



# 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 maiden 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. PRESENCE OF AN ARBITRATION CLAUSE DOES NOT OUST THE JURISDICTION UNDER ARTICLE 226 IN ALL CASES: SUPREME COURT

In *Unitech Ltd. v. Telangana State Industrial Infrastructure Corporation*, the Supreme Court held that “the jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority.” Thus, the jurisdiction of the High Courts cannot be ousted only on the pretext that the dispute is contractual in nature.

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#### 2. “THE WAY THE LD. ARBITRATOR HAS PASSED AN ORDER PERMITTING THE BANK TO TAKE POLICE AID IS PRIMA FACIE NOT TENABLE”: DELHI HIGH COURT

In *Tarun Krishnan Aggarwal v. SHO PS Huaaz Qasi*, the Delhi Police has been asked by the Delhi High Court to clarify if it is commonplace for the police to accompany the bank receivers for enforcing orders passed by arbitrators against loan borrowers, without

approaching an executing court. In this case, the petitioner had availed of a loan facility with Kotak Mahindra Bank. The Court held that “The party in whose favor an order under Section 17 is passed ought to approach the executing court in the concerned area for appropriate orders.”

[Read more](#)

#### 3. ARBITRATION UNDER SECTION 3-G (5) OF THE NATIONAL HIGHWAYS ACT, 1956 IS BOUND TO THE DETERMINATION OF THE FAIR AMOUNT OF COMPENSATION ONLY: ALLAHABAD HIGH COURT

In *Bhartiya Rashtriya Rajmarg Pradhikaran vs Rajesh Kaushik*, the Allahabad High Court held that an arbitrator cannot act outside the scope of his reference. The powers of an arbitration tribunal under the National Highways Act, 1956 is limited to the determination of the compensation only. Thus, the Court ruled that an arbitrator cannot set aside the order of compensation passed by the competent authority under the Highways Act.

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#### 4. MADRAS HIGH COURT CRITICIZES ARBITRATION COURT FOR CONFIRMING AN UNREASONED ARBITRAL AWARD

The bench comprising Chief Justice Sanjib Banerjee and Justice Senthilkumar Ramamoorthy slammed the arbitration court for confirming an award in *Hindustan Petroleum Corporation Ltd v. Banu Constructions*. According to the Court, the award goes against the most rudimentary principles of governing law.

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#### 5. A PARTY SHOULD APPROACH THE COURT UNDER S. 11 OF THE 1996 ACT IF IT APPOINTS AN ARBITRATOR ON ITS OWN AND DOES NOT

#### RECEIVE CONFIRMATION FROM THE OTHER PARTY: DELHI HIGH COURT

In *Oyo Hotels and Homes (P) Ltd. v. Rajan Tewari*, the Respondents invoked the arbitration clause citing the existence of disputes under the lease deed and appointed a Sole Arbitrator. However, this appointment was not confirmed by the petitioner. The Delhi High Court declared this appointment to be non-est. It further stated that the respondents should have approached the Court under section 11 of the Arbitration and Conciliation Act, 1996.

[Read more](#)

## INTERNATIONAL COMMERCIAL ARBITRATION

### 1. INTERNATIONAL BAR ASSOCIATION RULES, 2020 PUBLISHED

On February 17, 2021 the New IBA Rules on the Taking of Evidence in International Arbitration were published. Notably, the Rules are indicative of the changes in practice that were witnessed due to the pandemic. They lay down a procedure to allow arbitral tribunals to conduct an evidentiary hearing by way of a “Remote Hearing” and requiring parties to come up with a “Remote Hearing Protocol”.

[Read more](#)

### 2. HONG KONG COURT REFUSES TO ENFORCE ARBITRAL AWARD DUE TO LACK OF DUE PROCESS

In spite of a long standing pro-arbitration stance, the Hong Kong Court of First Instance refused to enforce an arbitral award holding that one of the parties had been denied due process. It observed that when exercising jurisdiction to enforce an arbitral award, the standard of due process under Hong Kong law must be considered and interference with the same can render the award unenforceable.

[Read more](#)

### 3. SWISS COURT HOLDS THAT ANNULMENT PROCEEDINGS DO NOT ALLOW FOR A REVIEW OF THE ARBITRATION AGREEMENT

The Swiss Federal Supreme Court refusing to vacate an arbitral award held that in an annulment proceeding the court may not review the arbitral tribunal’s interpretation of the arbitration agreement.

