Centre for Alternative Dispute Resolution, Rajiv Gandhi National University of Law

CADRadar

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

Quarterly Newsletter

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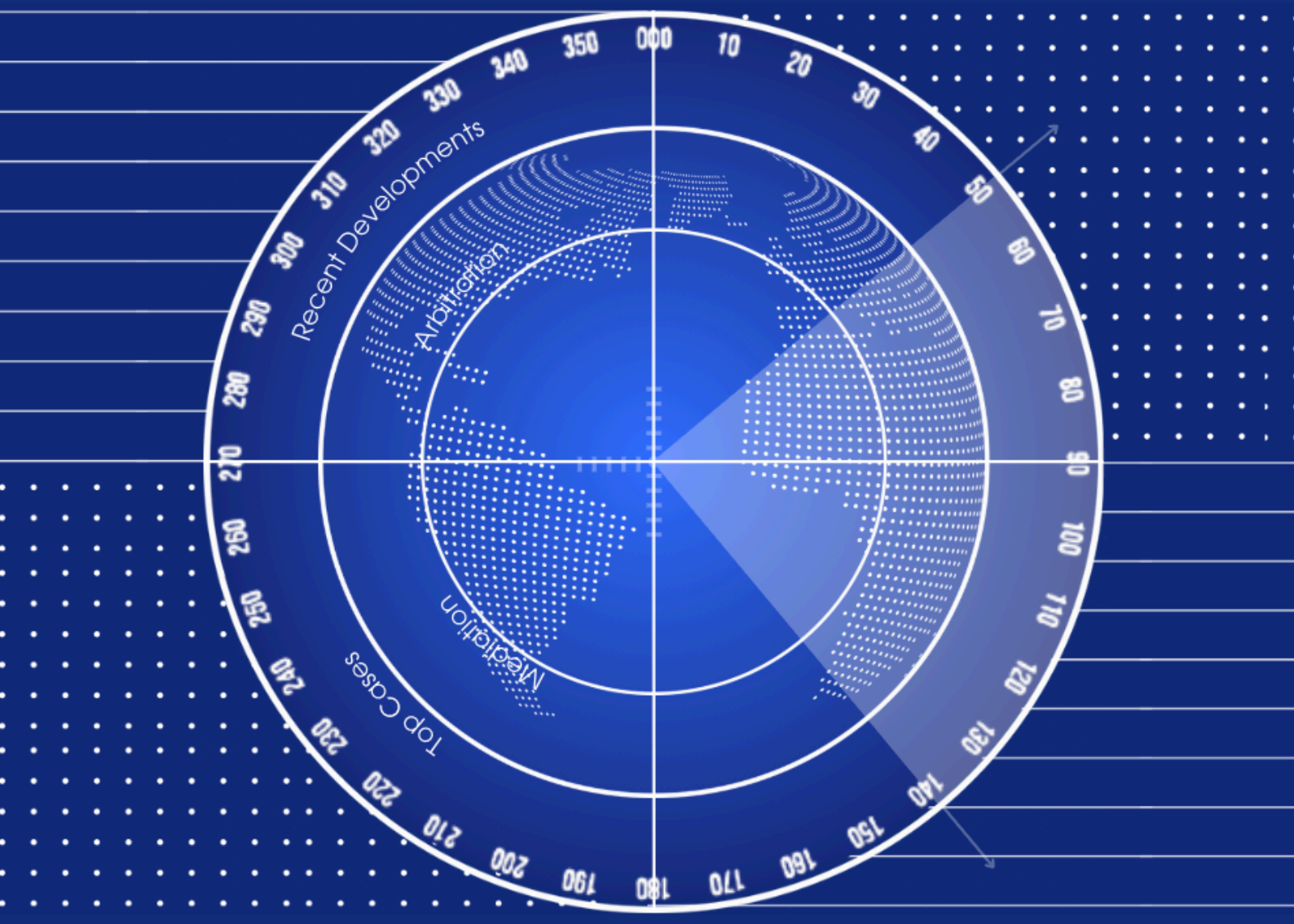

April - June 2025

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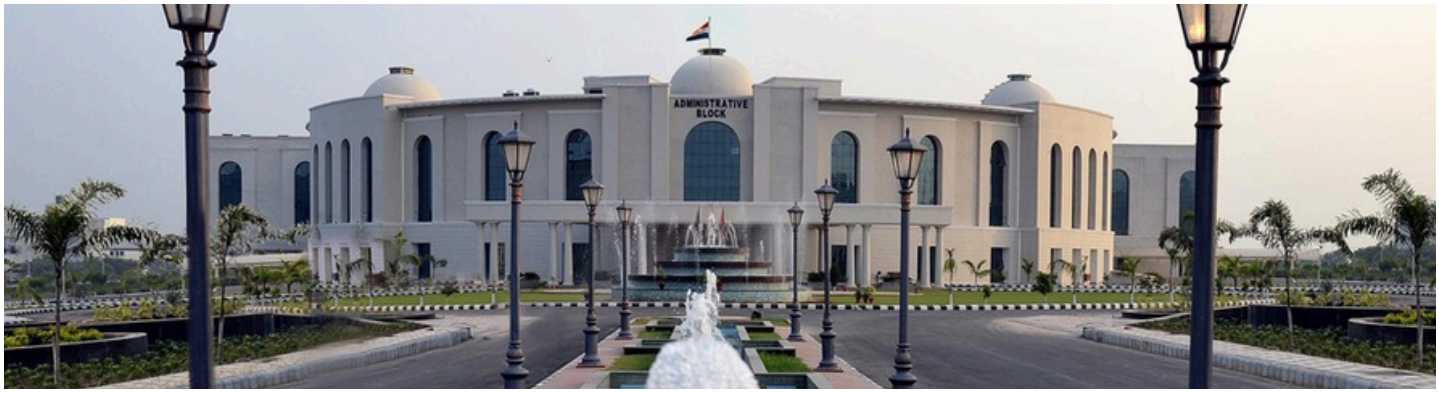


About CADR

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

The Centre for Alternative Dispute Resolution, RGNUL (CADR) is a research centre dedicated to research and capacity-building in Alternative Dispute Resolution (ADR). CADR's ultimate objective is to strengthen ADR mechanisms in the country by emerging as a platform that enables students and professionals to further their interests in the field.

In its attempt to further the objective of providing quality research and information to the ADR fraternity, the CADR team is elated to present the Fourth Edition of the Sixth Volume of its quarterly newsletter, "The CADR Radar."

The Newsletter initiative began with the observation that there exists a lacuna in the provision of information relating to ADR to the practicing community. With an aim to lessen this gap, the Newsletter has been comprehensively covering developments in the field of ADR, both national and international.

Additionally, the newsletter documents the events at CADR and the achievements of RGNUL students in ADR competitions. The CADR Radar is a one-stop destination for all that one needs to know about the ADR world; a "quarterly dose" of ADR News.

