationship with institutional dispute resolution.

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FIRESIDE CHAT WITH KEVIN NASH

The Institutional and Industrial Dispute Resolution Centre (IIDRC), in collaboration with Foresight Law Offices, recently co-hosted an insightful edition of the Courtroom Stories podcast with Adv. Varun Singh, Managing Partner of Foresight Law Offices, in Conversation with Kevin Nash, Director General of the London Court of International Arbitration (LCIA), alongside Sr. Adv. Vikas Singh, President of Supreme Court Bar Association."

The podcast brought together Kevin Nash, Varun Singh, and Vikas Singh for a compelling discussion on international arbitration, cross-border legal frameworks, and the evolving landscape of global law and dispute resolution.

The conversation explored how international arbitration is adapting to changing commercial realities, including procedural efficiency, enforcement challenges, and the increasing complexity of cross-border transactions. The speakers also reflected on the future of arbitration in an era shaped by technology, AI, virtual hearings, and rapidly evolving client expectations.

A key focus of the discussion was the growing importance of strategic contract drafting and dispute prevention mechanisms, highlighting how well-structured dispute resolution clauses and thoughtful legal planning can significantly reduce future commercial conflicts. The podcast further addressed the challenges faced by SMEs and emerging businesses in navigating international commercial disputes and enforcement concerns in interconnected global markets.

The discussion concluded with broader reflections on the expanding role of legal strategy in commercial decision-making, emphasizing how dispute planning and legal risk management are increasingly becoming integral to business governance and long-term institutional growth.

Through initiatives such as the Courtroom Series, IIDRC continues to facilitate meaningful dialogue between global arbitration leaders, legal practitioners, and industry stakeholders, contributing to the advancement of contemporary dispute resolution discourse in India and beyond.

SECTION THREE · ARTICLES

03

Force Majeure in Energy Contracts

This article has been authored by:

Mohammad Atif Ahmad
Attorney
Clement Law

Paritosh Awasthi
Attorney
Clement Law

Overview

Force majeure has moved from a boilerplate afterthought to the frontline of energy contract disputes. The COVID-19 pandemic, Russia's invasion of Ukraine, Western sanctions regimes, LNG supply shocks, and now the disruption of Strait of Hormuz transit have collectively stress-tested the doctrine across every major energy-contracting jurisdiction. For Indian energy stakeholders like generators, distribution companies, transmission utilities, and project developers operating under PPAs, EPC contracts, and fuel supply agreements, understanding the precise legal framework governing force majeure is not optional anymore. It is the difference between protecting a project and losing it.

The Indian Statutory Framework: Section 56 and Section 32 of the Indian Contract Act, 1872

Indian law approaches force majeure through two overlapping channels. The first is the statutory doctrine of frustration under Section 56 of the Indian Contract Act, 1872, which renders a contract void where performance becomes impossible or unlawful after the contract is made, without fault of either party. The second is the contractual force majeure clause itself, which, when present, governs the position entirely.

The distinction is foundational. Section 56 operates as a rule of positive law. It terminates the contract in toto. A contractual force majeure clause, by contrast, affords granular remedies: suspension of obligations, extension of time, partial performance, cost-sharing, or step-in rights, depending on its drafting. In long-duration energy contracts, PPAs of 25 years, EPC contracts, coal supply agreements, the latter flexibility is critical. Termination under Section 56 is almost never the commercially desirable outcome for infrastructure projects where public interest and sunk capital are at stake.

Section 32, governing contingent contracts, is relevant where performance is conditional on the non-occurrence of a specified event; if that event occurs, the contract becomes void. Together, Sections 32 and 56 form the residual statutory safety net where no express force majeure clause exists.

The Governing Judicial Test: Energy Watchdog v. CERC (2017) 14 SCC 80

The Supreme Court's landmark ruling in Energy Watchdog and Ors. v. Central Electricity Regulatory Commission and Ors., (2017) 14 SCC 80, is the lodestar of Indian force majeure jurisprudence in energy contracts. The case arose from a change in Indonesian coal export regulations that dramatically raised the price of imported coal for thermal power generators. The generators invoked the force majeure and change-in-law clauses of their PPAs, seeking tariff revision.

The Supreme Court laid down a set of principles that continue to govern every force majeure dispute in the Indian energy sector:

1. Contractual clause prevails over Section 56: Where a PPA or energy contract contains an express or implied force majeure clause, that clause governs. Section 56 is displaced. Relief must be sought under the contractual mechanism, not the statute.
2. The doctrine of frustration applies narrowly: Frustration under Section 56 must be confined to genuinely narrow circumstances. The fundamental basis of the contract must be destroyed. Not merely made more expensive or commercially inconvenient.
3. Price increase alone does not trigger force majeure: A rise in cost or expense cannot frustrate a contract or trigger a force majeure clause. Alternative modes of performance must be impossible, not merely costlier.
4. Force majeure is not exhaustive but inclusive: The category of qualifying events is not closed, but the invoking party must demonstrate that the event struck at the root of its contractual obligations.
5. Force majeure clause will not apply if alternative modes of performance are available.

This framework has been consistently followed by CERC, APTEL, and the High Courts. In NTPC v. Voith Hydro Joint Venture (O.M.P. (COMM)-16/2017), the Delhi High Court reinforced that Section 56 does not override the autonomy of parties and the terms of their contract.

Force Majeure in Energy Contracts: Sector-Specific Applications

A. Power Purchase Agreements (PPAs)

PPAs are the central commercial instrument of the Indian power sector. Force majeure and "change in law" clauses in standard PPAs including those issued under competitive bidding guidelines and CERC/APTEL oversight are heavily litigated.

A critical jurisdictional development emerged from CERC's order dated 17 January 2026 in MB Power (Madhya Pradesh) Limited v. PTC India Limited and Anr. (Petition No. 71/MP/2023). CERC reaffirmed that disputes relating to change in law and force majeure claims under a PPA are tariff disputes falling within CERC's jurisdiction under Section 79(1) of the Electricity Act, 2003, and cannot be referred to arbitration. The force majeure event at issue i.e., Coal India's alteration of coal allocation mechanisms was held to directly impact tariff and contractual compensation, making it squarely a regulatory matter.

This holding has significant practical consequences: energy developers and off-takers cannot contract out of regulatory

adjudication for core PPA force majeure disputes. The CERC's order in KSK Mahanadi Power Company Limited v. Southern Power Distribution Company of AP (Petition No. 91/MP/2018) clarified that while CERC has jurisdiction over tariff-related disputes in composite schemes, it may refer non-tariff disputes to arbitration under Section 79(1)(f) of the Electricity Act, 2003.

B. Transmission Agreements and Bulk Power Transmission Agreements (BPTAs)

Force majeure in transmission access agreements has been tested extensively before CERC. In Simhapuri Energy Limited v. Power Grid Corporation of India Limited (Petition No. 129/MP/2017), CERC examined whether non-availability of long-term PPAs with distribution companies constituted a force majeure event under Clause 9 of the BPTA. CERC held that Clause 9 of the BPTA was a temporary provision applicable to ongoing transmission/drawal disruptions and could not be used to exit the BPTA or extinguish relinquishment charge liability permanently. The APTEL and Supreme Court declined to grant relief, confirming the narrow reading of the force majeure clause in transmission contracts.

C. Renewable Energy Projects and COVID-19

The COVID-19 pandemic generated a wave of force majeure claims across the renewable energy sector. The MNRE issued Office Memoranda in March and April 2020 recognising COVID-19-related supply chain disruptions particularly disruptions emanating from China as force majeure events, granting blanket extensions of the Scheduled Commissioning Date (SCOD) for RE projects.

