JAN-FEB-MAR 2022, VOL IV, ISSUE 1

CADR NEWSLETTER

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

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CADR NEWSLETTER

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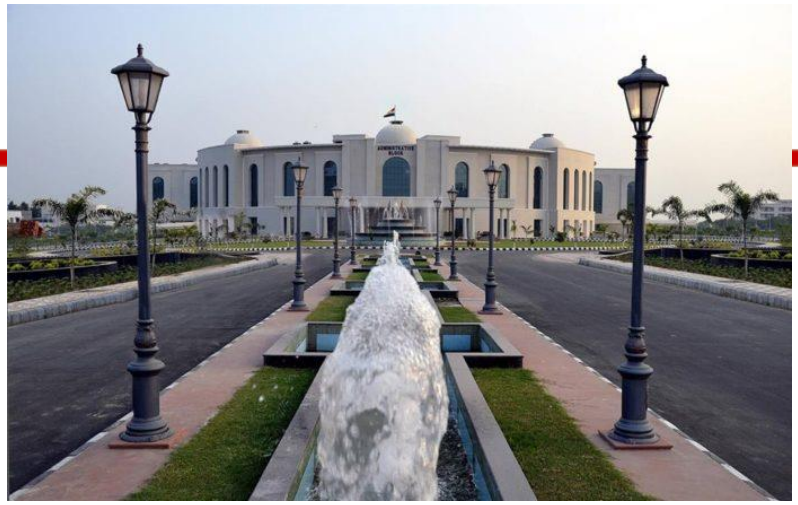
ABOUT US

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 First Issue 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!



ADR UPDATES

ARBITRATION

DOMESTIC ARBITRATION

1. **DELHI HIGH COURT RULES THAT ARBITRAL AWARD IS TO BE EXECUTED AT A PLACE WHERE JUDGEMENT DEBTOR RESIDES, CARRIES BUSINESS OR HAS ASSETS**

The Delhi HC in the case of *Continental Engineering Corporation* v. *Sugesan Transport Pvt Ltd* held that irrespective of the place where the award was passed, it is to be executed by a Court within whose jurisdiction the Judgment Debtor resides, carries on business or his property is situated. Further, relying on the case of *Sundaram Finance* v. *Abdul Samad*, the court opined that an arbitral award is not equal to a decree passed by a Court, and execution proceedings can be straightaway filed in the court where the Judgement Debtor's assets are located.

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2. **MADHYA PRADESH HIGH COURT DEFINES THE WORD DISPUTE UNDER THE ARBITRATION & CONCILIATION ACT, 1996**

Noting that the word 'dispute' has not been defined in the Arbitration & Conciliation Act, 1996, the Madhya Pradesh HC in the case of *Indian Oil Corporation Ltd. and others* v. *M/s Tatpar Petroleum Centre* observed that for a dispute to arise, there should exist an assertion or claim which is refuted by the other side. Further, it noted that whether the assertion made by one and the denial made by the other which leaves to the passing of any particular order by one of the parties is not necessary for arising of a dispute. An assertion by one and denial of the said assertion by another is enough for the germination of the concept of a dispute.

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3. **SUPREME COURT RULES THAT ARBITRAL AWARD CAN'T BE CHALLENGED ON THE ROUND THAT ARBITRATOR HAS FAILED TO APPRECIATE FACTS**

In the case of *Atlanta Limited* v. *Union of India*, the Supreme Court held that it is a well-settled principle of law that a challenge cannot be

raised against an Award only on the ground that the Arbitrator has drawn their own conclusion or failed to appreciate the relevant facts. Further, it was held that the Court cannot substitute its own view on the conclusion of law or facts as against those drawn by the Arbitrator, as if it is sitting in appeal.

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4. **ON MAINTAINABILITY OF APPEAL UNDER SECTION 34 INSTEAD OF SECTION 37 OF ARBITRATION ACT, SUPREME COURT HOLDS THAT AS LONG AS POWER EXISTS REFERENCE TO THE WRONG PROVISION WOULD NOT MATTER**

The Supreme Court, in the case of *M/s. Premier Sea Foods Exim Pvt. Ltd.* v. *M/s. Caravel Shipping Services Pvt. Ltd*, while determining the maintainability of appeal under Section 34 instead of Section 37 of the Arbitration Act, held that a reference to Section 37 instead of Section 34 of the Arbitration and Conciliation Act, 1996 would not matter as long as the jurisdictional court has the power to adjudicate the appeal.

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5. **POST AWARD INTEREST ON THE INTEREST AMOUNT AWARDED CAN BE GRANTED BY THE ARBITRATOR: SUPREME COURT**

The Supreme Court, in the case of *UHL Power Company Ltd.* vs *State of Himachal Pradesh*, held that post-award interest can be granted by an Arbitrator on the interest amount awarded. Placing reliance on the case of *Hyder Consulting (UK) Ltd.* v. *Governor, State of Orissa*, the Apex Court overruled the Himachal Pradesh High Court decision which had held that in the absence of any provision for interest upon interest in the contract, the Arbitral Tribunals does not have the power to award interest upon interest, or compound interest, either for the pre-award period or for the post-award period.

