



THE CADR NEWSLETTER

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ABOUT US

The Centre for Alternative Dispute Resolution, RGNUL (CADR-RGNUL) is a research centre dedicated to research and capacity-building in ADR. The ultimate objective, at CADR, 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 Special Edition of the Fourth Volume of ‘The CADR Newsletter’. 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. The CADR Newsletter is a one-stop destination for all that one needs to know about the ADR world; a ‘monthly dose’ of ADR News!



-Aditi

Arbitration Clause contained in an Unstamped Contract is not Enforceable: Supreme Court

A five-judge bench in the case of *M/s. N.N. Global Mercantile Pvt Ltd v. M/s. Indo Unique Flame Ltd & Ors*, by a 3:2 majority, held that an instrument exigible to stamp duty under the Indian Stamp Act, 1899, containing an arbitration clause, must be stamped for it to be enforceable in the court of law. Otherwise, an unstamped instrument shall render the arbitration clause therein, non-existent in law. The reference to the constitution bench was made by the three-judge bench that held the contrary view based on the severability and separability of the arbitration agreement from the underlying agreement. The decision of the three-judge bench was declared to be not in accordance with the law. [Read judgement](#)[Read more](#)

To receive the benefit of Exclusion of Period when the Court was Closed, the Application Challenging the Award must be filed within the Limitation Period: Supreme Court

The Supreme Court ruled that an application under Section 34 of the

Arbitration and Conciliation Act, 1996, must be filed within the "prescribed period" of limitation, i.e. 90 days, in order to benefit from the exclusion of the period during which the Court was closed from the computation of the limitation period. If the application is submitted by using Proviso to Section 34(3) of the Arbitration Act, which extends the limitation period to 30 days at the Court's discretion, the applicant will not be entitled to benefit from such exclusion. [Read judgement](#)

Bombay HC focuses on the purpose of Section 31(5) while dealing with a signed Copy v. Certified Copy of the Arbitral Award Debate

Petitioners while challenging the application filed by the Respondents under Section 36 of the A&C Act to enforce the award to be infirm contended that the said award did not fulfil the conditions of Section 31(5) of the A&C Act. It was argued that the certified copy was delivered instead of the signed copy, thereby not fulfilling the conditions of Section 31(5) which stipulates the delivery of a 'signed copy' to each party. The Court held that the purpose of Section 31(5) is to bring the information regarding the contents of

the award to the notice and knowledge of each party so that a decision can be taken by the party regarding the future course of action to be adopted. Since the information was brought to the knowledge of the parties by 'certified copies', the contention of Petitioners was dismissed. [Read judgement](#)

Delhi HC invokes the "direct benefits" estoppel theory and the "intertwined estoppel theory" to implead a Non-Signatory to Arbitration

In the Section 11 petition under A&C Act filed, the Delhi HC used the direct benefits estoppel theory and the intertwined estoppel theory to a non-signatory (the builder/developer to arbitration as a respondent in a dispute arising out of a maintenance agreement between the maintenance agency and the owner of various commercial units in the given building. According to the HC, the developer benefited directly from the service agreement with the maintenance agency. Furthermore, the service agreement was closely related to the maintenance agreements, which included the arbitration clause. Thus, the court found the applicability of both

"intertwined" and "direct benefits" theory while impleading the non-signatory to arbitration in the said case. [Read judgement](#)

Calcutta HC invokes its Power under Article 133(1)(a) r/w Article 134A in matter where the entire 30-day period under Section 34(3) fell during the Court Holidays

The High Court of Calcutta has exercised its powers under Article 133(1)(a) read with Article 134A of the Constitution to allow the aggrieved party to directly appeal to the Supreme Court against its judgement on the grounds that the case involves a substantial question of law of general importance. The Court dismissed the petition wherein the whole 30-day period in the proviso to Section 34 coincided with court holidays as barred in law for having been filed beyond the period of limitation prescribed under the A&C Act but with the liberty to the aggrieved party to directly approach the Supreme Court in appeal. [Read judgement](#)

It is the Arbitrator who has the Jurisdiction to Decide the Issue of Full

and Final Settlement of the Dispute b/w the Parties

In the given case the petitioner had approached the court to appoint an arbitrator under Section 11 of the A&C Act, however, the respondents objected to the appointment stating that the parties have reached an accord with regard to the dispute in question. The petitioners responded by claiming that the said agreements were not obliged and hence the dispute continues. The Court stated that when exercising jurisdiction under Section 11 of the A&C Act, the High Court must confine its inquiry to determining the existence of the arbitration agreement and cannot inquire into contested facts. The Court held that the issue regarding the full and final settlement of the dispute between the parties is a dispute question of fact that falls within the purview of the arbitrator. [Read judgement](#)