NEWS UPDATES

Catch up on the latest developments in the fields of Domestic Arbitration, International Commercial Arbitration, Investment Arbitration, and Mediation

Domestic Arbitration

– Raima & Piyush Singla

Supreme Court declares Arbitral Awards Unenforceable if Claims extinguished by IBC Plan

The Supreme Court in *Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd.* has held that once a resolution plan is approved under Section 31 of the Insolvency Code, all claims not included in that plan stand extinguished. Any arbitral award based on such claims becomes void and cannot be executed. The Court further clarified that an award passed without jurisdiction is a nullity, which may be resisted in execution proceedings under Section 47 CPC even if not challenged under Section 34. This reinforces the overriding effect of the IBC over other laws, including arbitration. **Read more**

SC Reaffirms Narrow Judicial Review of Arbitral Awards

In *Larsen & Toubro Ltd. v. Puri Construction Pvt. Ltd.,* the Supreme Court stressed that courts cannot modify arbitral awards, as their powers under Sections 34 and 37 are confined to setting aside awards on limited grounds. The Court reiterated that an arbitrator's plausible interpretation must be allowed to stand, even if another view is possible. It also affirmed that breaches of fundamental obligations justify termination of contracts, and findings of coercion or duress by the tribunal cannot be disturbed unless patently illegal. This decision reiterates the requirement of minimal judicial intervention in arbitral outcomes. **Read more**

Supreme Court upholds Levy of Liquidated Damages, limits Court Interference

In *Consolidated Construction Consortium Ltd. v. Software Technology Parks of India,* the Supreme Court reaffirmed that courts cannot reappreciate evidence or substitute their own views for those of the arbitrator under Sections 34 or 37 of the Arbitration and Conciliation Act. The Court held that where contractual timelines and liability clauses are clear, delay in performance justifies liquidated damages, even if time extensions are granted with express reservations. Emphasising deference to arbitral findings, the Court ruled that plausible interpretations by the tribunal must stand. This judgment underscores the principle that courts must guard against appellate-style interference in arbitral proceedings. **Read more**

Bombay High Court Upholds Arbitration Clauses Despite One-Sided Opt-Out Right

The Bombay High Court has held that an arbitration clause is not void merely because it contains a one-sided opt-out provision. The Court has reaffirmed that such clauses can be read down or severed to preserve the core arbitration agreement. It also clarified that jurisdiction under Section 11 is limited to verifying the existence of an arbitration agreement, leaving questions of validity or jurisdiction to the tribunal under Section 16. This strengthens the pro-arbitration approach while balancing unfair contractual terms. **Read more**

Supreme Court Seeks Redraft of Arbitration Bill, Flags Gaps on Non-Signatory Powers

On May 2, 2025, the Supreme Court directed the Ministry of Law and Justice to reconsider the Arbitration and Conciliation (Amendment) Bill, 2024, as it did not address historical gaps in procedure. Aspects of particular concern are that the Bill fails to mention whether the arbitral tribunal has the statutory power to implead non-signatories, which is an aspect that continues to raise confusion. The Court expressed its frustration that, more than 20 years after it last addressed the ambiguity of arbitration, questions of clarity still require further improvement in the present agonizingly slow draft legislation before Parliament. **Read more**

Vague Arbitration Clauses Can't Stand: Supreme Court Lays Down the Law

In *South Delhi Municipal Corporation v. SMS Ltd.*, the Supreme Court held that an arbitration clause must demonstrate a clear intention to submit disputes to an adjudicatory process. Article 20 of the concession agreement, couched in vague terms, was found to lack neutrality, judicial elements, and procedural certainty, thus failing to qualify as an "arbitration agreement" under Section 7 of the Arbitration and Conciliation Act, 1996. The Court deprecated deliberate drafting ambiguities, urging judicial forums to reject such clauses at the threshold and warning of potential personal liability in cases of mala fide intent. **Read more**

Supreme Court Closes Door on Post-Award Jurisdiction Objections

In *Gayatri Project Ltd. v. MPRDC,* the Supreme Court ruled that parties cannot raise jurisdictional objections under Section 34 of the Arbitration Act if

they failed to do so before the arbitral tribunal. It held that such objections, even if legal, are subject to waiver. The Court restored the arbitral award, reinforcing that tactical silence during arbitration can't be used to challenge awards later. This ruling strengthens procedural discipline in arbitration and curbs post-award legal ambushes. **Read more**

SC Rules Arbitral Tribunals Can Implead Non-Signatories Without Party Request

The Supreme Court in *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited* clarified a critical principle that arbitration is not confined to the paper signatures on a contract. If a company, though a non-signatory, is part of the same corporate group, or its conduct, role, or commercial involvement shows intent to be bound, it can be drawn into arbitration. The Court said tribunals, not just courts, may decide this. This extends arbitration's reach to reflect commercial reality over formal consent, signaling India's shift toward a substance-over-form approach in multi-party disputes. **Read more**

Calcutta HC Rules Arbitration Under MSME Act Cannot Be Reversed for Conciliation

In *Board of Major Port Authority v. Marinecraft Engineers,* the Calcutta High Court held that once arbitration begins under Section 18(3) of the MSME Act, pre-arbitral conciliation cannot be restarted. While additional settlement talks can run alongside arbitration, they cannot halt it. The Court clarified that the 90-day timeline under Section 18(5) is directory, not mandatory, unlike stricter timelines under the 1996 Act. This ruling solidifies finality once arbitration is underway under the MSME framework. **Read more**

International Commercial Arbitration

- Nandini Garg & Aarav Singhal

Amsterdam Court Blocks LC Corp Arbitration Claim Against Poland

On 22 April 2025, the Amsterdam Court of Appeal ordered Dutch company LC Corp to withdraw its arbitration claim against Poland under the Netherlands-Poland BIT, citing incompatibility with EU law and imposing a EUR 100,000 daily penalty for non-compliance. The court found that arbitration clauses and sunset provisions in intra-EU BITs have lapsed due to their conflict with EU law, reaffirming that intra-EU investment disputes should be resolved by national courts within the EU framework. **Read more**

London Reclaims Top Global Arbitration Centre Spot, Survey Shows

The recent survey from Queen Mary University of London, carried out in conjunction with White & Case, confirms that London has reclaimed its position as the most favoured global arbitration centre with 34% of practitioner preference - just ahead of competing jurisdiction Singapore at 31%. Following political uncertainty in Hong Kong, this survey placed Hong Kong in third place, followed by Beijing and Paris. This survey has taken the views of over 2,400 respondents and is the most comprehensive in the last four years. **Read more**

Paris Court Tightens Criteria for Staying Arbitral Award Enforcement

The Paris Court of Appeal ruled in May 2025 on when enforcement of an arbitral award may be stayed, emphasizing that only clear, concrete evidence of

grave harm to a party can justify stopping enforcement. Temporary cash flow difficulties were held insufficient, reinforcing France's pro-enforcement position for arbitral awards. Parties seeking a stay must prepare robust evidence to succeed. **Read more**

Court of Appeal Lifts Anti-Suit Injunction Amid Huge Russian Penalties

The Court of Appeal discharged its own anti-suit injunction after UniCredit faced €250 million penalties from a Russian court ruling that contradicted the English order. Despite RCA's breach of arbitration agreements, the Court prioritized commercial reality over principle, recognizing UniCredit's exposure to "eye-watering" penalties while RCA had no attachable English assets.
Read more