[Read more](#)

### 4. ARBITRATION INITIATED AGAINST SERBIA BY TELECOM COMPANY

An arbitration was initiated against Serbia by a Dutch media company United Group BV alleging that the government of Serbia harassed the company’s telecommunications business favouring a State owned telecommunications company Telekom Srbija.

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## INVESTMENT ARBITRATION

### 1. UKRAINE DEFEATS \$6 BILLION ECT CLAIM

A \$6 billion Energy Charter Treaty claim against Ukraine has reportedly been dismissed by an SCC tribunal. The claim was brought by entities associated with controversial oligarch associated with controversial Igor Kolomoisky.

[Read more](#)

### 2. RECORD BREAKING CASE STATISTICS RELEASED BY ICSID FOR THE YEAR 2020

A record number of 58 registered cases as shown in the statistics released by International Centre for Settlement of Investment Disputes for the year 2020 confirmed that the Covid-19 pandemic has not adversely affected the nature of investment disputes so far. Other changes such as shift to virtual hearing may affect investment arbitration disputes in 2021 onwards.

[Read more](#)

### 3. GERMAN COURT WON'T HALT TERMINATION OF INTRA-EU BITs

A constitutional court of Germany refused to halt the country's ratification of the agreement to terminate an intra-European Union-Bilateral Investment Treaties while hearing a complaint by Dutch insurer Achmea.

[Read more](#)

### 4. SHELL AND ITS SUBSIDIARY SPDC TAKES NIGERIA TO ICSID

Shell and its subsidiary the Shell Petroleum Development Company of Nigeria (SPDC) have lodged an ICSID claim against Nigeria under the Dutch-Nigerian BIT over an oil mining joint venture in the Niger Delta that has led to multiple lawsuits based on allegations of environmental contamination.

[Read more](#)

### 5. GHANA HELD LIABLE OVER CANCELLED ENERGY CONTRACT

Ghana has been ordered by UNCITRAL tribunal to pay around US\$170 million to an energy company for cancelling an emergency contract signed with a Beijing-based construction company, during an electricity supply crisis.

[Read more](#)

### 6. KUWAITI INVESTOR'S \$664 MILLION CLAIM AGAINST IRAQ DISMISSED BY ICSID

A Kuwaiti investor's \$664 million claim against Iraq has been dismissed by an ICSID tribunal over the alleged expropriation of a mobile phone operator in Kurdistan which has spawned several other arbitrations and bribery allegations.

[Read more](#)

### 7. NEW RULES ADOPTED BY EU AND CANADA PAVING A WAY FOR CETA INVESTMENT COURT

The EU and Canada have adopted a set of rules that will allow the permanent investment court in the EU-Canada CETA (Comprehensive

Economic and Trade Agreement) to become operational once the treaty becomes ratified.

[Read more](#)

# MEDIATION

## 1. CHINA'S SUPREME PEOPLE'S COURT (SPC) HAS REPORTED A HUGE RISE IN THE APPLICATIONS SUBMITTED TO THE COUNTRY'S ONLINE MEDIATION PLATFORM

It has been confirmed that almost 5.2 million disputes were resolved in 2020 through China's online mediation network with a success rate of 65% with a whopping surge of 300% in the applications submitted since its inception in 2018. 3,502 courts established in the country have enlisted their mediation services on the online platform and brought a total of almost 1,66,000 mediators to offer their expertise in this area of ADR. As per Qian Xiaochen, head of the case-filing tribunal of the SPC, it takes an average of 23.33 days for listed disputes to be resolved.

[Read more](#)

## 2. THE CJ OF MADRAS HC NOTES THE IMPORTANCE OF SOLVING DISPUTES THROUGH MEDIATION IN REDUCING THE PENDENCY OF CASES

The Madras HC CJ Sanjib Banerjee advocated mediation as an effective tool for reducing the backlog of cases before Courts while presiding over a workshop on 'Negotiation skills and mediation advocacy'. He furthered his point by saying that cases requiring adjudication need to

be left to the court but in matters wherein only certain adjustments are required could be resolved through mediation. He also announced the upgradation of Taluk Legal Services Committee, Karaikal (Puducherry) as a District Legal Services Authority with the aim of reducing dependence on litigation.