Illegality in the Appointment Process of the Arbitrator does not render the Whole Arbitration Agreement Invalid: Bombay HC

The Bombay HC held that simply because the procedure for appointing the arbitrator under the arbitration

agreement is declared illegal by the addition of Section 12(5) and the Supreme Court's decision in Perkins Eastman according to which the appointment of the sole arbitrator cannot be made unilaterally by one of the parties, the entire arbitration agreement is not rendered unworkable. The Court concluded that the decision to resolve the issue through arbitration is one thing, and the selection of a particular arbitrator is another and that both are severable and different from one another. It was found that when dealing with an arbitration clause that has partially become invalid, the courts can separate the illegal piece while retaining the remaining component if there is a clear intention to arbitrate. [Read judgement](#)

Continuation of Negotiations does not Interfere with the "Cause of Action" for the Purposes of Limitation: Supreme Court

In a petition under Section 11(6) of the A&C Act praying for the appointment of an arbitrator to adjudicate the disputes between the petitioners and the Ministry of Defence, the court held that the petitioners' claims were 'hopelessly

Time-barred'. The SC referred to the residual provision under Article 137 of the Limitation Act, since Section 11 does not prescribe any time period for filing an application for appointment of the arbitrator, which provides the time period to be limited to 3 years from the cause of action. Even though the contract between the parties provided for bilateral discussions to be the first resort for the resolution of any conflict between the said parties but mere negotiations will not postpone the "cause of action" for the purpose of limitation. [Read judgement](#)|[Read more](#)

Mere Procedural Irregularities in Arbitration Proceedings cannot be the Ground for Setting Aside an Award: Delhi HC

The court was dealing with a petition under Section 34 of the A&C Act which challenged the award on merits and procedural irregularities alleging that the arbitral award shocks the conscience of the court. The bench stated that procedural irregularities such as some of the Arbitral Tribunal's Orders not being signed by all of the Arbitrators and one of the Arbitrators not being present during some Arbitral Proceedings had no

bearing on the parties' rights. They also do not result in a denial of justice to any of the parties, according to the court. The bench determined that these anomalies do not have the potential to influence the Arbitrators' conclusion, and hence the award cannot be thrown aside on those grounds. The contention on merits was also dismissed with the court remarking that the Arbitral Tribunal's interpretation and construction of the contract were based on evidence and the contractual provisions. [Read judgement](#)

The clause providing for Arbitration as an Option for resolving Disputes is not a Binding Arbitration Agreement: Calcutta HC

Having arbitration as an option in the agreement between the parties does not bind them to go for arbitration. In the given case, the clause regarding the resolution of disputes gave the parties the option of either litigation or arbitration. The court relied on various precedents to hold that the mere possibility of arbitration is not enough to consolidate an arbitration agreement and hence, the court dismissed the application filed by the petitioners to

appoint an arbitrator under Section 11 of the A&C Act. [Read judgement](#)[Read more](#)

[De-jure Ineligibility of the Arbitrator can be raised as an Additional Ground to set aside the award without amending the petition under S. 34: Delhi HC](#)

Ruling that the plea of de jure ineligibility of the arbitrator is a plea of lack of jurisdiction, the HC held that the same can be raised as an additional plea to the Section 34 application by way of amendment or even without it. In the given case before the HC, the petitioner's application for amendment was allowed even after the limitation period mentioned under Section 34(3) was breached. The court further stated that the petitioner's filing of petitions under Section 29A of the A&C Act for the extension of the mandate of the Sole Arbitrator does not constitute a "agreement in writing" under the proviso to Section 12(5). Thus, the petitioner cannot be deemed to have waived the

Sole Arbitrator's ineligibility by filing the Section 29A petitions, the court held.