Costa Rica Unifies Arbitration with New Harmonization Law

May Costa Rica has enacted the Harmonization Law, merging domestic and international arbitration into a single unified regime to reduce fragmentation. Key reforms include setting tribunal compositions, three arbitrators for international cases and one for domestic, empowering arbitral institutions to appoint arbitrators if parties disagree, and introducing provisional measures for all arbitration types with clear application to non-signatories. The law also streamlines timelines and judicial oversight to speed up proceedings, boosting Costa Rica's standing as an arbitration hub. **Read more**

English Courts Clarify Anti-Suit Injunctions in Foreign-Seated Arbitrations

The Commercial Court (a division of the High Court of Justice, England and Wales) issued clarifications on anti-suit injunctions (ASI) in cases involving foreign-seated arbitrations. Recent series of judgments confirm that an ASI can be granted even for foreign-seated arbitration, provided personal jurisdiction over the defendant is established in England and Wales. The Supreme Court upheld this pro-arbitration stance, and the reasoning supports international comity while protecting commitments made under arbitration agreements. **Read more**

ICC Tribunal Awards $1.37 Billion to Naftogaz in Transit Dispute with Gazprom

In June 2025, an ICC arbitral tribunal in Zurich ruled that Gazprom breached the "take-or-pay" clause in its 2019 gas-transit agreement with Naftogaz, awarding $1.37 billion in debt, interest, and legal costs to Naftogaz. The tribunal was led by Urs Weber-Stecher with co-arbitrators Olle Flygt and Zvi Bar-Nathan. Naftogaz has since initiated efforts to recover Gazprom's international assets, being represented by multiple law firms, while Gazprom chose not to retain separate counsel. **Read more**

Woodside Energy Starts Tax Arbitration Against Senegal

June Woodside Energy, holding an 82% stake in Senegal's offshore Sangomar oil field, initiated arbitration proceedings in May 2025 at the International Centre for Settlement of Investment Disputes (ICSID) against Senegal. The dispute concerns a CFA 40 billion (about $65 million) tax reassessment by Senegal's tax authorities issued in July 2024, which Woodside contests, having previously challenged it in Senegalese courts. The arbitration aims to resolve unresolved tax issues amid Senegal's broader efforts to review its extractive sector contracts. **Read more**

Investment Arbitration

– Adamya Rawat

Webuild wins ICSID award against Argentina

On 28 April 2025, an ICSID tribunal ordered Argentina to pay over US$150 million to Webuild S.p.A. under the Italy-Argentina BIT in *Webuild S.p.A. (formerly Salini Impregilo S.p.A.) v. Argentine Republic*. The claim arose from Argentina's 2000s emergency measures that eliminated dollar toll revenues, froze tariff adjustments, and terminated the Rosario-Victoria highway concession. Having earlier upheld liability for breaching fair and equitable treatment, the tribunal's award reinforces treaty protections against unilateral state interference in infrastructure projects. **Read more**

Paris Court Authorises Enforcement Steps on Naftogaz's Multi-Billion Award Against Russia

On 17 April 2025, the Paris Court authorised Naftogaz to enforce its US$5 billion ICSID-converted award against Russia for the seizure of Crimean assets in *Naftogaz and others v. Russia*. The decision allows enforcement in France, including mortgages on €120 million of Russian state property. By recognising the Hague tribunal's award, the Court marked a key step in cross-border enforcement efforts, underscoring how national courts advance investor claims despite sovereign resistance to treaty-based expropriation findings. **Read more**

English Court Holds Ratification of New York Convention Does Not Waive Sovereign Immunity

On 17 April 2025, the English Commercial Court in *CC/Devas (Mauritius) Ltd & Ors v. Republic of India* held that India's ratification of the New York Convention did not amount to a waiver of sovereign immunity under

the UK State Immunity Act 1978. The Court emphasized that an express waiver is required, clarifying that mere treaty ratification cannot override statutory protections, thereby reinforcing limits on investor enforcement against states in England. **Read more**

ICSID Award Settlement Finalized in Nachingwea v. Tanzania

On 7 April 2025, Indiana Resources confirmed receipt of the final USD 30 million tranche from Tanzania, completing a USD 90 million settlement of the ICSID award in *Nachingwea and others v. United Republic of Tanzania*. The original award exceeded USD 109 million plus costs. While annulment proceedings were suspended, Tanzania's tax authority issued a jeopardy assessment on the settlement sum, which Indiana claims breaches the deed, complicating discontinuance before ICSID. **Read more**

English Commercial Court stays Yukos-related award enforcement pending Dutch appeal

On 2 May 2025, the English Commercial Court in *JSC DTEK Krymenergo v. Russian Federation* [2025] EWHC 1060 (Comm) stayed enforcement of a US$208 million UNCITRAL award against Russia, pending annulment before the Hague Court of Appeal. The tribunal had found Russia liable under the Ukraine-Russia BIT for expropriating Krymenergo's assets in Crimea. Citing comity and risk of inconsistent rulings, the Court signalled its deference to seat-court review in investment treaty enforcement. **Read more**

AES wins US$733 million ICSID award against Argentina

On 30 May 2025, an ICSID tribunal in *AES Corporation v. Argentine Republic* ordered Argentina to pay US$733 million to AES Corporation under the U.S.-Argentina BIT. The tribunal held Argentina liable for dismantling the tariff system in 2001, withholding receivables, and mandating

reinvestment in state projects. One of the largest awards against Argentina, it reflects enduring claims from its 2001–02 crisis. Enforcement remains uncertain as Argentina may pursue annulment, highlighting persistent obstacles in collecting high-value investor-state awards. **Read more**

Enagás compensation in Peru dispute raised to US$302m (ICSID)

On 26 May 2025, an ICSID tribunal increased compensation in *Enagás S.A. v. Republic of Peru* to US$302 million, the largest arbitral award against Peru to date. The dispute arose from Enagás' investment in the Southern Peruvian Gas Pipeline, halted in 2017. The tribunal found expropriation and FET violations under the Spain-Peru BIT, rejected Peru's allegations of misconduct, and ruled that Enagás' inclusion under Law 30737 was improper, affirming expanded compensation for aggravated investor losses. **Read more**

Ontario Court Enforces USD 91 Million ICSID Award in Kuntur Wasi v. Peru

On 15 May 2025, the Ontario Superior Court of Justice enforced a USD 91 million ICSID award in *Kuntur Wasi and Corporación América v. Republic of Peru*. Peru failed to appear, but the Court held that under the ICSID Convention and Ontario's Settlement of International Investment Disputes Act 1999, recognition is automatic upon filing a certified award. The judgment reinforces the mandatory nature of ICSID award enforcement in Canadian courts. Peru's failure to annul the award, and the expiry of the annulment period, left the court with no discretion but to register the judgment. **Read more**

ICSID Committee Declines Annulment in Sevilla Beheer v. Spain

On 11 June 2025, an ICSID ad hoc committee rejected Spain's bid to annul the ECT renewables award in *Sevilla Beheer B.V. and others v. Kingdom of Spain*. The committee confirmed that EU law does not directly govern ICSID annulment review and left the underlying award intact. The decision narrows intra-EU objections at the annulment stage and reinforces the limited scope of ICSID annulment powers. **Read more**