In SEI Sunshine Power Pvt. Ltd. v. CERC (APL No. 328 of 2024, decided 19 December 2024), APTEL examined the interplay between COVID-19 force majeure extensions, ISTS transmission charge waivers, and bilateral transmission charge liability for the "mismatch period" between LTA operationalisation and project commissioning. APTEL held that even where a force majeure extension was granted by the competent authority extending the SCOD, a generator that had obtained LTA remained liable for bilateral transmission charges for the mismatch period under Regulation 8(5) of the CERC Sharing Regulations, 2010. The force majeure recognition under MNRE OMs did not automatically translate into a waiver of LTA-related transmission charge obligations, which are governed by distinct regulatory frameworks.

This is a critical takeaway: force majeure under one contract or regulatory framework does not automatically extend to related obligations under a different contract or regulatory instrument.

D. COVID-19 and General Commercial Contracts

In Halliburton Offshore Services Inc. v. Vedanta Ltd. (2020 SCC OnLine Del 542), the Delhi High Court granted ad-interim relief restraining Vedanta from encashing performance bank guarantees, recognising the COVID-19 lockdown as a prima facie force majeure event that had prevented the contractor's performance. In contrast, in Standard Retail Pvt. Ltd. v. G.S. Global Corporation (2020 SCC OnLine Bom 704), the Bombay High Court emphasised that force majeure relief must be tested strictly against the actual language of the clause, general hardship cannot substitute for contractual entitlement.

Global Jurisprudence: Sanctions, War, and LNG Supply Disruption

The global energy arbitration landscape has been fundamentally reshaped since 2022. The following developments are directly relevant to Indian energy stakeholders with international contracts or exposure to global commodity markets.

A. Russia-Ukraine War and Gazprom Disputes

Following Russia's invasion of Ukraine, Gazprom declared force majeure retroactively in July 2022 to justify its curtailment of gas supplies to European buyers claiming technical constraints arising from Western sanctions as the qualifying event. EU buyers uniformly rejected this force majeure claim, and over 20 buyers initiated arbitration proceedings. Uniper won a landmark ICC arbitration against

Gazprom Export and was awarded €13 billion in damages for failure to deliver contracted gas volumes, along with the right to terminate its long-term Russian gas supply contracts. Similar claims were pursued by RWE, Engie, Eni, SEFE, and others.

These awards establish a globally significant precedent: economic or political inability to perform, arising from sanctions imposed on the non-performing party, does not necessarily constitute force majeure where the non-performance was driven or facilitated by the party's own government. Performance must be genuinely impossible, not merely legally or politically inconvenient for the invoking party.

India's exposure: India's state-owned gas company GAIL is the claimant in a $1.8 billion LCIA arbitration against a former Gazprom unit that ceased delivering LNG under a long-term supply contract, declaring force majeure citing the war in Ukraine and international sanctions. This dispute crystallises the difficult to sustain under rigorous arbitral scrutiny. Russia's "Rouble Decree" of March 2022 (requiring European buyers to pay for gas in Roubles) also generated disputes. In the Gasum-Gazprom Stockholm arbitration, conflicting claims emerged: Gasum contended the tribunal held that it was not obligated to pay in Roubles, while Gazprom argued the tribunal recognised the Rouble Decree as a force majeure event. The uncertainty around currency-of-payment clauses and force majeure is a live drafting concern for Indian entities entering long-term international energy supply contracts.

B. LNG, Sanctions, and the Iran War (2026)

The most recent wave of energy force majeure declarations arises from the Iran War commenced in February 2026 and the effective blockade of the Strait of Hormuz. Iranian attacks on Qatar's LNG export infrastructure reportedly damaged approximately 17% of Qatar's LNG export capacity (roughly 12.8 MMTPA), triggering force majeure declarations from Middle Eastern suppliers. The value of new ICC disputes reached a record $102 billion in 2024, driven substantially by energy-sector disputes arising from the Russo-Ukrainian War.

For Indian stakeholders, including GAIL, Petronet LNG, and private importers with long-term LNG SPAs, this environment requires careful attention to: (i) whether Middle Eastern supply disruptions qualify as force majeure under their specific contractual language; (ii) the mitigation obligation (is alternative supply commercially feasible?); and (iii) whether price spike in spot markets following a force majeure by the counterparty creates independent breach-of-contract claims.

The RTI Ltd v. MUR Shipping BV [2024] UKSC 18 decision of the UK Supreme Court (cited in commentary) confirmed that a force majeure clause requiring a party to exercise "reasonable endeavours" does not obligate it to accept non-contractual performance, a principle relevant to

Indian energy contracts governed by English law or referencing English common law standards.

Drafting Clauses and Dispute-Resolution Takeaways

Given the above, Indian energy stakeholders should consider the following:

1. Draft with specificity: Modern force majeure clauses must move beyond "Acts of God." Enumerate pandemics, port closures, sanctions, cyber-attacks, geopolitical conflicts, and supply chain disruption. Vague clauses fail in arbitration.
2. Separate force majeure from change in law: These are distinct triggers in standard Indian PPAs, with different remedies and notice requirements. Conflating them in drafting or invocation creates jurisdictional and procedural risks, as CERC's 2026 MB Power order illustrates.
3. Notice requirements are non-negotiable: Failure to give timely notice routinely defeats otherwise valid force majeure claims. Notice must be contemporaneous, documented, and comply strictly with contractual deadlines.
4. Mitigation is mandatory: Courts and tribunals across jurisdictions, Indian and international, consistently require the invoking party to take all reasonable steps to mitigate. This includes pursuing alternative supply sources, alternative routes, or modified performance modes.
5. Jurisdictional clarity in dispute resolution: For PPA disputes involving force majeure and change in law, CERC's jurisdiction under the Electricity Act, 2003 is mandatory for tariff-related claims. For non-tariff contractual disputes, arbitration remains available. Structuring arbitration clauses to account for this bifurcation is essential.
6. Integrate insurance with contractual relief: Force majeure clauses cannot substitute for risk transfer through political risk insurance, delay-in-start-up cover, and construction all-risk policies. The COVID-19 experience demonstrated that contractual relief without financial safeguards leaves projects commercially exposed.
7. Distinguish between contracting frameworks: As the SEI Sunshine case confirms, force majeure recognition in one contractual or regulatory instrument (e.g., MNRE OMs under a PPA) does not automatically relieve obligations under a separate instrument (e.g., ISTS transmission charge liability under the Sharing Regulations). Each instrument must be independently analysed.

Conclusion

Force majeure in Indian energy contracts occupies a complex intersection of statutory law, regulatory jurisdiction, and contractual autonomy. The Supreme Court's framework in Energy Watchdog remains authoritative, but it is now layered with CERC and APTEL jurisprudence on jurisdictional boundaries, regulatory treatment of COVID-19 extensions, and the limits of force majeure as a tool to exit long-term transmission obligations. Globally, the Gazprom arbitrations, LNG supply disputes, and the emerging Iran War-related force majeure wave signal that tribunals will scrutinise force majeure claims rigorously demanding proof of genuine impossibility, exhaustion of reasonable alternatives, and full compliance with procedural requirements. For Indian energy counsel and stakeholders, the imperative is to draft precisely, invoke carefully, and litigate strategically within the correct regulatory forum.