[Read judgement](#)

[Expert Committee has been constituted by the Central Govt to look into reforms in A&C Act](#)

To recommend reforms to the Arbitration and Conciliation Act. 1996, the Department of Legal Affairs, Ministry of Law and Justice has constituted an expert committee headed by former Law Secretary, T K Vishwanath. The panel includes a total of 16 members. The committee shall analyze the working of the Act, suggest solutions to limit the requirement for parties to approach the court for its intervention and address the issues for providing expeditious finality to the awards among other objectives. [Read more](#)

[Extension of Period of Agreement by Written Communications instead of Novation will not Impact the Operation of Arbitration Clause: Delhi HC](#)

The Delhi High Court has ruled that if the parties have prolonged the duration of the agreement by written communications, the arbitration clause that was part of the agreement remains in effect. The bench differentiated between situations in which an arbitration clause expires with the novation of the main agreement and situations in which the arbitration clause remains in effect when the original agreement is not superseded by any other agreement but is extended by the parties through written communications.

[Read judgement](#)

-Aishwarya Singh Bishnoi

Kazakhstan starts arbitration over oilfields

According to Kazakhstan's energy minister, arbitration proceedings have been initiated against businesses working on the country's Kashagan and Karachaganak oilfields valued over \$13 billion and \$3.5 billion in expenditures, respectively.

The Astana administration has previously engaged in a number of disagreements about the terms of oil agreements with its partners, most of which have been resolved.

The allegations, according to a recent Bloomberg story, include the years 2010 to 2018 for Kashagan and 2010 to 2019 for Karachaganak.

After three years of discussions, Kazakhstan and the Karachaganak consortium resolved their most recent disagreement in 2018, with the company paying Astana \$1.1 billion and granting it a larger share of future income. [Read more](#)

Libya defeats 660 Million Dinars claim of Korea

The Korean Shinhan Construction Company had filed an arbitration claim against the Libyan government, in which Libya has prevailed.

According to a statement released by a Government Department, the filed complaint was founded on a bilateral investment agreement between Korea and Libya that aims to promote and safeguard investments. The value that the Korean corporation claimed from Libya was more than 660 million Libyan dinars, including interest that was owed up to the date of payment.

According to the Department, the Korean corporation had alleged that four housing and infrastructure projects being implemented had been violated by the contractual parties. [Read more](#)

Finnish state entity brings ICC claim over Russian wind farms

RFortum Oyj, a state-owned corporation in Finland, has filed a claim for arbitration against Vestas Wind Systems A/S in Sweden. In order to comply with European Union sanctions brought on by Russia's invasion of Ukraine, Vestas terminated contracts for Russian wind

projects, giving rise to the arbitration claim, which exceeds 200 million euros. Vestas was unable to fulfill its obligations under contracts with the Russian customer WEDF, which is controlled by Fortum, due to sanctions and export control laws passed in 2022. [Read more](#)

Arbitrator pressed with criminal charges

In Spain, charges have been filed against the arbitrator who mandated that Malayasia pay US\$14.92 billion (RM62.59 billion) to the purported descendants of the last sultan of Sulu. According to reports, Gonzalo Stampa has been accused of disobeying a Madrid court's ruling to revoke his appointment as an arbitrator. According to reports, Stampa was accused of engaging in "unqualified professional practise" and, if proven guilty, could spend up to three years in prison. The 1878 agreement between Malaysia and the former Sulu monarchy in the Philippines had been broken, which gave rise to the arbitration claim. [Read more](#)

Crowell & Moring's side-switching a

Ubetrayal, alleges Walgreens

Crowell & Moring's "unethical side-switching," which resulted in a \$642 million arbitration award against Walgreens, is said to have been the cause of the award being gained by "undue means" in a May 19 revised petition aiming to vacate the verdict. According to the petition, Crowell & Moring provided Walgreens with recommendations about whether a pharmacy savings club would have an impact on the "usual and customary" rates that the drugstore submitted to insurers for reimbursement in 2008 and 2009. Then, in 2017, Crowell & Moring sent Humana, a health insurance provider, a "pitch" document in which they claimed Walgreens and other pharmacies had overcharged the insurer. [Read more](#)

Pakistani company launches arbitration against UN

A Pakistani poultry firm has filed a complaint with the Permanent Court of Arbitration, a non-UN intergovernmental organization located in The Hague, against a UN organisation,

alleging that it violated a procurement contract. Against a specialised agency of the United Nations (UN), the claimant wishes to bring a multi-million rupee lawsuit against the agency for contract violation. [Read more](#)

Real Madrid lose €400m court battle with Mubadala

According to several reports, Spanish football powerhouse Real Madrid have lost a €400 million (US\$435 million) court dispute with the Mubadala Abu Dhabi sovereign wealth fund over the proposed sponsorship of their stadium.