ICSID Ad Hoc Committee Annuls ECT Award in Rockhopper v. Italy

On 2 June 2025, an ICSID ad hoc committee annulled the EUR 190 million award in *Rockhopper Exploration Plc, Rockhopper Italia S.p.A., and Rockhopper Mediterranean Ltd v. Italian Republic* under the ECT. The original tribunal had found unlawful expropriation of Rockhopper's Ombrina Mare oilfield after Italy's offshore drilling ban. Annulment was granted because arbitrator Charles Poncet failed to disclose a past criminal conviction, despite its annulment decades earlier. The ruling highlights how procedural lapses can unravel even high-value investor-state awards. **Read more**

ICSID Tribunal Issues Award on Loan Conversion in Société Générale v. Croatia

On 30 June 2025, an ICSID tribunal in *Société Générale S.A. v. Republic of Croatia (*ICSID Case No. ARB/19/33) awarded over €17.5 million to the French bank. The tribunal found that Croatia's retroactive conversion of Swiss franc–denominated loans, adopted during the "francogeddon" measures, breached protections under the Croatia–France BIT. This marks the first successful investment award against Croatia linked to those measures, underscoring investor protections against retroactive financial regulation. **Read more**

Mediation

– Syed M. S. Ashraf

India Prepares for Mediation Council Establishment under Mediation Act 2023

On 3 April 2025, the Ministry of Law and Justice clarified that while only select provisions of the Mediation Act, 2023, were notified in October 2023, steps are underway to establish the Mediation Council of India under Section 31. This statutory body will regulate mediators and mediation institutions, marking a key step toward institutionalising mediation in India. **Read more**

Spain Mandates ADR as Pre-Litigation Requirement in Civil & Commercial Disputes

Spain Makes ADR a Mandatory Pre-Litigation Step On 3 April 2025, Spain's Organic Law 1/2025 came into force, mandating parties in civil and commercial disputes to attempt ADR (including mediation, conciliation, or expert determination) before filing claims in court. Parties must attach proof of attempted ADR with their plaints or provide a justified reason for non-compliance. **Read more**

Lodha Family Brand Dispute Resolved Through Mediation

The *Lodha v. Lodha* dispute arose when Abhishek Lodha's Macrotech Developers, holding exclusive rights to the "Lodha" brand, challenged Abhinandan Lodha's use through HoABL. Filed as a ₹5,000 crore suit, the Bombay High Court referred the matter to mediation. In April 2025, they settled: Macrotech retained "Lodha," while Abhinandan secured "House of Abhinandan Lodha," with disclaimers ensuring market clarity. **Read more**

Delhi High Court Refers Dispute Between 'The Emergency' Author, Netflix And Manikarnika Films To Mediation

The Delhi High Court referred to mediation a dispute between Coomi Kapoor, the author of The Emergency: A Personal History, and Manikarnika Films over alleged breach of contract and reputational harm tied to the film Emergency. Justice Manmeet Pritam Singh Arora directed the matter to be mediated at the Delhi HC Mediation Centre on May 9, with a follow-up hearing set for May 20, 2025. **Read more**

SC Affirms Pre-Institution Mediation as Mandatory in Commercial Suits

Supreme Court Clarifies Mandatory Nature of Pre-Institution Mediation (Dhanbad Fuels v Union of India). On 15 May 2025, the Supreme Court in M/S Dhanbad Fuels v Union of India (2025 INSC 696) held that Section 12A of the Commercial Courts Act, 2015 makes pre-institution mediation mandatory in commercial disputes. The Court ruled that lower courts erred in merely referring such matters to mediation; instead, non-compliance requires rejection of the plaint under Order VII Rule 11 CPC. **Read More**

Delhi HC Reiterates Mandatory Pre-Institution Mediation under Section 12A

Delhi High Court Reinforces Section 12A (Exclusive Capital Ltd v Silver and C.Z. International) On 2 May 2025, the Delhi High Court reiterated that compliance with Section 12A is mandatory in commercial disputes instituted after 20 August 2022. The Court held that suits filed without undergoing pre-institution mediation must be rejected at the threshold, unless urgent interim relief is demonstrably required. **Read more**

Delhi Court: 90-Day Limitation Inapplicable Where Party Cannot Understand Mediated Settlement

Reena Devi v Sanjay Kumar Jain – Mediated Settlement Limitation Clarified. On 16 May 2025, the Delhi Court ruled that the 90-day limitation under Section 28 of the Mediation Act does not apply where the mediated settlement agreement was in a language not understood by one of the parties. The plaintiff's inability to comprehend the English agreement rendered the standard limitation inapplicable. **Read more**

South Africa's move towards mandatory mediation

South Africa Mandates Mediation in Gauteng High Court Matters On 12 June 2025, the Gauteng Division of the High Court (Johannesburg) issued a revised directive making mediation compulsory in almost all civil trial cases. The directive requires parties to file Rule 41A notices and nominate mediators. Non-compliance can attract cost sanctions or forfeiture of trial dates, embedding ADR within South Africa's judicial process. **Read more**

Consumer protection: Council and Parliament reach a deal to modernise alternative dispute resolution rules

EU Agrees on Reforms to Strengthen Consumer ADR Directive On 26 June 2025, the European Council and Parliament reached a provisional agreement to modernise the EU ADR Directive for consumer disputes. The reforms require digital accessibility, strict deadlines for ADR bodies, and enhanced consumer safeguards, reflecting Europe's commitment to making mediation more effective and user-friendly. **Read more**

CASE COMMENT

Adavya Projects v. Vishal Structurals
The Expanded Scope of Arbitral Tribunal's Impleadment Powers

– Kartikey Tripathi & Kritvee Sharma

Introduction

This case comment examines the Supreme Court's ruling in *Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd.* which marks a significant step in clarifying the scope of arbitral jurisdiction under the *kompetenz-kompetenz* principle. The central issue concerned whether the absence of a Section 21 notice or omission of parties in Section 11 proceedings bars their impleadment in arbitration. The discussion begins with a brief exposition of fact which is followed by the discussion on the legal issues and arguments advanced. The comment then discusses the judgement and how the ruling advances arbitral autonomy and strengthens India's pro-arbitration jurisprudence.

Facts of the Case

The appellant, Adavya Projects Pvt. Ltd., and respondent no. 1, Vishal Structurals Pvt. Ltd., entered into a Limited Liability Partnership Agreement on 1 June 2012 to form Vishal Capricorn Energy Services LLP, which is respondent no. 2. Under the agreement, respondent no. 3, Mr. Kishore Krishnamoorthy, was designated as the Chief Executive Officer of the LLP, responsible for administration and execution of contracts. The LLP Agreement also contained an arbitration clause under Clause 40, which provided for arbitration of disputes between the partners inter-se and between the partners and the LLP or its administrator. Oil India Ltd. subsequently awarded a contract for augmentation of storage capacity at Tenughat, Assam, to a consortium that included respondent no. 1. On 8 January 2013, the consortium subcontracted the project to respondent no. 1, and thereafter, through supplementary agreements dated 29 January 2013, the appellant and respondent no. 1 agreed to execute the project through respondent no. 2. The appellant infused funds amounting to ₹1.1 crore for this purpose.