[Read more](#)

## 3. THE CALIFORNIA COURT OF APPEAL HAS DECIDED IN FAVOUR OF MANDATORY MEDIATION OF TRUST DISPUTES

The Court in *Breslin v. Breslin* held that California probate may call for the private mediation of trust disputes and consequently disallow the objections of non-participating parties to settlement agreement arrived at through mediation. This implies that probate judges will be more inclined towards requirement of pre-trial mediation process with all affected parties participating holistically to avoid waiver of any benefits.

[Read more](#)

## 4. AN IRISH COMMERCIAL COURT HAS OPINED FOR RESOLUTION OF THE IVEAGH MARKET DISPUTE THROUGH MEDIATION

As per Justice David Barniville, the proceedings were deemed to have substantially progressed owing to mediation between the parties concerned and therefore adjourned the

same to April. The dispute relates to two separate issues, one relating to Martin Keane, a Dublin Hotelier and Arthur Iveagh, a descendent of the First Earl of Iveagh and the other one between Martin Keane and the Dublin City Council. Both of these issues fundamentally relate to the possession of the Iveagh Market complex in Dublin.

[Read more](#)

5. **POSITIVE SIGNS HAVE BEEN OBSERVED IN THE DISPUTE BETWEEN HUAWEI AND VERIZON AFTER THE FORMER AGREED TO UNDERGO PRIVATE MEDIATION WITH THE LATTER**

In one of the lawsuits filed against Verizon over patent royalties, Huawei has decided to enter mediation proceedings with the American carrier service. The lawsuit filed by Huawei alleged that Verizon infringed upon 12 of its patents and demanded a compensation of \$1 billion. The said gesture of engaging ADR mechanisms to solve the dispute has been construed as one of goodwill towards the changes in US sanctions under Joe Biden's leadership.

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## CADR BLOGS

### 1. *ENKA Vs CHUBB*: UK SC DRAWS THE FINAL CURTAIN BY LAYING DOWN THE APPROACH TO BE TAKEN IN ASCERTAINING THE LAW GOVERNING ARBITRATION AGREEMENTS

In this article, **Yash Kapadia** and **Abhishek Kurian** analyse the apex Court's judgement on the law of arbitration agreements and suggest an alternative approach to determine the law.

[Read more](#)

### 2. THE EMERGENCE OF THE PRESUMPTION OF TRANSPARENCY IN INVESTMENT ARBITRATION

This article by **Preksha Mehndiratta** analyses the presumption of ensuring procedural transparency and suggests points to ensure such transparency in investment arbitration.

[Read more](#)

### 3. THE LIMITATION FOR ENFORCEMENT OF FOREIGN AWARDS CONUNDRUM – ANALYSIS OF VEDANTA JUDGEMENT

In this article, **Charvi Krishna** analyses the reasoning given by the Supreme Court on the limitation period for deciding arbitral awards and discusses its implications in the field of arbitration.

[Read more](#)

### 4. CAN INDIAN PARTIES ARBITRATE ON A FOREIGN SEAT?

This article by **Arjun Chakladar** and **Aman Kumar** traces the inconsistency in Indian judiciary on the question of choosing a foreign seat of arbitration and analyses the positive trend of pro arbitration rulings by the Judiciary.

[Read more](#)

### 5. THE SCOPE OF ARBITRABILITY OF IPR DISPUTES IN INDIA

In this article, **Kavya Arora** and **Aryaman Kaushik** explain how arbitration can be resorted to in disputes concerning Intellectual Property Rights. They do so while discussing various relevant case laws.

[Read more](#)

### 6. DEALING WITH A WORKPLACE DISPUTE – BEFORE IT STARTS AFFECTING THE WORK

This article by **Aanchal Gupta** suggests tools that mediators can use with the disputing parties in a mediation session in order to conduct the session efficaciously.

[Read more](#)

## HIGHLIGHTS OF THE MONTH

### STUDENTS UPDATE

The RGNUL Intra Mediation & Client Counselling, 2021 was held virtually from the 19th-21st February with the aim of furthering the cause of ADR and assess participating students for the purpose of allotting mediation and client-counselling competitions for the coming year.

The team comprising ***Paritoshvir Singh*** and ***Parevartna*** (TC- 40) emerged at as the top-scoring Negotiating Team for the Mediation Competition while ***Harkirat Kaur*** (TC- 04) was adjudged the top-scoring mediator of the same. As far as the Client-Counselling Competition is concerned, ***Anany Singh*** and ***Om Pandey*** (CC- 93) emerged as the top team.

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