They entered into a strategic agreement in 2014 to provide funding for a project to restore the Santiago Bernabéu home which was put on hold in 2015 by a Madrid court. The variations from the initial concept were reported to be the reason why Mubadala withdrew from the project. Then, in 2018, Real Madrid filed a lawsuit against the fund in the International Chamber of Commerce (ICC) Court of Arbitration, claiming they were due €400 million (US\$435 million) in investment before the sovereign investor backed out of the agreement. [Read more](#)

SCOTUS crackdowns on deceitful efforts to avoid award enforcement

According to the U.S. Supreme Court, a foreign plaintiff may file a lawsuit against a domestic U.S. judgement debtor under the Racketeer Influenced and Corrupt Organisations Act ("RICO") for the debtor's dishonest domestic attempts to evade payment on a U.S. judgement upholding a foreign arbitral award. Justice Sotomayor concluded in the case of Yegiazaryan v. Smagin that foreign plaintiffs may file a civil RICO lawsuit provided "the circumstances surrounding the alleged injury" occurred in the US. This judgement establishes that international arbitration award creditors are eligible for RICO, including its payment of triple damages and solicitors' costs, when there are sufficient accusations to prove domestic harm. [Read more](#)

Cryptocurrency exchange permitted to arbitrate by US SC

The US Supreme Court supported cryptocurrency exchange Coinbase Global Inc.'s request to halt customer lawsuits while it attempts to exit litigation and move towards private

arbitration. In a 5-4 decision, the justices overruled a lower court's judgement concerning a user who filed a lawsuit after a fraudster stole money from his account. A potential class action lawsuit had been allowed to proceed by the lower court as Coinbase pushed its app appeal, arguing that the issues should be resolved through arbitration. [Read more](#)

Nigeria witnesses dawn of new arbitration regime

The 2023 Arbitration and Mediation Act (the "Act"), which provides an updated and contemporary legal framework to organisations looking to arbitrate their commercial disputes in Nigeria, was signed by the President of the Federal Republic of Nigeria on May 26, 2023. The Act adds a number of unique provisions, including those on Award Review, Emergency Arbitrator Procedure, Third Party Funding, Interim Measures and their Enforcement, Grounds for Setting Aside of Awards, Limitation Period, etc. [Read more](#)

Italian Energy group initiates arbitration against US Developer

Italian energy company Edison has filed

an arbitration case against US developer Venture Global LNG, alleging that unjustifiable delays have occurred in the supply of LNG supplies that were agreed to be delivered from the US' Calcasieu Pass project in Louisiana. A "unjustified" and "intolerable" delay, according to the Italian company, compelled it to initiate legal action in May at the London Court of International Arbitration. According to individuals familiar with the situation, Venture Global had claimed force majeure due to its inability to fulfil its obligations as of the end of September this year, the deadline for delivery to Edison. [Read more](#)

-Dhanya Jha

[High Court of Australia recognised and enforced an investment arbitration award against the Kingdom of Spain](#)

In the landmark judgement of Kingdom of Spain v. Infrastructure Services Luxembourg S.à.r.l. & Anor, the High Court of Australia held that Spain could not claim immunity against the recognition and enforcement of an arbitration award. The High Court's proceedings resulted from judgements rendered in two separate ICSID arbitrations between Spain and foreign investors, from Netherlands and Luxembourg, against Spain's violations of the multilateral treaty obligations. [Read more](#)

[Moscow ordered to pay a compensation of USD 5 billion for illegal expropriation of Naftogaz's assets](#)

Naftogaz, Ukraine's gas company emerged victorious in its case against Russia for expropriation of its assets in 2014 when Russia annexed Crimea. Naftogaz had initiated arbitration proceedings in October 2016. The Permanent Court of arbitration at Hague ruled Russia to pay USD 5 billion dollar to the company in April 2023.

decision is crucial in light of the Russia's invasion of Ukraine which began in 2022. [Read more](#)

[Spain cannot claim immunity to avoid ICSID award](#)

The London High Court dismissed Spain's claim of sovereign immunity against the enforcement of an award of 101 million euros. The award arises from International Centre for Settlement of Investment Disputes (ICSID) proceedings that were initiated by Infrastructure Services Luxembourg and Energia Termosolar against Spain for withdrawing renewable energy subsidies. [Read more](#)