SECTION THREE · ARTICLES

03

Beyond ESG Promises: Greenwashing, E-Waste Compliance Disputes, and the Emerging Role of Advertising Regulation

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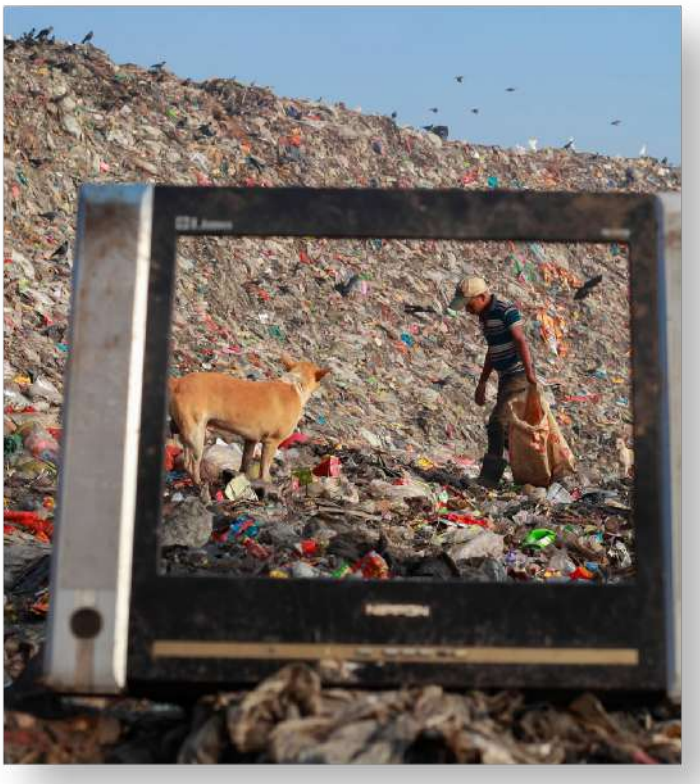
There is something almost poetic about the phrase "the world's first carbon-neutral airline." It has the ring of a historic achievement, the kind of declaration that belongs on a plaque, or at least on a boarding pass. Delta Air Lines thought so too. From 2020 onwards, the carrier deployed precisely that claim across emails, social media posts, and in-flight materials, promising passengers that their journeys through the sky were, in some meaningful environmental sense, equivalent to having never taken off at all.

In **May 2023**, plaintiff Mayanna Berrin filed a class-action lawsuit in the United States District Court for the Central District of California, alleging that Delta's carbon-neutrality representations were false and misleading in violation of California's consumer protection statutes. The complaint went to the heart of what has become one of the defining legal tensions of our era: the gap between what companies say about the environment and what they do for it. Delta's claim, the lawsuit alleged, rested substantially on carbon offsets sourced from projects whose environmental credibility and long-term impact were themselves under scrutiny.

Such concerns resonate deeply within the electronics industry as well. Technological advancement has dramatically increased the volume of electronic devices in circulation, resulting in a corresponding surge in e-waste generation. Electronic waste contains hazardous substances such as lead, mercury, cadmium, and brominated flame retardants that can contaminate soil, water, and air if not responsibly managed. A significant portion of India's e-waste continues to move through informal recycling channels, creating environmental, operational, and reputational risks for businesses. The concept of Extended Producer Responsibility (EPR) emerged prominently in Swedish environmental policy discourse during the 1990s and was subsequently developed internationally.

The OECD defines EPR as a framework that extends producer responsibility beyond the point of sale, with the objective of reducing waste generation and internalising environmental costs that would otherwise be borne by society.

From an advertising and consumer protection perspective, ESG remain vulnerable to manipulation because consumers are often unable to independently verify environmental representations. As a result, businesses are increasingly being evaluated not merely on sustainability narratives, but on measurable and verifiable circular economy practices.



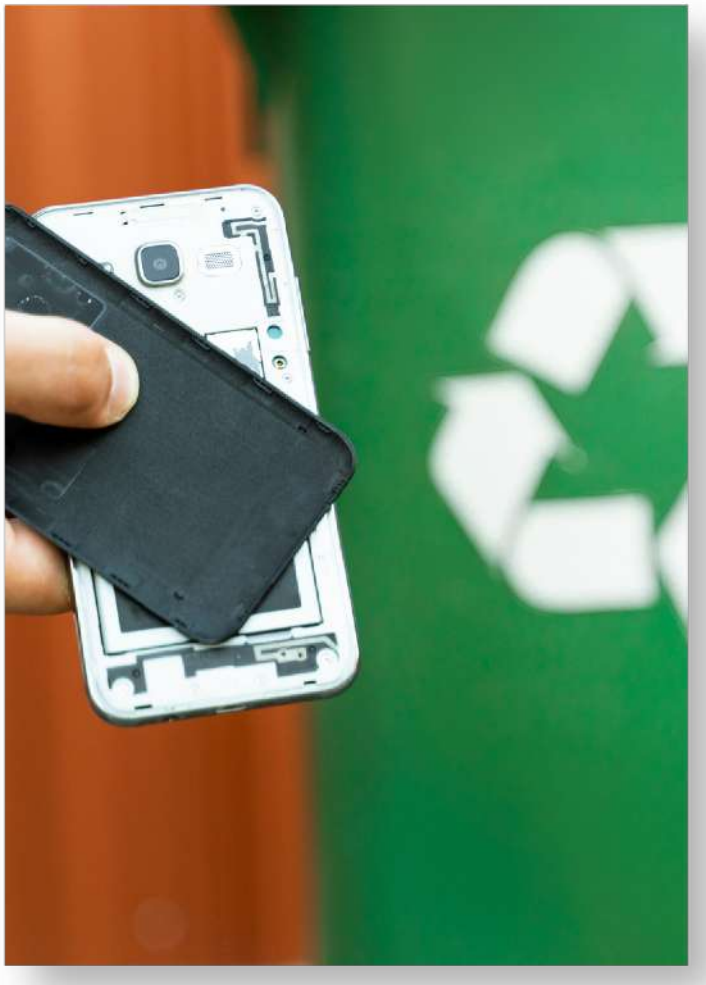
The Weight of Waste: Navigating Compliance, Disputes, Liabilities and ESG Implications

If greenwashing represents a crisis of words, India's e-waste challenge represents a crisis of accumulation, the physical burden of technological obsolescence on a scale that strains comprehension.

India is presently among the world's largest generators of electronic waste. Parliamentary records for FY 2023–24 indicate that India generated more than 1.25 million metric tons of e-waste, while formal processing rates increased from approximately 22 percent in 2019–20 to nearly 43 percent in 2023–24. Yet a substantial volume of e-waste continues to remain outside formal recycling ecosystems.

Even after the introduction of structured regulatory frameworks, a large segment of e-waste processing continues to occur within the informal sector. Informal recycling clusters frequently rely on hazardous methods including open burning of wires, acid extraction of metals, and manual dismantling without protective equipment. These practices expose workers and surrounding communities to toxic substances linked to respiratory, neurological, and long-term environmental harm.

E-waste should not be discarded with ordinary municipal waste or transferred to unauthorised collectors. Such practices can release highly toxic dioxins and furans into the environment or cause hazardous substances to leach into soil and groundwater over time.



India introduced the concept of Extended Producer Responsibility through the E-Waste (Management and Handling) Rules, 2011, later strengthened through the Plastic Waste Management Rules, 2016, the E-Waste (Management) Rules, 2022, and the Battery Waste Management Rules, 2022. Together, these frameworks mandate producer registration, collection mechanisms, take-back systems, and authorised recycling obligations.

Under Section 15 of the Environment (Protection) Act, 1986, contravention may attract imprisonment, monetary penalties, and additional fines for continuing violations. Despite regulatory evolution, implementation gaps remain significant. Government data suggests that while formal processing capacity has improved substantially over recent years, a sizeable proportion of India's e-waste continues to remain outside authorised recycling channels. With limited authorised collection infrastructure relative to the scale of consumption and disposal, the challenge is not merely one of legal compliance, but of systemic capacity and enforcement.