Disputes arose in 2018 when the appellant sought access to the accounts of respondent no. 2 in relation to the project. Notices demanding payment were issued in 2019, followed by a notice under Section 21 of the Arbitration and Conciliation Act, 1996, on 17 November 2020. Importantly, this notice was issued only to respondent no. 1 and not to respondents 2 and 3. The appellant then moved an application under Section 11 for appointment of an arbitrator, again impleading only respondent no. 1.

The High Court appointed an arbitrator by order dated 24 November 2021. Once arbitration commenced, the appellant filed its statement of claim impleading respondents 2 and 3, and subsequently amended its prayer clause to include them. The arbitral tribunal, however, by order dated 15 February 2024, upheld the objections of respondents 1 to 3 under Section 16, holding that in the absence of a Section 21 notice and their joinder in the Section 11 application, the arbitration could not proceed against respondents 2 and 3. The High Court, in an appeal under Section 37, affirmed this decision on 8 July 2024. The appellant then brought the matter before the Supreme Court.

Issues and Arguments

The High Court appointed an arbitrator by order dated 24 November 2021. Once arbitration commenced, the appellant filed its statement of claim impleading respondents 2 and 3, and subsequently amended its prayer clause to include them. The arbitral tribunal, however, by order dated 15 February 2024, upheld the objections of respondents 1 to 3 under Section 16, holding that in the absence of a Section 21 notice and their joinder in the Section 11 application, the arbitration could not proceed against respondents 2 and 3. The High Court, in an appeal under Section 37, affirmed this decision on 8 July 2024. The appellant then brought the matter before the Supreme Court.

On behalf of the appellant, it was argued that the arbitral tribunal has the power under the principle of *kompetenz-kompetenz* embodied in Section 16 of the Act to implead parties, including non-signatories, whose conduct demonstrates that they are veritable parties to the arbitration agreement. Counsel submitted that respondents 2 and 3 were bound by the arbitration agreement: respondent 2, being the LLP created by the LLP Agreement itself, fell squarely within the wording of Clause 40, while respondent 3, designated as the CEO and administrator under Clause 8, was equally within the contemplation of the arbitration clause. Their involvement in the performance of the LLP Agreement, supplementary agreements and the project demonstrated that they had consented to arbitration. The appellant further argued that since the Section 21 notice had been served on respondent 1, the director of which was respondent 3, constructive notice had been given, and the absence of a separate notice to respondents 2 and 3 did not bar their impleadment.

For the respondents, it was contended that the question was not one of the arbitral tribunal's competence in the abstract, but whether persons who were not served with a Section 21 notice and who were not parties before the High Court in Section 11 proceedings could later be made parties to the arbitration. Counsel for the respondents maintained that *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* (**Cox and Kings**), the precedent relied upon by the appellant, was inapplicable, as neither the arbitral tribunal nor the High Court had found respondents 2 and 3 to be necessary parties. They argued that since respondents 2 and 3 were not signatories to the LLP Agreement in their own capacity, they were not bound by the arbitration clause. Further, to implead them without any notice or reference under Section 11 would be contrary to principles of natural justice.

Judgement

The Supreme Court held that while a notice under Section 21 is mandatory as it fixes the date of commencement of arbitration for purposes of limitation and other procedural requirements, non-service of such notice on certain persons who are otherwise parties to the arbitration agreement does not prevent their impleadment in arbitral proceedings. Thus, the scope of the Tribunal constituted is not limited by the absence of any possible party to the notice under Section 21. The Court further held that the purpose of a Section 11 application is limited to securing the appointment of an arbitrator, and the court at that stage only undertakes a prima facie inquiry into the existence of the arbitration agreement. The appointment order does not conclusively determine the scope of parties bound by the arbitration clause, and the arbitral tribunal retains jurisdiction to decide the issue under Section 16. The true source of jurisdiction is the arbitration agreement itself, which derives from the consent of the parties. The relevant inquiry for the arbitral tribunal is whether the person sought to be impleaded is a party to the arbitration agreement under Section 7 of the Act.

Applying this principle, the Court found that both respondents 2 and 3 were parties to the arbitration agreement in Clause 40 of the LLP Agreement. Respondent 2, the LLP, was a creation of the LLP Agreement and operated under it, undertaking the project pursuant to its terms. By its conduct, respondent 2 was bound by the arbitration clause. Respondent 3, as CEO of the LLP under Clause 8, derived his authority and responsibilities from the LLP Agreement and was therefore bound by the arbitration clause, not in his individual capacity but in his role as administrator of the LLP. Thus, both respondents 2 and 3, despite being non-signatories, had consented to arbitration through their conduct and roles under the agreement.

Analysis

The judgment builds on the trajectory of landmark rulings like *Cox and Kings Ltd.*, which recognised that even non-signatories may, in appropriate circumstances, be impleaded in arbitration proceedings if their conduct demonstrates an intention to be bound. What distinguishes the present decision is its recognition of the arbitral tribunal's authority, under the *kompetenz-kompetenz* principle in Section 16 of the ACA, to implead such parties notwithstanding the absence of a Section 21 notice or their omission from Section 11 proceedings.

Earlier jurisprudence often treated procedural lapses as jurisdictional bars. For instance, in *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*, the Delhi High Court had held that failure to issue a Section 21 notice rendered the arbitral proceedings unsustainable. Yet, later rulings such as *State of Goa v. Praveen Enterprises* clarified that the scope of arbitration is not confined to the claims mentioned in the notice and that limitation consequences alone follow from omissions at this stage. Similarly, *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.* explained that the true purpose of Section 21 lies in fixing the commencement of proceedings for limitation and choice-of-law purposes, not in conclusively defining parties to the arbitration. By extending this reasoning, the present judgment rightly holds that non-service of a Section 21 notice cannot, by itself, prevent impleadment where consent to arbitration exists.

The same functional approach is evident in relation to Section 11. In *BSNL v. Nortel Networks (India) Pvt. Ltd.*, the Supreme Court underscored that referral courts are confined to constituting the tribunal after a prima facie inquiry into the existence of an arbitration agreement. The Constitution Bench in *Cox and Kings* went further, holding that questions of whether

non-signatories are bound fall squarely within the jurisdiction of the arbitral tribunal under Section 16. This case reaffirms that position, ensuring that procedural non-joinder at the referral stage does not foreclose jurisdictional determination by the tribunal.

At the heart of this jurisprudence is the centrality of consent. In *ONGC Ltd. v. Discovery Enterprises Pvt. Ltd.*, factors such as mutual intent, commonality of subject-matter, composite transactions, and the performance of contractual obligations were identified as relevant in determining whether a non-signatory is a "veritable" party to the arbitration agreement. *Cox and Kings* harmonised these principles, recognising that modern commercial realities require arbitration to bind those who, through their conduct, assume obligations under the contract.

Read together, these precedents show a shift from a rigid, formalist model to a functional and commercial approach. Party autonomy remains the foundation, but tribunals are encouraged to give effect to the broader contractual matrix, ensuring that disputes arising out of the same relationship are adjudicated together. In this sense, *kompetenz-kompetenz* not only empowers the tribunal to rule on its jurisdiction but also ensures that technicalities such as service of notice do not undermine substantive justice.