[Costa Rica sued by investors before ICSID for expropriation of land under Germany-Costa Rica BIT](#)

German investors have filed claims against the Costa Rica government before International Centre for Settlement of Investment Disputes (ICSID) for expropriation of the land for the purpose the construction of a hydroelectric power plant. In February 2021, the Costa Rican Electricity Institute confiscated the investors along

Reventazon River which was a tourist spot owned by the investors. [Read more](#)

[Arbitration proceedings launched before ICSID by Enerflex](#)

Enerflex, a Canadian energy infrastructure company has initiated proceedings against the ruling of the Mexican Court before International Centre for Settlement of Investment Disputes (ICSID). The ruling pertains to a labour litigation wherein the Mexican Court awarded \$120 million additional damages to an ex-employee. Enerflex alleges it to be an indirect expropriation. Enerflex claims to have initiated the investment arbitration after the ministry did not respond to its request for a comment on the decision.

[Read more](#)

[Zenith Energy initiates arbitration proceedings claiming USD 48 million against Tunisia](#)

On 5th June, 2023 Zenith Energy filed claims against Tunisia regarding oil concessions. The proceedings initiated at International Centre for Settlement of Investment Disputes are in lieu of the UK-Tunisia bilateral investment treaty of

1989. The USD 48 million worth dispute relates to the Sidi El Kilani and Ezzaouia oil concessions and arbitrary obstructions against the sale of processed oil in the region of North African country. The proceedings are a result of failed negotiations with the Tunisian government. [Read more](#)

[Nepal triumphs over Axiata Investments UK in its first ever ISDS arbitration](#)

Foley Hoag LLP earns a victory for Nepal against USD 422 million claim brought by Axiata Investments UK Limited and Ncell Axiata Limited. Ncell Axiata was taxed by the Nepal's Large Taxpayers Office on the transaction of 80% share holding by Axiata Investments. The apex court of Nepal held the imposition of tax to be valid under Section 57 and 73 of Income Tax Act, 2002. Against the aforementioned decision of the court, Axiata Investment initiated International Centre for Settlement of Investment Disputes (ICSID) proceedings for breach of the BIT between Nepal and UK. [Read more](#)

[Turkmenistan wins arbitration case against Russia's Mobile TeleSystems](#)

Turkmenistan received a significant victory as all claims brought by Russia's Mobile TeleSystems were rejected by International Centre for Settlement of Investment Disputes. Additionally, the tribunal awarded Turkmenistan USD 11 million to cover its arbitration costs. Russia's Mobile TeleSystems claimed losses worth USD 1.2 billion from its premature exit from the mobile market of Turkmenistan owing to wrongful data quality issues. [Read more](#)

J&K and Ladakh HC: Mediation Proceedings Are Confidential and Cannot Be Used in Court Proceedings

The Jammu and Kashmir and Ladakh High Court has emphasized that proceedings conducted before a Mediator are confidential, and parties cannot be forced to adhere to offers made during negotiations. This ruling came during a hearing on a petition challenging an order by a Sub Judge. The petitioner sought to amend their complaint, including incorporating a subsequent construction event and a failed compromise with the defendants. However, the court noted that the compromise was not signed by the defendants and, even if it existed, it was merely a piece of paper with no impact on the outcome of the case. The court emphasized that discussions and drafts exchanged during mediation must remain confidential and cannot be used in court proceedings. Consequently, the petition was dismissed, upholding the trial court's order. [Read Judgement](#)

CJI DY Chandrachud to the Union Government: "Mediate, Don't Litigate"

Chief Justice of India, DY Chandrachud,

has urged the Indian government to shift from adversarial litigation to alternative dispute resolution methods, particularly mediation, to alleviate the burden on courts and promote collaborative and interest-based justice. On April 14, speaking at the National Conference on Mediation, he highlighted the importance of dialogue, negotiation, compromise, and consensus building in both the drafting of the Indian Constitution and mediation. Chandrachud emphasized the transformative nature of mediation, which empowers ordinary people to make decisions and evaluate outcomes. He praised mediation for its potential to provide timely and affordable justice, reduce judicial caseloads, and foster personalized, inclusive, and democratic conceptions of justice. He called on the government to embrace mediation as a friend, partner, and problem solver rather than an adversarial opponent. [Read More](#)

IAMC Hyderabad Hosts the 1st Indian Mediation Day

The International Arbitration & Mediation Centre (IAMC) in Hyderabad hosted the 1st Indian Mediation Day on