Going forward, technologies such as digital traceability systems, AI-enabled compliance monitoring, and product lifecycle tracking may become critical tools in strengthening ESG verification and responsible recycling ecosystems.

The Advertising Regulation Nexus and The Verification Gap

Between American courtroom litigation and growing mountains of electronic waste in Indian scrapyards, a third institutional actor has entered the sustainability debate: the regulator of environmental messaging.

In January 2024, the Advertising Standards Council of India (ASCI) released its Guidelines for Advertisements Making Environmental/Green Claims. These guidelines seek to establish evidentiary standards for environmental advertising and discourage misleading sustainability representations. Absolute expressions such as "eco-friendly" require robust substantiation or credible third-party certification, while comparative environmental claims must be supported through verifiable evidence. The guidelines also caution against the use of visual imagery that may create exaggerated impressions of environmental benefit.

Consumer awareness regarding environmental impact increasingly influences purchasing behaviour, with many consumers willing to pay a premium for products perceived as sustainable. At the same time, regulatory scrutiny of environmental claims has intensified. In October 2024, the Central Consumer Protection Authority released guidelines addressing greenwashing, while SEBI has also introduced compliance standards relating to green debt securities.

One structural issue connects the Delta litigation, India's e-waste crisis, and emerging advertising regulations: consumers generally lack the ability to independently audit carbon offsets, verify responsible recycling practices, or validate environmental claims made in complex supply chains. Consequently, regulators, courts, and civil society are simultaneously attempting to close this verification gap through litigation, disclosure obligations, regulatory oversight, and compliance frameworks.

The strategic implication for corporations is increasingly clear: environmental claims must be legally defensible before they are publicly communicated. Sustainability messaging can no longer remain solely within the domain of marketing teams; it requires active participation from legal, compliance, risk management, and sustainability professionals.

Conclusion: The Architecture of Accountability

There is an old legal maxim that equity aids the vigilant, not those who sleep on their rights. In the context of environmental governance, one might adapt this principle differently: regulation ultimately protects the genuine, not the performative.

The convergence of greenwashing litigation, e-waste governance, and advertising regulation reflects the emergence of a broader architecture of accountability within the ESG era. Berrin v. Delta Air Lines is more than a dispute over marketing language; it signals growing judicial willingness to scrutinise environmental representations that cannot be substantiated through credible evidence.

Similarly, India's E-Waste (Management) Rules, 2022 recognise that the lifecycle of a product does not conclude at the point of sale and that producers cannot indefinitely externalise environmental costs onto society or informal labour ecosystems. ASCI's green advertising guidelines further reinforce the principle that environmental claims must maintain a disciplined and verifiable relationship with actual corporate conduct.

For legal professionals, policymakers, and corporate advisors, the message emerging from this evolving regulatory landscape is unmistakable: ESG is increasingly moving beyond voluntary commitments into a domain shaped by enforceable obligations, regulatory scrutiny, reputational exposure, and litigation risk.

The organisations that recognise this shift and approach environmental compliance as a strategic governance function rather than merely a branding exercise that are likely to be not only more legally resilient, but also better positioned for a future in which accountability, transparency, and verification will define sustainable business credibility.

The green premium, as it turns out, must ultimately be earned.

SECTION THREE · ARTICLES

03

Alternative Dispute Resolution in the Energy Sector: Navigating Technical and Infrastructure Disputes

This article has been authored by:

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Abstract

The global energy sector is facing increasing legal challenges due to a rise in disputes related to technical failures, grid inefficiencies, delays in renewable energy projects, and cross-border pipeline issues.

Traditional court-based litigation is not well-suited for these complex conflicts because it often lacks the necessary technical knowledge. Alternative Dispute Resolution (ADR) — which includes arbitration, mediation, expert determination, and dispute adjudication boards — provides a more effective and practical solution. This article explores how ADR is used to resolve technical and infrastructure-related disputes in the energy sector, examining its benefits, existing institutional structures, major challenges, and new developments in the field.

Keywords: ADR, Energy Sector, Infrastructure Disputes, International Arbitration, Expert Determination, Dispute Adjudication Boards, Energy Transition, FIDIC, Renewable Energy

Introduction

The energy sector is one of the most capital-intensive industries in the modern economy, encompassing activities such as oil and gas exploration, pipeline operations, refining, power generation, and renewable energy infrastructure.

Each of these sub-sectors has unique dispute issues that stem from engineering standards, contract performance terms, and regulatory obligations. These disputes require adjudicators who are both legally proficient and technically skilled — a combination that is rarely found in national courts. The limitations of traditional litigation have led to a greater reliance on ADR, which offers tailored resolution methods that can address technical complexity, maintain business relationships, and deliver quicker results.

Categories of Technical and Infrastructure Disputes

Energy-related infrastructure disputes can generally be classified into three main types.

First, construction and commissioning disputes commonly occur during the development of power plants, pipelines,and renewable energy installations. These disputes often involve project delays, changes in project scope, and defects in equipment or workmanship under Engineering, Procurement, and Construction (EPC) contracts. Second, post-commissioning operational performance disputes arise, involving disagreements over agreed-upon output levels, capacity factor benchmarks under power purchase agreements (PPAs), and production rates in oil field agreements. These disputes often require detailed forensic assessments such as energy yield analysis, reservoir simulation, and equipment testing — tasks that are beyond the capabilities of most courts. Third, grid connectivity and transmission disputes have increased significantly as part of the global energy transition. As renewable energy developers connect new facilities to national grids, conflicts related to connection costs, curtailment protocols, and liability for transmission losses have become more frequent. These disputes involve a mix of energy law, infrastructure regulation, and electrical engineering, and require specialized resolution mechanisms.

ADR Mechanisms in Energy Disputes

International arbitration is the most commonly used ADR mechanism for large-scale energy disputes.

Institutions such as the ICC, LCIA, SCC, and ICSID provide well-developed procedural rules that are specifically adapted to the complexities of the energy sector. The New York Convention, which has been ratified by 172 countries, ensures that arbitral awards can be enforceable internationally, offering investors a reliable and widely accepted resolution pathway.

Expert determination is another useful ADR tool, particularly for disputes that involve narrow technical issues.

A neutral expert, such as an engineer, geologist, or energy economist, provides a binding or advisory decision on specific factual questions, such as reservoir valuations, metering discrepancies, or PPA output measurements. This method is efficient, confidential, and relies on the expertise of specialists, making it suitable for disputes primarily based on technical factors rather than legal arguments.

Dispute Adjudication Boards (DABs), often included in FIDIC contracts, function throughout the life of a project.

A panel of three independent experts regularly reviews disputes as they arise and issues timely decisions that the parties must implement while awaiting final arbitration. This real-time resolution mechanism helps prevent technical disagreements from causing costly project delays.

Institutional and Regulatory Frameworks

The Energy Charter Treaty (ECT), ratified by more than 50 countries, establishes a multilateral framework for investor-state arbitration, allowing foreign investors to pursue claims against host governments for regulatory actions that negatively impact their energy investments.

In India, the Electricity Act 2003 and the PNGRB Act 2006 lay the legal foundation for resolving sector-specific disputes. The Central Electricity Regulatory Commission (CERC) is empowered to adjudicate technical and commercial disputes between generators, transmission utilities, and distribution licensees. While CERC proceedings are not strictly ADR forums, they often incorporate mediation as part of their process, demonstrating a preference for negotiation over adversarial approaches.

Challenges

ADR in the energy sector continues to face several structural challenges. One major issue is the shortage of arbitrators who possess both legal neutrality and deep technical knowledge in areas such as subsurface geology, grid balancing, or offshore wind engineering, which can cause delays in major proceedings. Multi-party complexity is also a significant challenge, as large energy projects often involve multiple stakeholders — developers, EPC contractors, equipment suppliers, financiers, and regulators — each with unique contractual relationships. Without universally binding multi-party clauses, disputes can fragment across multiple parallel proceedings, leading to inconsistent outcomes.