In sum, the power of arbitral tribunals to implead parties has been reinforced by three key developments: (i) procedural requirements like Section 21 and Section 11 do not conclusively limit jurisdiction; (ii) consent may be inferred from conduct and the surrounding contractual framework, not merely from signatures; and (iii) the *kompetenz-kompetenz* principle places primary responsibility on the tribunal itself to determine who is bound by the arbitration agreement. This jurisprudence significantly strengthens arbitral autonomy in India, aligning it with contemporary international practice and enhancing the efficiency of dispute resolution.

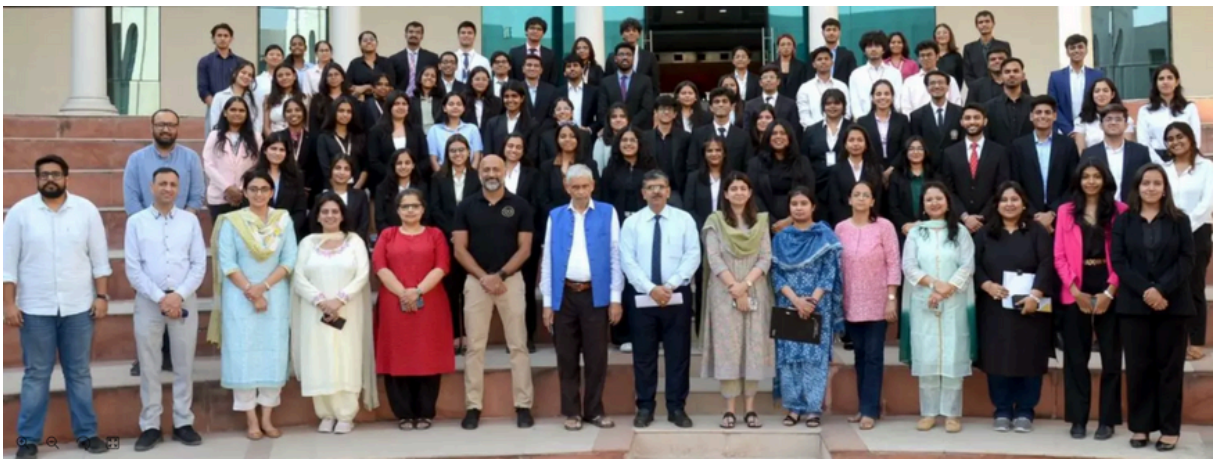
CADR Spotlight

Stay updated on the latest events and developments from CADR, RGNUL!

Upcoming Events

5th RGNUL National Negotiation Competition, 2025

After the successful organisation of 7th SEMC in the previous academic year, the CADR, RGNUL is all geared up to welcome eager scholars around the nation to yet another season of negotiation battle where participants showcase their brilliancy through excellent negotiating skills. Interesting yet mind-boggling propositions await them, that will push the participants to go the extra mile and present their prowess before an all-stars jury composed of eminent advocates, academicians and other legal luminaries. The 5th RGNUL National Negotiation Competition, 2025 will be organised in collaboration with Shardul Amarchand Mangaldas & Co.



Upcoming Events

Online Certificate Course in Mediation

The CADR, RGNUL, in collaboration with Dr. P.C. Markanda Chair on Alternative Dispute Resolution, is all set to organise the Online Certificate Course in Mediation from September 2025 in a virtual set-up. This Online Certificate Course in Mediation is a comprehensive three-month program designed to equip participants with a solid foundation in mediation theory, legal frameworks, and practical skills. With the growing recognition of mediation as a time-efficient, cost-effective, and harmonious method of resolving disputes, this course is tailored to meet the demands of legal professionals, law students, academicians, HR practitioners, and community leaders seeking to build competence in ADR. The course will be divided into 8 modules. Each module is carefully structured to enhance your competence in Mediation and broaden your career prospects in the ever-expanding field of ADR.

Upcoming Events

6th Surana & Surana and RGNUL International Arbitral Award Writing Competition 2025

The CADR, RGNUL, in collaboration with Surana & Surana International Attorneys, is set to organise the 6th Edition of the Surana & Surana and RGNUL International Arbitral Award Writing Competition, 2025. This prestigious event provides students with a platform to delve into contemporary issues in arbitration and showcase their ability to think critically and draft reasoned arbitral awards. Over the years, the competition has earned a reputation for attracting some of the brightest legal minds, fostering an environment of healthy academic exchange, and encouraging participants to approach arbitration not just as a legal mechanism but as a tool for delivering justice in commercial disputes.

The competition not only encourages rigorous legal research and analytical reasoning but also nurtures clarity of thought and precision in writing. By engaging with real-world arbitration problems, participants will gain invaluable practical exposure to the nuances of dispute resolution, sharpening skills that are indispensable for future careers in advocacy, corporate practice, and international arbitration.

Upcoming Events

RGNUL Intra Client Counselling Competition 2025

The CADR, RGNUL is set to organise the Intra Client Counselling Competition 2025 from 10th to 12th September 2025 in offline mode. This event will offer RGNUL students an opportunity to engage in simulated client interactions, sharpening essential skills in client communication, ethics, and problem solving — key aspects for aspiring lawyers. With over 250 students expected to participate, the competition will mark a significant increase in interest, underscoring a collective commitment to experiential learning. Participants will handle realistic scenarios, offering professional and empathetic legal advice within a collaborative yet competitive environment. This experience will further CADR's mission to equip students with practical lawyering skills, preparing them to meet the challenges of future legal practice.

Completed Events

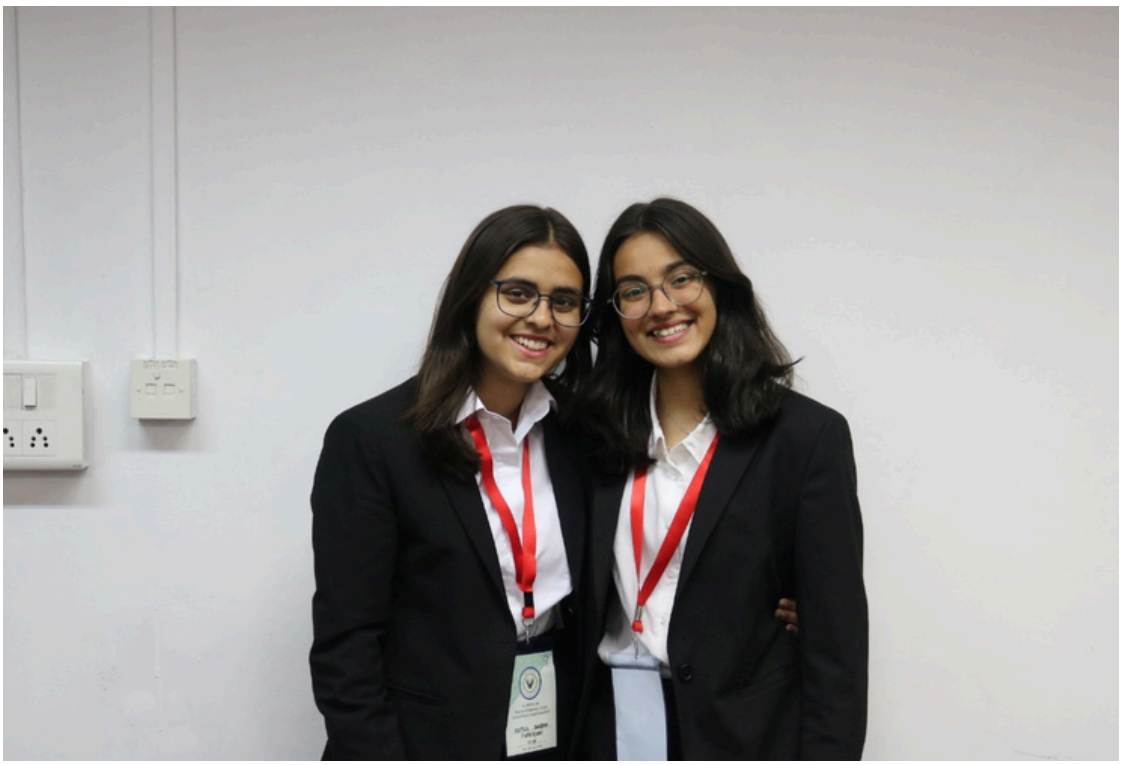
7th RGNUL Sports and Entertainment Law Mediation Competition, 2025

