



CADR NEWSLETTER

THE OFFICIAL NEWSLETTER OF
CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION,
RGNUL, PUNJAB

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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 fourth Issue of the Third 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!



ADR UPDATES

ARBITRATION

DOMESTIC ARBITRATION

1. ORDERS REFUSING TO CONDONE THE DELAY ARE APPEALABLE: SUPREME COURT

The Supreme Court in *Chintels India Ltd v. Bhayana Builders Pvt Ltd* unequivocally held in an appeal against a Delhi High court order that an order refusing to condone the delay under Section 34(3) of the Arbitration and Conciliation Act, 1996 amounts to refusal under section 34, and is therefore appealable, under Section 37(1)(c) of the Act. The Apex Court resorted to the literal interpretation of “setting aside or refusing to set aside an arbitral award under section 34” in Section 37 in place of narrowing the expression to the provisions of Section 34(2) of the Act.

[Read more](#)

2. INDIA CAN CHOOSE A FORUM FOR ARBITRATION OUTSIDE INDIA: SUPREME COURT

The Apex Court in *PASL Wind Solutions Private Limited v. GE Power Conversion India*

Private Limited affirmed that Indian parties can arbitrate outside India. The Bench headed by Justice Rohinton Fali Nariman held that “Nothing stands in the way of party autonomy in designating a seat of arbitration outside India even when both parties happen to be Indian nationals”.

[Read more](#)

3. NOVATION OF CONTRACT CONTAINING AN ARBITRATION CLAUSE CANNOT BE CONSIDERED: SUPREME COURT

The 3-judge bench comprising RF Nariman, BR Gavai and Hrishikesh Roy in *Sanjiv Prakash v. Seema Kukreja* in an appeal against the dismissal of a petition before the High Court of Delhi observed that the question of novation of a contract containing an arbitration clause cannot be considered in a petition filed under Section 11 of the Arbitration and Conciliation Act.

[Read more](#)

4. OPEN FOR PARTIES TO AN ARBITRATION AGREEMENT TO CHANGE THE SEAT OF ARBITRATION BY MUTUAL AGREEMENT: SUPREME COURT

The Apex Court in *M/s Inox Renewables Ltd v. Jayesh Electricals Ltd* held that parties to an

arbitration agreement can change the seat of arbitration by mutual agreement provided the same is recorded in the award and is not challenged by either party.

[Read more](#)

INTERNATIONAL COMMERCIAL ARBITRATION

1. AN APPEAL UNDER SECTION 69 ALLOWED BY THE ENGLISH HIGH COURT

The English High Court in *CVLC Three Carrier Corp and another company v. Arab Maritime Petroleum Transport Co.* allowed an appeal under Section 69 of the Arbitration Act, 1996. The court advised on the following two issues:

- I. Whether the permission to appeal an award under s69 can be revisited after it has been granted and,
- II. How the Court should identify the relevant question of law when granting permission under s69.

[Read more](#)

2. EQUITABLE COMPENSATION FOR NON-COMPLIANCE WITH ARBITRATION CLAUSE ALLOWED BY THE ENGLISH HIGH COURT

The English High Court in *Argos Pereira España SL and another v. Athenian Marine Ltd.* observed that a third party, who has acquired the right to claim under a contract, would be liable to pay “equitable compensation” as and when it fails to abide by the arbitration clause.

[Read more](#)

3. PRINCIPLES OF HALLIBURTON ON ARBITRATOR BIAS APPLIED BY THE MALAYSIAN HIGH COURT

The Malaysian High Court in *Low Koh Hwa v. Persatuan Kanak-Kanak Spastik Selangor & Wilayah Persekutuan and another* allowed an application to be set aside on the following grounds:

- i. The award was in conflict with the public policy of Malaysia due to the arbitrator’s apparent bias.
- ii. Rules of Natural Justice were breached during the arbitration proceedings.

The court also explained how *Halliburton’s* principle of arbitrator’s apparent bias along with his duty of disclosure is applied in Malaysia.

[Read more](#)

4. ANTI-SUIT INJUNCTION ON A “WITHOUT NOTICE BASIS” ALLOWED BY THE ENGLISH HIGH COURT

The English High Court in *VTB Bank (PJSC) v. Mejlumyan* granted the claimant an interim anti-suit injunction on a “without notice basis” on the grounds that the defendant

party was unwell with COVID-19 and the hearing of the “on-notice” anti-suit injunction had to be adjourned. The suit arose in relation to foreign proceedings in Armenia under a “share pledge agreement” and the court granted the injunction to “hold the ring”.

[Read more](#)

5. APPEALS UNDER SECTION 69 OF THE ARBITRATION ACT, 1996 CONSIDERED BY THE ENGLISH HIGH COURT

The English High Court in *Navision Shipping A/S v. Precious Pearls Ltd and Conti Lines Shipping NV v. Navision Shipping A/S* considered two appeals under Section 69 of the Arbitration Act, 1996. The appeals were filed by Navision Shipping A/S (herein referred to as the “**Navision Appeal**”) and Conti Lines Shipping (herein referred to as the “**Conti Lines Appeal**”). They were related to two arbitral awards passed in relation to the detention of a vessel in Guinea. The High Court while dismissing the Conti Lines Appeal allowed the Navision Appeal.

[Read more](#)

6. APPELLATE REVIEW OF ARBITRATION AWARDS UNDER THE FEDERAL ARBITRATION ACT CAN BE AVOIDED: THE FOURTH CIRCUIT

In *Beckley Oncology Assocs. v. Abumasmah*, the United States Court of Appeals for the Fourth Circuit gave its decision on first impressions that act as guiding principles for employers who enter into arbitration agreements with their employees. As per the decisions, the parties in the Fourth Circuit have the right to waive appellate review of arbitration awards but not its judicial review.