Confidentiality, although valued by parties, limits the development of legal precedent.

Unlike court judgments, private arbitral awards cannot be used to establish legal standards, leaving emerging areas such as offshore wind decommissioning liability, hydrogen infrastructure standards, and battery storage warranties without clear legal guidance.

The Energy Transition and Emerging Frontiers

The global shift toward decarbonization is creating an entirely new category of technical disputes. Issues such as grid integration challenges,

compensation for curtailment, defects in green hydrogen production, and failures in carbon capture infrastructure are becoming critical areas where specialized ADR is needed. At the same time, the digital transformation of energy systems — including smart metering, AI-driven grid management, and demand-response platforms — is generating disputes at the intersection of technical and legal matters, such as data accuracy, cybersecurity standards, and platform compatibility. ADR institutions are working to develop specialized rules and expert panels, but procedural frameworks must keep pace with the rapid changes in technology.

Conclusion

The need for a sector-specific ADR framework in the energy industry has never been more urgent.

Arbitral institutions must invest in expert panels with both legal and technical expertise, develop energy-specific procedural rules, and explore the publication of anonymized awards to support the development of legal principles. Governments should integrate ADR mechanisms into energy-related legislation, while project developers must include more precise multi-party dispute resolution clauses in their contracts.

Efficient and technically informed dispute resolution is essential for building investor confidence, speeding up project delivery, and supporting the achievement of a secure and sustainable energy future.

In this context, ADR is not just an alternative to litigation — it is the most appropriate forum for the disputes that will shape the energy sector in the twenty-first century.

SECTION THREE · ARTICLES

03

Change-in-Law Risk in India's Cross-Border Energy Arbitration

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Abstract

Energy disputes with an Indian connection are usually discussed as an enforcement issue. That emphasis is now misplaced. The public policy ground has narrowed considerably, and for a power purchase agreement, an EPC contract, or a fuel-supply arrangement, the harder question is whether the claim has been framed as a genuinely contractual one rather than a disguised attack on a regulated tariff. The change-in-law clause is where the money sits, and the regulated-contract doctrine governs both whether a tribunal may decide the claim and whether the resulting award will hold.

The Enforcement Worry Is Largely Out of Date

Indian lawyers advising foreign investors and foreign energy companies on Indian energy contracts still treat the enforcement of a foreign award as a primary concern. In 2026, that concern deserves to be retired, or at least dampened.

Three settled propositions explicate why. Since the Constitution Bench ruling in Bharat Aluminium, Indian courts do not supervise arbitrations seated abroad: Part I of the Arbitration and Conciliation Act, 1996, simply does not travel with the parties.

The public policy ground for refusing recognition under Section 48 has been cut back by both Parliament and the Supreme Court, and now reaches only fraud, the fundamental policy of Indian law, and basic notions of morality and justice. It is not a licence to reopen the merits. And the "patent illegality" ground does not run against a foreign award at all.

What survives is one specific risk factor, and not a general apprehension. It is the risk that an award vindicating a contractual claim to a tariff or to compensation is later characterised by the losing party as having strayed into territory that Indian law reserves to the electricity regulator. That is a constricted opening, but it is the opening a well-advised respondent will press. Why it exists has nothing to do with the arbitration procedure and everything to do with the very substratum of the Indian energy contract.

Why an Indian PPA Is a Regulated Contract

Commercial arbitration assumes the parties own the contractual obligations they bargained. Indian electricity law qualifies that assumption at the root. Fixing the tariff for the purchase of power is a regulatory function, conferred by statute on the State Electricity Regulatory Commission. The Supreme Court has now said so without hedging: a generating company and a distribution licensee cannot privately fix or revise the tariff in a power purchase agreement ("PPA") without the Commission's review and approval. Price here is not something the parties negotiate to a close on their own.

That carries a structural consequence. A tribunal hearing a tariff-linked PPA dispute works against a

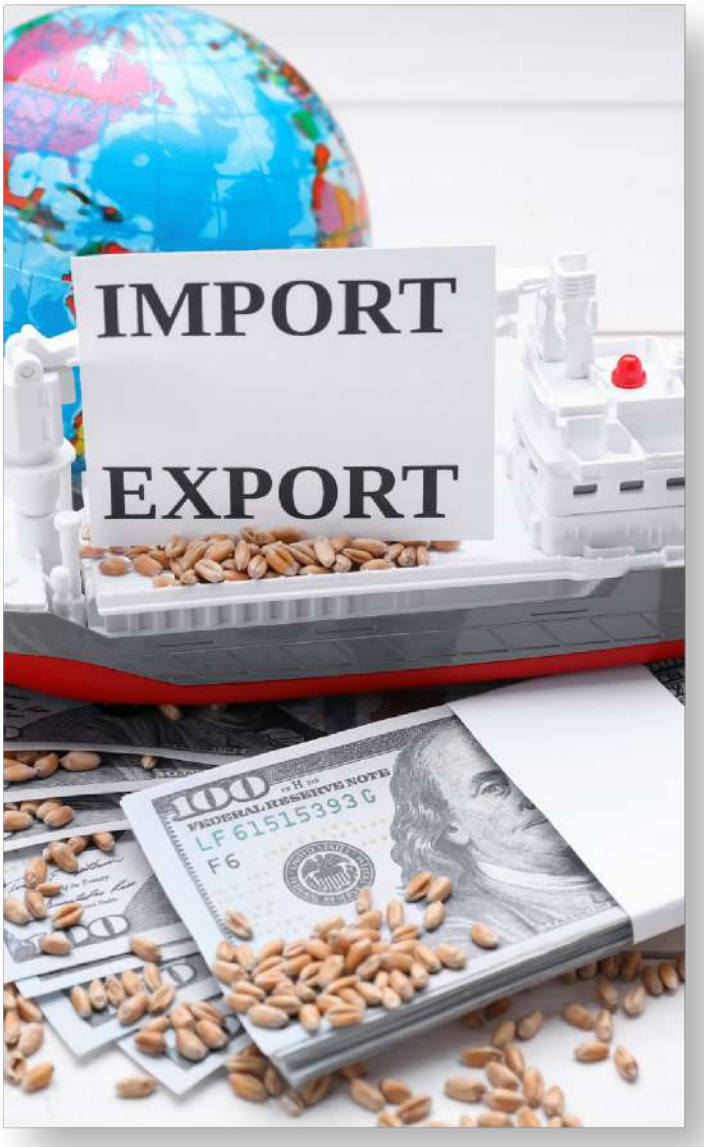
statutory division of authority that no arbitration clause, however widely worded, can override. The Electricity Act builds its own statutory hierarchy: the Commission, then the Appellate Tribunal for Electricity, then a statutory appeal to the Supreme Court, and the arbitral mandate sits below it. Arbitration governs the contractual remainder, while anything amounting in substance to setting a tariff is pulled back into the regulatory channel. The practical point for cross-border counsel is blunt. A Singapore or London seat gets a forum for the commercial dispute; it does not get an exit from this division of authority.

Change-in-Law: Where the Money Sits

Once the tariff itself is regulated, the contractual term that carries the real arbitral weight is the change-in-law clause, which restores an affected party to the same economic position after a post-bid change in law, levy, or duty. In a competitively bid PPA running twenty-five years, the developer's return is set on a thin margin, and the change-in-law clause is how an unexpected fiscal shock is shifted between the generator and the offtaker.