The CADR, RGNUL proudly hosted the 7th Edition of the RGNUL Sports and Entertainment Law Mediation Competition (SEMC), held from 25th to 27th April 2025 in the offline format. As the only mediation competition in India dedicated exclusively to Sports and Entertainment Law, SEMC drew eager scholars from across the nation to engage in intense mediation battles. Participants showcased their brilliance through exceptional negotiation and mediation skills, addressing interesting yet mind-boggling propositions that tested both their creativity and legal acumen.

The competition was graced by a distinguished panel of assessors and judges, including eminent advocates, academicians, and other legal luminaries, who enriched the rounds with their expertise and feedback. Organised in partnership with Zeus Law Associates and co-sponsored by the Asian School of Cyber Laws (ASCL), the 7th Edition of SEMC stood as a resounding success, further strengthening RGNUL's commitment to fostering a robust culture of alternative dispute resolution.

Achievements

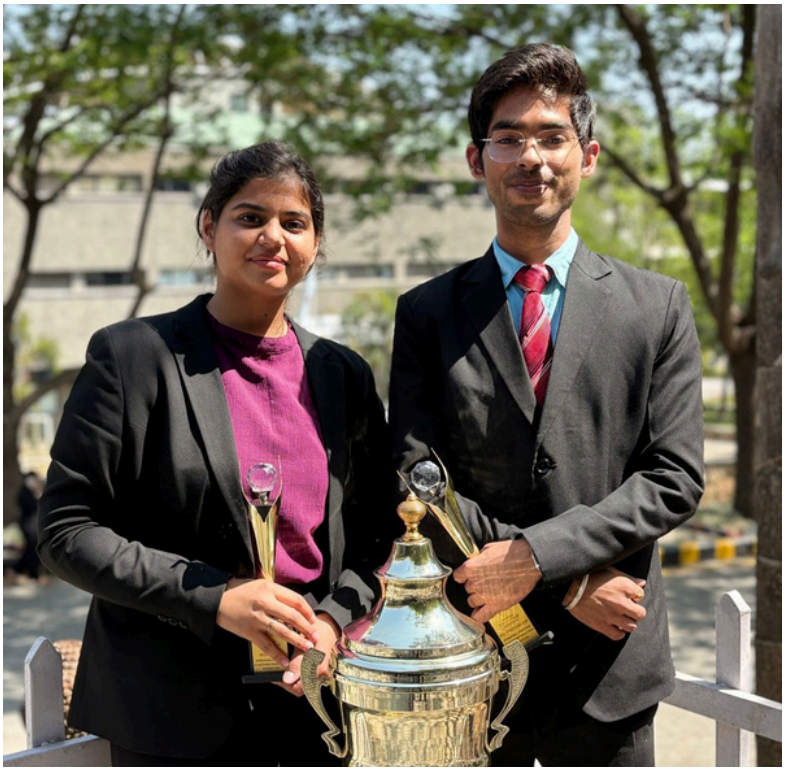
The National Corporate Client Counselling Competition 2025 | MNLU Mumbai



A team comprising of Kritvee Sharma (Batch of '29) and Ananya Kumar (Batch of '29) emerged as the Winner in The National Corporate Client Counselling Competition 2025, MNLU Mumbai. We wish them the best of luck for future endeavours!

Achievements

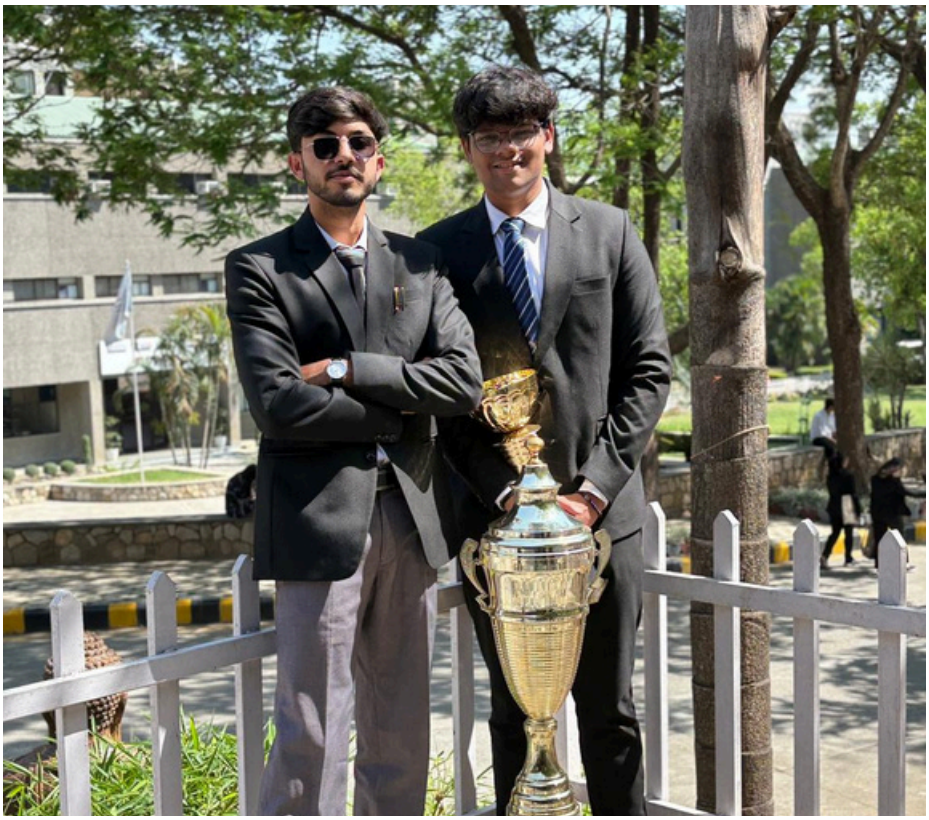
2nd International Competition on Negotiating Transaction Documents 2025 | School of Law, UPES Dehradun



A team comprising of Divyanjali Rathore (Batch of '27) and Vinay Jha (Batch of '27) were emerged as the Runners-Up, with Divyanjali Rathore being adjudged as the Best Client, in the 2nd International Competition on Negotiating Transaction Documents 2025, organised by School of Law, UPES Dehradun. We wish them the best of luck for future endeavours!