April 16, 2023. The event was attended by prominent figures such as Justice NV Ramana, Former Chief Justice of the Supreme Court of India, and Justice Hima Kohli, Judge of the Supreme Court of India. Panel discussions were held on various topics, including the relevance of mediation in cross-border disputes and India's emergence as a hub for institutional mediation. Justice L. Nageswara Rao highlighted the need for alternative dispute resolution to alleviate the burden on courts. Justice Kohli discussed the benefits of mediation, the current state of mediation in India, and the proposed Mediation Bill, 2021. The importance of online dispute resolution (ODR) was also emphasized, along with the need for trained mediators and a robust legal framework. The event aimed to increase awareness, develop infrastructure, encourage international participation, and foster a culture of mediation. [Read More](#)

Jharkhand State Legal Services Authority Launches "Mann Ka Milan Pakhwara"

The Jharkhand State Legal Services Authority (JHALSA) has launched a campaign called 'Mann Ka Milan Pakhwara' to promote dispute

resolution through mediation. The campaign, which will run until June 14, includes the display of posters, handbills, banners, and video clippings at court buildings, police stations, and public places across the state. These materials aim to raise awareness among disputing parties about the benefits of mediation. Litigants entering the courts are being provided with handbills containing information on mediation. The campaign also features success stories of mediation shared through video clippings. Warring groups can seek advice on mediation from mediators, police, and the secretary of the district legal service authority on a daily basis. JHALSA officials emphasize that mediation offers advantages such as quicker resolution, cost savings, and the opportunity for mutual agreement. JHALSA will provide advocates at government cost, assistance with document preparation, and free documents, orders, and decisions. The campaign involves the engagement of para-legal volunteers, mediators, and officers to raise awareness about mediation among the public. [Read More](#)

[Delhi HC: Guidelines for Mediators Involved in Drafting Settlements Agreements in Matrimonial Cases](#)

The court emphasized the importance of coherence, consistency, and clarity in these agreements to prevent future conflicts. The court directed that settlement agreements must include the names of all parties involved and avoid terms like 'respondent' or 'petitioner' to avoid ambiguity. The agreements should clearly specify timelines for fulfilling terms and conditions, include a default clause, and explain the consequences of default. Additionally, the court directed mediators to prepare settlement agreements in Hindi, in addition to English, to ensure better comprehension, as many parties involved in these cases do not understand English well. The court expressed the hope that clear and carefully prepared agreements in Hindi would lead to successful outcomes in mediation centers and subsequent court proceedings. The court acknowledged the sensitive nature of matrimonial disputes and emphasized the long-lasting impact of the agreements on the lives of the parties involved. [Read More](#)

US Backs China's Mediation in the Russia-Ukraine Conflict

In an interview with NPR, US Secretary

of State Antony Blinken described recent diplomatic talks with China as "candid, substantive, and constructive," although acknowledging the significant differences between the two countries. Blinken emphasized the importance of engaging with China, citing the need for consistent communication to avoid misunderstandings and conflicts. He also noted that dialogue is crucial for resolving issues such as detained Americans, cooperation on fentanyl, and protecting the interests of American workers and companies operating in China. While acknowledging China's growing role as a global mediator, particularly in the Middle East, Blinken stated that the United States remains the preferred partner for countries in the Persian Gulf. He expressed support for China's initiatives that contribute to problem-solving, such as in Ukraine, as long as they contribute to establishing a just and lasting peace in the region. [Read More](#)

Mediation Mela Conducted by DCDRC in Namakkal

The Namakkal District Consumer Disputes Redressal Commission (DCDRC) in India announced a mediation

mela (fair) on June 15th to address over 70 execution applications filed against companies and individuals who have failed to pay ordered compensation. In May, the DCDRC had issued arrest warrants against 33 people in relation to these cases. The mediation mela aims to facilitate discussions between the parties involved, including those who are required to pay compensation, those against whom arrest warrants were issued, and those who have appealed the decisions. Lawyers from Paramathi Velur, Tiruchengode, and Namakkal will act as mediators during the mela. Additionally, the Namakkal and Rasipuram police inspectors have been instructed to provide reports on the status of arrest warrants issued in ten cases. The DCDRC has the power to impose three years of imprisonment, as stated in Section 72 of the Consumer Protection Act, for non-compliance with the commission's orders. [Read More](#)

Mehvish Alam & Diya Gaur

NN Global Mercantile Pvt Ltd v. Indo Unique Flame Ltd & ors.