The Indian Supreme Court precedents are reasonably mature and broadly faithful to the bargain. In Energy Watchdog v. CERC, the Supreme Court refused to treat a rise in imported coal prices as a frustrating force majeure, while accepting that a change in Indian law could attract compensatory relief. Building on that, the Appellate Tribunal for Electricity held in the Parampujya line of cases that compensation for safeguard duty on imported solar modules and for the introduction of GST must cover the whole impact period and carry interest as "carrying cost," since relief that ignores the time value of delayed payment makes the guarantee worthless. The principle is restitutionary: the clause shields the bid tariff from precisely these movements. It is pertinent to mention that this judgment was later challenged in the Supreme Court, which was pleased to stay the enforcement of the order passed by the tribunal, and the matter is currently sub judice.

The real difficulty is forensic, not doctrinal. Change-in-law claims turn on quantum, on carrying cost, on the discount rate, and on the date relief runs from , which is exactly the terrain a capable tribunal with a sector-literate expert handles better than a regulatory commission. The trouble lies at the boundary. A claim garbed as a contractual change-in-law claim often cannot be cleanly separated from a request to reopen the tariff. When parties leave that boundary obscured and the regulated-contract doctrine drags the dispute back to the Commission, and hands the losing party its Section 48 argument at the enforcement stage.



Andhra Pradesh and the Sanctity of the Bargain

The Andhra Pradesh episode of 2019 makes the point. The State leaned on renewable developers to renegotiate concluded PPAs downward, trying to claw a lower tariff out of contracts that its own distribution companies had signed. The Andhra Pradesh High Court refused: it set aside the interim tariff, ordered payment at the contractual PPA rates, and quashed the regulatory petitions brought to revise those tariffs. The principle cuts two ways. The first risk to a foreign investor's PPA is rarely a failed enforcement at the end of the road, but more importantly, it is a sovereign or regulatory repudiation at the start, before any award exists. What is actually noteworthy is that the forum that defended the bargain was the writ court, not an arbitral tribunal, because the act complained of was an exercise of executive and regulatory power, not a breach of covenant.

EPC and Fuel-Supply Contracts: Cleaner Ground

Not every Indian energy dispute carries this regulatory shadow. EPC contracts and fuel-supply arrangements sit on cleaner contractual ground, and arbitration works there in its natural register. EPC disputes over completion delay, liquidated damages, defective works, variations, and extension-of-time entitlement are ordinary contract claims; the tariff problem does not arise, and an offshore-seated tribunal can deliver a durable result. Long-term fuel-supply and gas-sale agreements raise familiar price-review, take-or-pay, and force majeure questions that institutional arbitration handles well. Counsel's drafting attention is therefore best concentrated on the PPA, where the regulatory exposure lies.

The Energy Transition Will Widen the Field

Decarbonisation will add to these disputes rather than ease
them. Curtailment of "must-run" renewable capacity, "deemed generation" compensation, weakening offtaker credit, storage and round-the-clock supply obligations, and the contractual treatment of carbon costs and renewable- purchase obligations all sit close to change-in-law territory, and each will test the line between the regulated and the negotiated. The drafting answer is to write the change-in-law clause tightly: enumerate its triggers, fix the restitutionary computation and the carrying-cost rate, and ring-fence it expressly from any redetermination of tariff, so it survives the regulated-contract doctrine and yields an award that holds.

Conclusion

Indian energy arbitration answers to two masters, the contract and the regulatory statute. The sensible practitioner neither inflates the enforcement bogey, which BALCO and Vijay Karia have largely tamed, nor overlooks the regulated-contract doctrine, which fixes the outer limit of what a tribunal may decide. The pending statutory reform points the same way.[1] What is left is a question of drafting. Frame the change-in-law claim so that it is plainly contractual, and it will be arbitrable, and it will be enforceable. In the Indian energy sector of this decade, that is where the case is won.

SECTION THREE · ARTICLES

03

When Energy Meets Dispute: The Case for ADR in Offtake Agreements, Pricing Conflicts, and Environmental Obligations

This article has been authored by:

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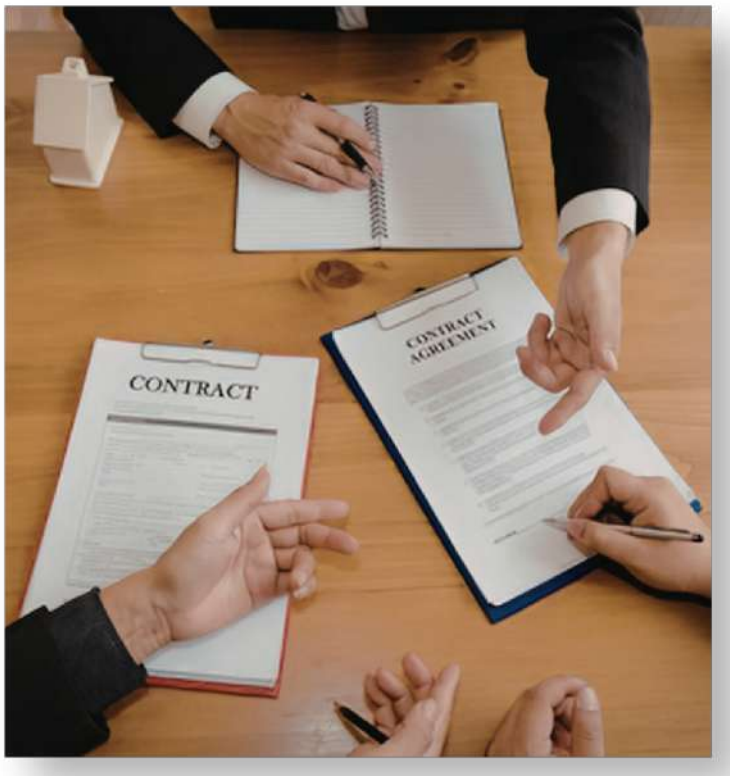
A Sector Too Critical for Prolonged Litigation

Energy is not simply another commodity. It is the baseline upon which economies breathe, industries operate, and lives are organized. When disputes arise in the energy sector—and they do, with growing frequency—the stakes are rarely abstract. A stalled power purchase agreement between a renewable developer and a state utility can delay gigawatts of clean energy capacity, disrupt livelihoods, and set back climate commitments by years.

This is precisely why Alternative Dispute Resolution (ADR) has found—and must continue to find—a natural home in the energy sector.



Litigation, with its adversarial posture, public proceedings, and slow timelines, sits uncomfortably in an industry defined by long-term relationships, technical complexity, and continuous interdependence. ADR—whether through arbitration, mediation, or expert determination—offers something litigation rarely can: resolution that is fast enough to matter.

This article examines three of the most consequential pressure points in energy dispute resolution today: offtake agreements, pricing conflicts, and environmental obligations. Each presents distinct challenges; together, they reveal why a thoughtful, sector-specific ADR architecture is no longer optional but essential.

Offtake Agreements: Where Certainty Meets Reality

An offtake agreement is, at its core, a promise. A developer builds a power plant—solar, wind, gas, or otherwise—because a buyer has agreed to purchase the output at defined terms over a defined period. That promise is the financial backbone of any project; without it, most energy developments simply do not get financed. Banks lend against the certainty that offtake represents.

But promises stretching across fifteen or twenty years inevitably collide with reality. Grid conditions shift. Demand forecasts prove wrong. Transmission infrastructure lags behind generation capacity. Force majeure events—once considered exceptional—have grown alarmingly routine in an era of climate disruption. And then there is the increasingly contested question of "curtailment": what happens when a grid operator instructs a generator to reduce output, not due to any fault, but because of system congestion? Who bears that loss?