Achievements

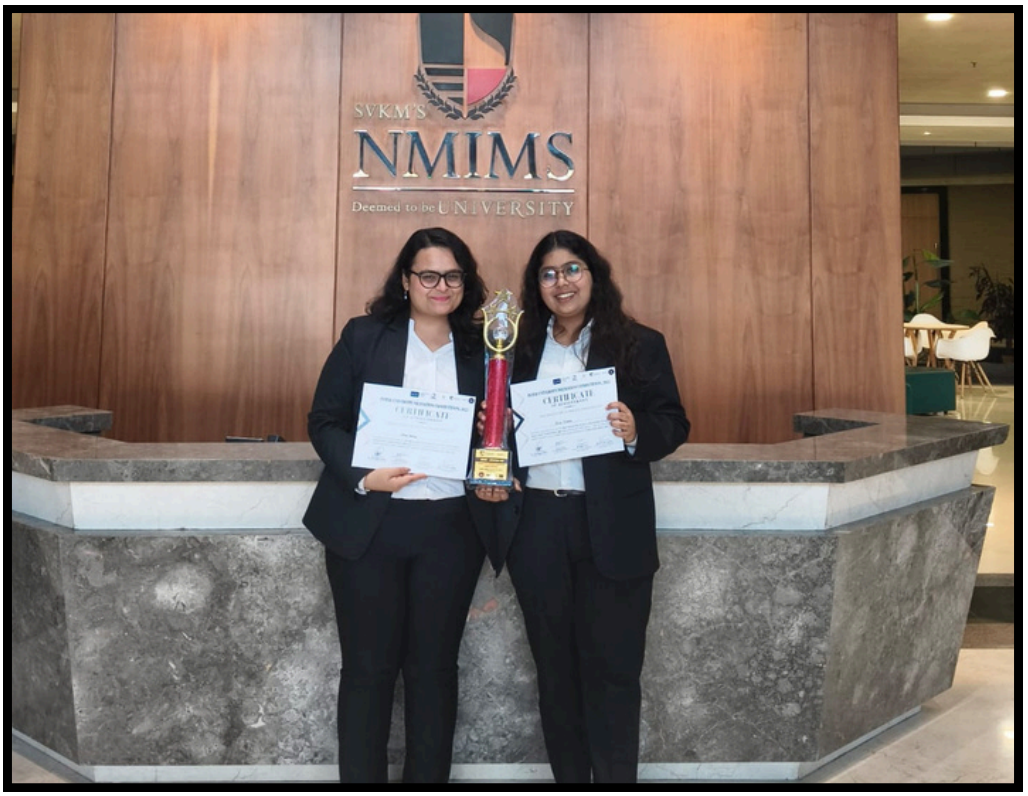
X UPES Madhyastham Client Counselling Challenge | School of Law, UPES Dehradun



A team comprising of Amratanshu Awasthi (Batch of '27) and Viraj Singh (Batch of '29) emerged as the Winners in the X UPES Madhyastham Client Counselling Challenge, organised by School of Law, UPES Dehradun. We wish them the best of luck for future endeavours!

Achievements

2nd Inter-University Mediation Competition | NMIMS Indore



A team comprising Sohum Sakhuja (Batch of '27) and Aliza Khatoon (Batch of '27) emerged as the Best Mediating Pair in the 2nd Inter-University Mediation Competition, organised by NMIMS Indore. We wish them the best of luck for future endeavours!

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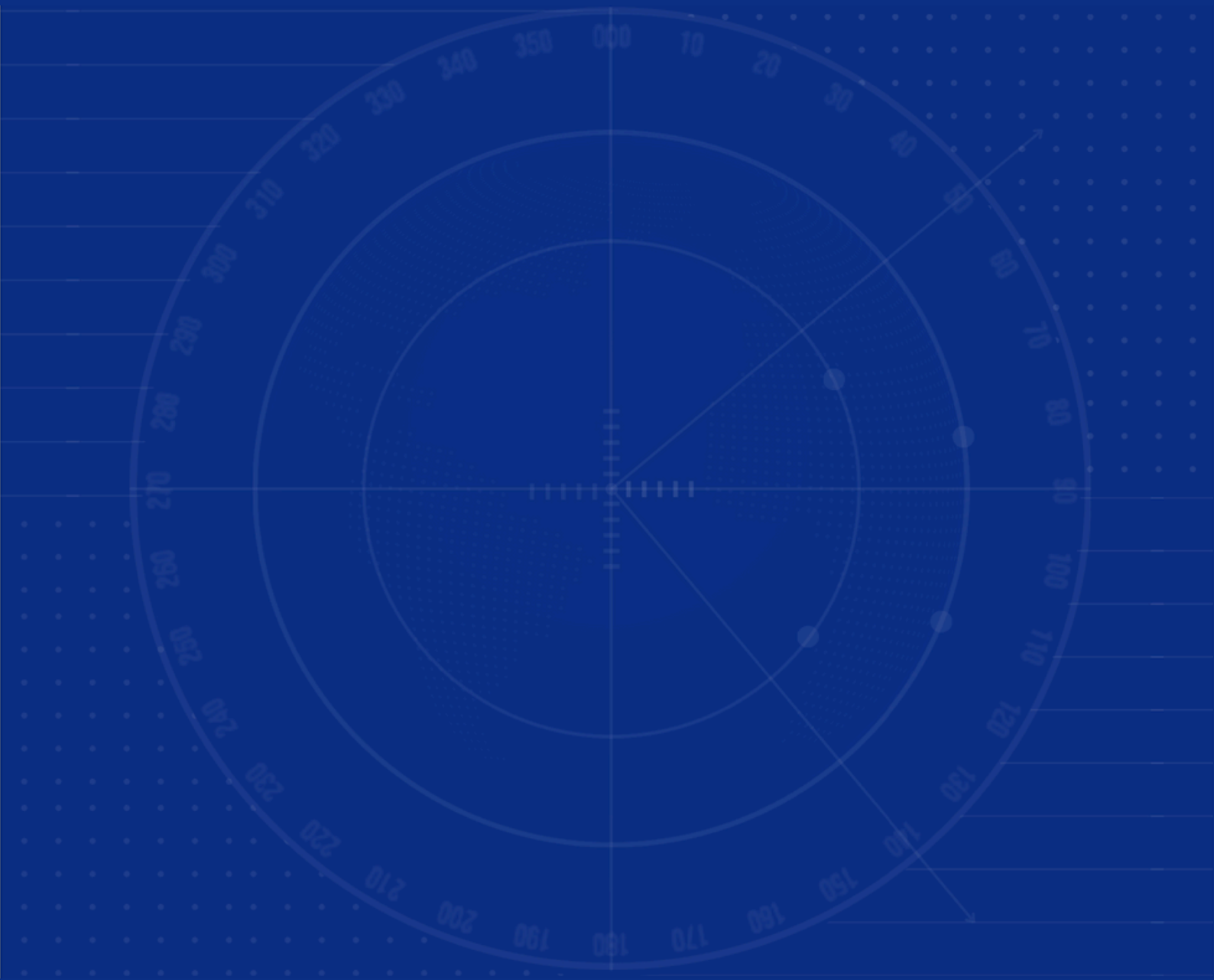

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