(2023 SCC OnLine SC 495)

Introduction

The Apex Court has recently, in the case of *NN Global Mercantile Pvt Ltd v. Indo Unique Flame Ltd & Ors*, held that an unstamped arbitration agreement will not be enforceable. It declared a contract invalid due to non-payment of stamp duty which led to the arbitration agreement embedded within being declared non-enforceable as well. The judgment may come across as a surprise owing to the foundational principle of separability, which states that an arbitration clause is considered to have a separate and independent existence vis-à-vis other provisions of a contract. The validity of the clause has seemingly been held to be dependent on the validity of the rest of the contract. The verdict overruled a previous judgement of the Apex Court on the same issue and is being criticized as a set-back to India's pro-arbitration approach.

Factual Matrix at a Glance

The parties entered into a sub-contract work order for the transportation of coal which also enclosed the arbitration

clause. Clause 9 of the work order contained the provision of a bank guarantee to be furnished by N.N. Global Mercantile Pvt. Ltd to Indo Unique Flame Ltd. The invocation of a bank guarantee by the Respondent led to a suit being filed by the Appellant against the invocation. The Respondent requested the court to refer the parties to arbitration u/s 8 of the Arbitration and Conciliation Act, 1996 ("Act") in light of the presence of a valid arbitration clause in the contract. However, the Commercial Court rejected this application of the Respondent, who then challenged this order before the Bombay High Court through a writ petition. The Bombay High Court allowed the writ petition and the issue came to be reconsidered before the constitutional bench of the apex court. Before the High Court, the issue was to determine the enforceability of an arbitration agreement which is contained in an unstamped and unenforceable work order.

Judgment

The Supreme Court gave the following judgement with a 3:2 majority.

Majority View

The majority opinion stated that an instrument that is exempt from stamp duty but includes an arbitration clause that is not stamped cannot be considered legally enforceable. They also concluded that an unstamped instrument, which is required to be stamped but is not a contract and not legally enforceable, cannot exist in the eyes of the law. The majority approved paragraphs 22 and 29 of the *Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Engineering Limited* case, as well as the *Vidya Drolia* case.

The Court explained that the purpose of including Section 11(6A) in the Arbitration and Conciliation Act, 1996 was to limit the Court's role in determining the existence of an arbitration agreement. A certified copy of the agreement should clearly indicate the payment of stamp duty. If it fails to do so, the Court should not rely on that certified copy. If an instrument is presented without proper stamping, the Court, as per Section 11(6A) of the Act,

is obligated to follow the Stamp Act, 1899 under Section 33.

An arbitration agreement under Section 7 of the Act requires payment of stamp duty, and if it is not stamped or is inadequately stamped, it cannot be enforced under Section 35 of the Stamp Act, unless the necessary duty is paid subsequently.

The provisions of Section 33 and the restrictions in Section 35 of the Stamp Act apply to instruments subject to stamp duty. In addition, under Section 3 of the Act read with the Schedule, the arbitration agreement in such an instrument would be considered non-existent in the eyes of the law unless the instrument is validated according to the Stamp Act.

Minority View

The dissenting opinion expressed concern over an increased judicial intervention and delay in arbitration proceedings if the process is halted at the preliminary stage due to non-payment of stamp duty, which is a mere 'curable defect' capable of being solved at a later stage.

Furthermore, the minority reasoned that the issue of the enforceability of an arbitration agreement due to non-payment of stamp duty is an issue to be examined by the arbitral tribunals.

Analysis

Doctrine of Separability: The Doctrine of Separability entails that an arbitration clause has a separate and independent existence apart from the contract. This doctrine is reinforced by Article 21(2) of the UNICTRAL Arbitration Rules which further mentions that if the contract is declared null and void by an arbitral tribunal, the arbitration clause present therein will not become ipso facto void. In the present case, however, the arbitration clause inserted in the contract was held to be non-enforceable as well. The validity of the clause being fixated on the rest of the contract negates the proposition contained in Section 7(2) of the A&C Act, which inter-alia states that an arbitration agreement may be in the form of an arbitration clause in a contract. It was rendered non-enforceable because the work order was unstamped. This comes as a surprise because the Supreme Court in its 2021 judgement, whilst adopting a

pro-arbitration approach held that non-payment of stamp duty will not serve as the ground for rendering the arbitration agreement void. This error was not considered as grave to declare the agreement unenforceable and was labelled as a 'curable defect' by virtue of words "unless duly stamped" occurring in Section 35 of the Stamp Act, 1899. This ensured a smooth and efficient utilisation of the arbitration clause by underpinning the doctrine of separability. However, the present judgement does not appear to be in consonance with this principle. If the contract is unstamped the arbitration clause will also become non-enforceable, negating the doctrine of separability. impact the enforceability of the arbitration agreements.