Disputes over offtake agreements are frequently technical. They hinge on load forecasts, dispatch protocols, metering standards, and capacity factor calculations—terrain where generalist judges rarely feel at home, and where public proceedings offer little benefit. International arbitration, particularly under institutional rules like those of the ICC or the LCIA, can seat engineers, energy economists, and

sector specialists as arbitrators.

The confidentiality of arbitration is a further virtue: energy companies operating in regulated environments are understandably reluctant to air contractual disputes in open court. Mediation, too, has a powerful role here. Many offtake disputes do not involve a fundamental breakdown of the relationship—they reflect a misalignment of expectations that both parties would prefer to resolve quietly. A skilled mediator with energy sector credentials can help find pragmatic solutions—amended dispatch schedules, revised floor prices, payment restructuring—that keep projects alive rather than terminate them.

Pricing Conflicts: The Volatility Problem

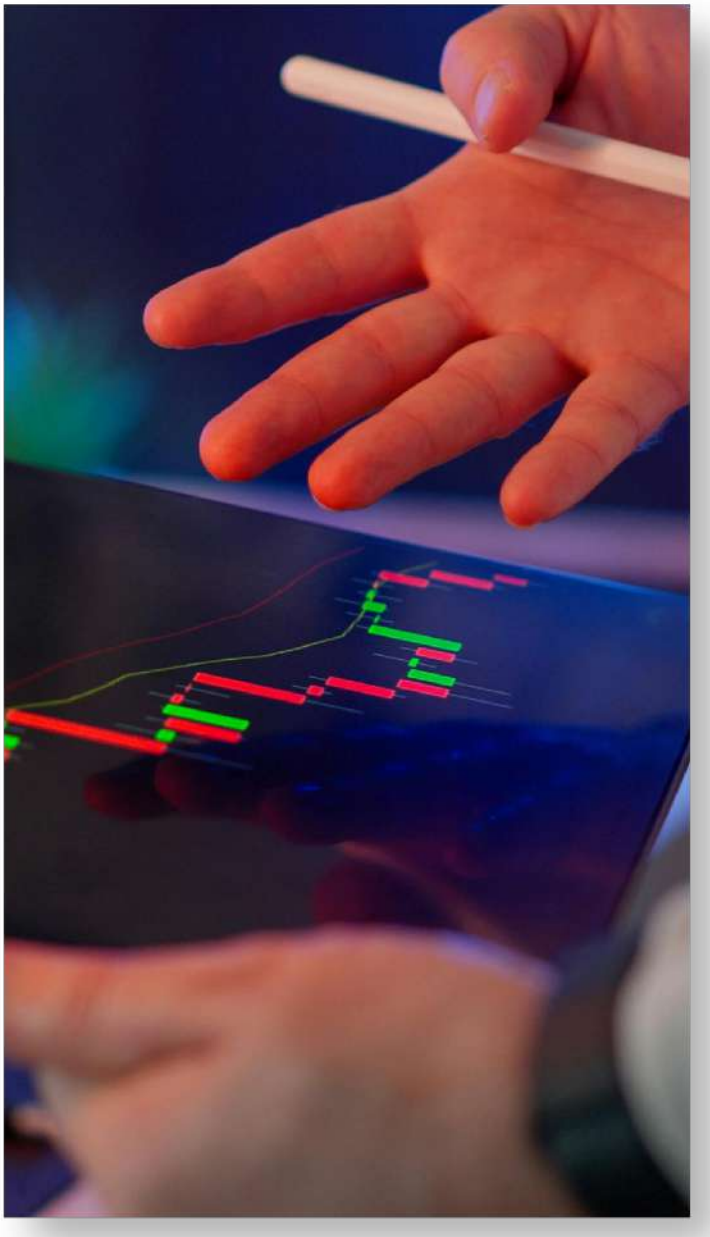
If offtake agreements are about volume and availability, pricing disputes are about the money—and in energy markets, money is rarely still. Long-term power purchase agreements often embed indexation clauses tied to inflation indices, fuel benchmarks, or exchange rates. In theory, these mechanisms protect both parties against volatility. In practice, they become flashpoints for some of the most contentious energy disputes the world has seen.

The post-2021 energy price crisis in Europe, triggered by supply disruptions and accelerated by geopolitical conflict, saw dozens of long-term contracts suddenly appear wildly misaligned with spot market realities—and with them came waves of renegotiation demands and, where those failed, formal disputes. The fundamental tension is familiar: one party is disadvantaged by current market conditions, while the other believes the contract should be honored as written.

Hardship clauses and force majeure provisions offer some relief, but their interpretation varies enormously across jurisdictions. Civil law systems, drawing on the doctrine of imprévision, are generally more sympathetic to contract renegotiation under changed circumstances than common law systems, which tend to hold parties strictly to their bargain.

This is where ADR—and particularly arbitration with empowered arbitrators—becomes invaluable. Tribunals can be authorized to adapt pricing terms to changed circumstances rather than simply declaring one party in breach. Expert determination, where a neutral technical expert decides a specific contested figure—a gas price index, a currency adjustment formula, a capacity payment methodology—is a faster, cheaper tool well suited to pricing disputes where the underlying commercial relationship remains intact. The emerging challenge is the intersection of pricing and the energy transition. As carbon pricing mechanisms proliferate—through emissions trading schemes, carbon taxes, or border adjustment mechanisms—offtake pricing is increasingly entangled with regulatory uncertainty.

What happens when a pricing formula drafted in 2018 did not contemplate a carbon cost that materialized by 2024? ADR processes that allow for expert input on regulatory developments will be far better equipped to handle these next-generation disputes than courts applying static contractual interpretation.



Environmental Obligations: The Accountability Frontier

Perhaps the most transformative development in energy dispute resolution over the last decade is the rise of environmental obligations as enforceable legal claims—not merely regulatory requirements, but treaty commitments, contractual warranties, and increasingly, human rights obligations.

National implementation of the Paris Agreement has created a dense web of carbon commitments. Governments have made binding pledges; utilities have announced net-zero pathways; project developers have issued green bonds tied to environmental performance benchmarks. When these commitments go unmet—or when one contracting party argues another's conduct is incompatible with shared sustainability goals—a new category of dispute emerges.

The tension is particularly acute in projects straddling the transition period: gas-fired power plants once considered "bridging" infrastructure, upstream oil and gas developments with multi-decade lifespans, and coal power plants subject to early retirement agreements. Investor-State dispute settlement under bilateral investment treaties has become a battleground, with fossil fuel investors invoking treaty protections against government decisions to accelerate decarbonization.

This dynamic has drawn fierce criticism from climate advocates and generated landmark arbitrations at the Energy Charter Treaty tribunal.

Beyond investment treaty arbitration, environmental obligations are increasingly surfacing in commercial arbitration, ESG-linked contract disputes, and community-based claims. A renewable energy developer who has contractually warranted minimal environmental impact faces claims when a wind farm disrupts local ecosystems. A carbon offset project developer faces claims from buyers when certified offsets are later found to have dubious additionality.

These are not hypothetical scenarios—they are disputes already appearing in arbitral dockets.

For ADR practitioners, this shift demands a new kind of competence: not only technical energy knowledge, but environmental science literacy, familiarity with international climate frameworks, and sensitivity to the voices of affected communities who are rarely the named parties in formal proceedings.

Mediation, in particular, offers space for these broader stakeholder interests to be heard—a space that adversarial arbitration does not naturally create.

Conclusion: Designing ADR for the Energy Future

The energy sector's dispute landscape is not simply growing in volume—it is growing in complexity, ambition, and consequence. Offtake conflicts will become more frequent as the energy mix diversifies and grid systems grow more dynamic. Pricing disputes will grow more intricate as carbon costs, subsidy architectures, and cross-border energy trade evolve. Environmental obligations will generate an entirely new category of claims that blend law, science, and ethics in ways no court is fully equipped to navigate alone.