[Read more](#)

7. SINGAPORE HIGH COURT DEPARTS FROM ITS PRO-ARBITRATION STANCE AND SETS ASIDE ARBITRATION AWARD

The Singapore High Court in *Convexity Ltd. v. Phoenixfin Pte Ltd., Mek Global Ltd. and Phoenixfin Ltd.* set aside an arbitral award after moving away from its pro-arbitration stance. The court held that the arbitral tribunal had misunderstood that the two parties had negotiated to include an unpleaded issue in the scope of submission. This unpleaded issue transformed into the central argument based on which the tribunal dismissed the applicant’s claim. The High Court set aside the award and observed that principles of natural justice were violated by dealing with issues outside the scope of submission.

[Read more](#)

INVESTMENT ARBITRATION

1. THE HIGHER REGIONAL COURT FRANKFURT HELD THE ACHMEA DECISION BY THE ECJ TO BE APPLICABLE TO ALL OTHER INTRA-EU BITs

The Higher Regional Court Frankfurt recently dealt with the ruling in the Achmea decision by the ECJ, wherein the ECJ had decided that EU members must not settle their disputes through arbitration proceedings agreed on the basis of intra-EU investment treaties. The Higher Regional Court Frankfurt held that this ruling in *Achmea* was transferable to other Intra-EU BITs as well and that the arbitration clause in the present case was invalid based on the Achmea ruling.

[Read more](#)

2. MONGOLIAN GOVERNMENT THREATENS TO CANCEL THE OYU TOLGOI MINE INVESTMENT AGREEMENT

The Mongolian government has threatened to declare the Oyu Tolgoi mine from 2009 void in case an international tax arbitration is not dismissed. The taxarbitration is related to Oyu Tolgoi LLC, the world's largest copper-silver-gold mine, and its payment of taxes. Oyu Tolgoi is Rio Tinto's unit, and Rio claims Oyu

to have paid \$4.8 Million, in January 2018, to make the settlement. The government has now filed its statement of defence with a counter-claim.

[Read more](#)

3. THE INVESTOR CHOICE ACT WOULD PROHIBIT BROKER-DEALERS AND ADVISORS FROM MAKING CLIENTS SIGN MANDATORY ARBITRATION AGREEMENTS

The Bill, which was introduced in both the Senate and House by Sen. Jeff Merkley (D-Ore.) and Rep. Bill Foster (D-Ill.), looks to amend the Securities Exchange Act making it illegal for any "broker, dealer, funding portal or any municipal securities dealer" to include a mandate for arbitration in the event of a dispute.

[Read more](#)

4. THE EUROPE COMMISSION SUSPENDS THE RATIFICATION OF COMPREHENSIVE INVESTMENT AGREEMENT (CAI) WITH CHINA

The European Commission has stated that its efforts to ratify the Comprehensive Investment Agreement (CAI) with China has been suspended due to China's imposition of sanctions on several high-profile members of

the European Parliament, and others. The Chinese sanctions came in response to the sanctions imposed by the EU against 4 Chinese officials.

[Read more](#)

MEDIATION

1. INTERNATIONAL ALLIANCE SET IN SINGAPORE TO RAISE INTERNATIONAL MEDIATION STANDARDS

To raise international mediation standards, five international mediation training bodies have reached an understanding and signed an MOU in this regard. They have pledged to mediation into a recognized and viable profession and say that the MOU and technological advances will remove barriers of physical geography and will allow mediators to mediate disputes in other jurisdictions. Signatories of MOU have promised to improve the quality of services, training and mediation skills and promotion of the use of mediation for resolving disputes.

[Read more](#)

2. HUMAN RELATIONS COMMISSION MEDIATION SERVICE LAUNCHED IN OHIO

To help residents of Toledo in solving their civil disputes among community members, City leaders of Ohio have relaunched Human Relations Commission Mediation Service, which puts a system in place to address issues amongst neighbours. The service seeks to

handle civil disputes through neutral third-party mediators.

[Read more](#)

3. AN ORDINANCE ISSUED FOR SPEEDY JUSTICE TO MSMEs

Govt. of India has issued an ordinance in April 2021 to abolish five appellate tribunals, which were looking after the disputes between organizations with a view to providing Ease of doing business to the MSMEs. The government says that it wants a voluntary mediation mechanism in place, which is important for all MSMEs.

[Read more](#)

4. VOUCHER SCHEME LAUNCHED IN THE UK FOR RESOLUTION OF DISPUTES OUTSIDE OF COURT

The UK government has launched a new mediation scheme to help families resolve disputes outside of court, which will be administered by the Family Mediation Council. The scheme aims to help more than 70% of couples, having disputes, to resolve their issues outside of the courtroom, which

scheme is quicker, cheaper and less stressful, as compared to prolonged litigation in courts.

[Read more](#)

5. AMENDMENTS INTRODUCED IN ICDRs INTERNATIONAL ARBITRATION AND MEDIATION RULES

ICDR, the international wing of the American Arbitration Association has revised its International Disputes Resolution Procedure with effect from 1st March 2021. These novel changes include an emphasis on assisting the parties to find a mutually agreeable mediator, reinforcing the party's responsibility to ensure attendance of its representative at mediation, with authority to commit the execution of a settlement, mediators' responsibility to help parties in reaching at the resolution of their dispute and requiring him to conduct the case for such resolution, including the arranging of a "preparatory conference". The amended rules refer to the ability of the ICDR or the mediator to issue an attestation to enforce the settlement agreement under the Singapore Convention.

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