Doctrine of Kompetenz-Kompetenz: This is a foundational principle of any arbitration which gives the arbitral tribunal the power to determine its own jurisdiction to hear a particular claim brought before it. In India, this doctrine has evolved over time to provide for the rule of minimal judicial interference where parties expressly arbitrate their disputes. Section 11(6A) of the Act mandates any judicial

authority hearing an application for appointment to only confine its examination to the mere existence of an arbitration clause- "*nothing more or nothing less*", and the questions of its substantive validity must be left to the arbitral tribunal. The same principle extends to applications under Section 8 as well, as held by a 3-judge bench in the case of *Vidya Drolia v. Durga Trading Corporation*. However, in *Vidya Drolia*, the Court has also laid down to enable judicial authorities to conduct a prima-facie inquiry into the validity and in rare situations, the arbitrability aspect of the arbitration agreement. While in doing so, it has been cautioned to not transgress into the domain of the arbitral tribunal because "*when in doubt, the courts must refer*". The question therefore, of whether the issue of adequate stamping is a question to be examined by the courts is answered in the affirmative relying on the ruling in the case of *Vidya Drolia*. The Amicus, on the contrary, told the court that a deeper examination under Section 33(2) of the Stamp Act, 1899 shall be done by the arbitral tribunal since it has the power to do so u/s 16 of the Act, and that this is the correct way of harmoniously interpreting both the sections.

It is also difficult to understand in light of the Court's ruling, how an issue of stamping, being a perfectible defect, can altogether take away the jurisdiction of an arbitral tribunal. This, in the opinion of the author, casts a chilling effect on the autonomy of an arbitral tribunal to rule upon its own competence.

Conclusion

While the judgement deals with the stamping of arbitration agreements, the implications of the same will be felt across the arbitration process. In the opinion of the author, juxtaposing the arbitration agreement to a statute that itself treats non-stamping as a curable defect to declare unstamped arbitration agreements as non-est in law, is an erroneous position. This puts India's efforts to become a pro-arbitration jurisdiction backstage. From a commercial point of view, compliance with the Stamp Act becomes utmost necessary for the conclusion of new contracts containing arbitration clauses, and even standalone arbitration agreements. However, for ongoing arbitrations, this translates into additional rounds of delay and potential setting aside of awards u/s 34 of the Act.

This opens a Pandora's box for potential annulment of arbitral awards on the grounds of insufficient stamping of the arbitration agreement, since now non-stamping or inadequate stamping is considered to lie at the heart of the tribunal's jurisdiction. However, in a judgement passed on 04th July, 2023 by the Delhi High Court in the matter of *ARG Outlier Media Private Limited v. HT Media Limited*, a single-judge of the High Court, acting u/s 34 of the Act, has held the judgement in NN Global (supra) to be not applicable to insufficiently stamped arbitration agreements if it has been already admitted as evidence by the arbitrator. Albeit it is yet to be seen, how this issue would be approached by different High Courts and the Supreme Court.

The judgement is predicted to cause significant delays as well. The process of adjudicating stamp duty in India along with any payable penalty is a lengthy affair, especially in the absence of any statutorily prescribed time frame for completion. This potentially sets off the parties' expectations of a speedy and effective resolution of their disputes through arbitration.

Taking cognisance of the same in the case of *Uno Minda Limited v. Deputy Commissioner, Revenue Department*, the Delhi High Court with respect to the Delhi Act, 2011, has directed the relevant stamp authority to complete the adjudication process within 30 days of the filing of an application by the party.

The NN Global verdict is applicable to domestic arbitrations and India-seated international arbitrations. Indian courts have consistently shown a pro-arbitration approach in recent years and there has been a push for enforcement, third-party funding, emergency arbitration, etc. However, the current judgement only shows that there is still a long way to go in terms of bringing judicial intervention to a minimum in the arbitral landscape.

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