ADR—when designed thoughtfully, staffed with genuine expertise, and shaped by the sector's distinctive characteristics—is not merely an alternative to litigation. In the energy context, it is the superior method: faster, more expert, more flexible, and more capable of preserving the long-term relationships on which energy infrastructure depends.

As law students entering a profession that will grapple with energy transition for decades, the task before us is not merely to understand these mechanisms, but to help shape them. The disputes of the next thirty years will determine whether the energy transition succeeds or stalls. ADR will be at the centre of that story—and it deserves practitioners who take it seriously.

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04

Beyond Titles: A Journey of Resilience, Growth, and Purpose with Ms. Menaka, Senior Director at Fujitsu

WITH MENAKA

Menaka is a seasoned technology leader with over 22 years of experience in delivering large-scale, global business application services across industries. Currently serving as Service Delivery Senior Director and Head of Cloud Native Applications at Fujitsu, she leads global delivery across Oracle, Microsoft, and Salesforce platforms, driving delivery excellence, and sustainable business outcomes.

She began her career at Infosys as a software developer, where she built a strong technical foundation and steadily progressed into leadership roles, managing teams and delivering complex programs. She later joined Wipro as a Project Manager, further strengthening her expertise in delivery management and stakeholder engagement. Her career journey reflects consistent growth, resilience, and the ability to balance professional excellence with personal milestones.

Menaka is recognized for her calm and composed leadership style and ability to drive collaboration across diverse teams. As a mentor and coach, she is passionate about unlocking team potential and building high-performing, accountable organizations.

Beyond her professional responsibilities, she leads diversity, mentoring initiatives and is actively engaged in community programs. Outside work, she enjoys spending time with family, singing, and practicing crochet.

Q **How did growing up in a small industrial township shape your outlook on ambition, discipline, and success?**

When people ask me what shaped my personality, my resilience, my mind immediately travels back to a small city in eastern India - Bokaro. I was raised in Bokaro, a beautiful, simple township built around one of India's largest steel plants. People from all corners of the country, including my father and his engineering friends, moved there with young families and big ambitions.
Though small, it was rich in values. It believed deeply in education, discipline, and holistic development. Schools in Bokaro were built with the vision of nurturing capable and confident individuals.

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Q **Who were the people that most deeply influenced your thinking while you were growing up, and how did they shape the person you eventually became?**

My father became the anchor of my life - my mentor and my coach and he still is. I saw how education had completely transformed his life, giving him stability, opportunities, and dignity. Because of him, curiosity for science was planted in me early. Engineering felt like the most natural choice. My mother taught me resilience, values and staying fearless. My elder sister gave me strength and was my confidante. I am blessed to have a joyous childhood with my family and friends. I was fortunate to study at St. Xavier's School Bokaro, where excellence was not merely encouraged - it was expected. My teachers have a huge role to play in shaping the person I eventually became.

Q **What first sparked your interest in technology and IT, and what made you feel that this was the path you wanted to pursue?**

From a young age, I was interested in Maths and Physics. I vividly recall the satisfaction of working through Maths problems, eagerly flipping the pages to check my answers, and feeling quiet a sense of accomplishment when they matched. These moments fuelled my curiosity and laid the foundation for my passion in technology. Later, when I began coding and witnessed my programs run successfully, that same sense of fulfilment grew even stronger. The process of turning ideas into results has always brought me immense satisfaction and continues to inspire my journey in tech.

Q **Over the years, what has been your personal mantra during difficult or uncertain phases of life?**

I remind myself constantly that difficult times are temporary and will eventually pass. Life and careers rarely follow a linear path; they're filled with highs and lows. This perspective and wisdom come from experience. Early in my career, I often found myself anxious and overwhelmed when faced with challenges. However, as these tough moments came and went, they ultimately taught me one of the most valuable lessons of all: resilience and confidence grow with each challenge we overcome.

Q **In high-pressure professional environments, how do you protect your sense of self and emotional balance?**

I naturally have a calm and composed demeanour, which allows me to keep my emotional balance without much effort. As we advance in our careers, the issues that reach our desk are often already heated and complex. Approaching these situations with a clear mind is essential for thoughtful problem-solving and accurate assessment. Additionally, having a high-performing team by your side makes a significant difference. As leaders, it's crucial to invest time and effort into building such teams, as their support and expertise provide both stability and strength.

Q **What role has family played in helping you navigate the demands and expectations of a long professional journey?**

My family has been my absolute rock. They don't always understand the intricate tech stack I am working on, but they understand me. When my day is getting rough, my husband or daughter will quietly step into my room and leave a small chocolate bar or a can of Coke on my desk. They don't say a word, just their thoughtful gesture to soften the stress and reassure me that everything will be alright.. If that isn’t enough to lift my spirits, a quick phone call to my parents or sister never fails to brighten my mood and reminds me of who I am.

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Q **Have there been moments where failure or self-doubt unexpectedly became your greatest teacher?**

Yes, there have been multiple moments of self-doubt. In the initial years of my career, there were so many days I sat at my desk feeling entirely overwhelmed, desperately trying to balance technical delivery with my own self-doubt. I questioned if I was smart enough to be there. But over my 23 years in this industry, I've learned that confidence doesn't magically appear before a challenge. It is forged after you overcome it. You doubt, you question and then work hard to achieve it. Once you do it, you start believing in yourself.

Networking, collaboration, and professional allies will help you in the journey. Surviving the challenges isn't a solo journey. I am here today because I didn't have to carry that heavy armour alone. In our professional journeys, the biggest blessing is having that one person with whom you can completely let your guard down. Someone with whom you can comfortably discuss your wildest opportunities, voice your deepest insecurities, and speak with complete, unadulterated trust. I am incredibly fortunate to have such a person in my professional life. Look for someone who can be your support, your mentor, your sponsor.

Q **What do you think people often misunderstand about strong women in leadership positions?**

My personal view, a leader is a leader. We should stop seeing a leader through the gender lens. If you are strong, deserving, you will be seen, valued, and get your due. Strong women make their way and even if they are misunderstood in the beginning, when they start driving outcomes and results, the perception change and respect follows.

Q **What changes would you most like to see in workplaces for the next generation of women professionals?**

Today, workplaces have the conducive environment for each and everyone to flourish irrespective of the gender. We just need to have our goals set right and just keep working towards it. Workplaces trust women with larger opportunities, and career breaks don't mean career dead-ends. Flexibility and support in some difficult phases of life goes a long way. Women communities can help give space to women to learn from each other's experience.

Q **After more than two decades of continuous growth and change, what continues to keep you motivated and excited about learning?**

In more than 23 years of my professional journey, none of my two projects had the same tech stack. This always kept me curious and has inculcated the habit of continuous learning. Every role demanded new skills, new thinking, and new adaptability. Technology evolves rapidly, and so must we. The excitement of solving problems. The thrill of learning something new. And above all, the feeling of achievement that comes from continuously reinventing oneself. You do not need to know everything. You only need the willingness to keep learning.

Q **If a young woman reading this interview is currently struggling with self-doubt or uncertainty, what would you want her to remember about her own potential?**

There will be difficult projects. There will be moments when balancing personal and professional responsibilities feels overwhelming. There will be times when you may feel underestimated. But remember, you are here after years of hard work; you have secured your position in the industry despite high competition. Challenges may slow you down, but if you keep showing up every day and not quit, you will soon see yourself navigating the current situation like a Champion. You do this and then you will become an inspiration for many other women to follow suit.

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JUNE 2026
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IIDRC OPEN HOUSE
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