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6. **SUPREME COURT RULES THAT IF ARBITRAL TRIBUNAL CONSTITUTED BEFORE THE 2015 AMENDMENT VIOLATES NEUTRALITY MANDATE UNDER SECTION 12(5), IT CANNOT OPERATE**

The Supreme Court, in the case of *Ellora Paper Mills Limited* v. *State of Madhya Pradesh*, held that an Arbitral Tribunal constituted as per an arbitration clause before the 2015 Amendment to the Arbitration and Conciliation Act, 1996, will lose its mandate if it violates the neutrality clause under Section 12(5) read with the Seventh Schedule, which was incorporated through the 2015 Amendment. The Court further observed that the main purpose for amending the provision was to provide for

"neutrality of arbitrators" and sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule, shall be ineligible to be appointed as an arbitrator.

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7. **COMMERCIAL DIVISION CONSTITUTED AT KARNATAKA HC TO ENTERTAIN PLEAS AGAINST INTERNATIONAL COMMERCIAL ARBITRAL AWARDS**

In light of Section 2(e)(ii) of the Arbitration and Conciliation Act, a challenge to an award in an International Commercial Arbitration can be made before the High Court of Karnataka as a Commercial Division under Section 4(1) of the Commercial Courts Act, 2015 has been constituted, consisting of Single Judge at the Principal Bench at Bengaluru and Benches at Dharwad and Kalaburagi.

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8. **MERE PARTICIPATION IN ARBITRAL PROCEEDINGS DOES NOT CONSTITUTE WAIVER OF RIGHT TO CHALLENGE APPOINTMENT OF INELIGIBLE ARBITRATOR: DELHI HIGH COURT**

In the case of *BW Business world Media Pvt. Ltd.* v. *India Railway Catering and Tourism Corporation Ltd.*, the Delhi HC ruled that the mere fact that the petitioner did not object to the appointment at the material time and participated in the arbitral proceedings, would not stand in the way of terminating the mandate of such an arbitrator, for the reason that the appointment was made by a person ineligible to be appointed as an arbitrator.

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9. **SUPREME COURT RULES THAT AN APPLICATION SEEKING APPOINTMENT OF ARBITRATOR CANNOT BE MOVED BEFORE A HIGH COURT IF NO PART OF THE CAUSE OF ACTION AROSE WITHIN ITS TERRITORIAL JURISDICTION**

The Supreme Court in the case of *Ravi Ranjan Developers Pvt. Ltd.* vs *Aditya Kumar Chatterjee* held that an application under Section 11(6) of the Arbitration and Conciliation Act for the appointment of an Arbitrator/Arbitral Tribunal cannot be moved in a High Court irrespective of its territorial jurisdiction. Further, it was noted that it could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent

at a disadvantage and steal a march over the opponent.

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10. **MERE REFERENCE TO THE WORD 'ARBITRATION' IN AGREEMENT CLAUSE HEADING NOT SUFFICIENT TO INFER EXISTENCE OF AN AGREEMENT BETWEEN PARTIES TO RESOLVE DISPUTES THROUGH ARBITRATION: DELHI HC**

In the case of *FOOMILL PVT. LTD.* v. *AFFLE (INDIA) LTD.*, Clause 11 of the Master Service Agreement between the parties read as "Jurisdiction, Arbitration & Dispute Resolution". Based on the heading of Clause 11 noting the word 'Arbitration', the petitioner claimed resolution of disputes arising between the parties through arbitration. The Delhi High Court ruled that mere use of the word 'Arbitration' in the heading in Clause 11 of the Agreement between the parties in the present proceedings would not lead to the inference that there exists an agreement between the parties seeking resolution of disputes through arbitration.

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11. **SUPREME COURT RULES THAT IN CONTRACTUAL MATTERS RELIEF UNDER ARTICLE 226 IS NOT AN APPROPRIATE REMEDY WHERE THERE IS AN EXISTING ARBITRATION CLAUSE**

In the case of *Gujarat Housing Board &Anr.* V. *Vandemataram Projects Private Limited*, the Supreme Court ruled that the invocation of Article 226 of the Constitution of India for a contractual matter, where there was an existing arbitration clause was not the appropriate remedy. Further, the Court in this case set aside the High Court's order and relegated the parties to seek remedy under the Arbitration Act.

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12. **SUPREME COURT TO CONSIDER PRESSING ISSUES RELATING TO ARBITRATORS FEE SCALE**

The Supreme Court, during the hearing in the case of *OIL AND NATURAL GAS CORPORATION LTD.* vs. *AFCONS GUNANUSA JV*, ruled that it will consider pressing issues relating to the Arbitrator's fee such as are the arbitrators legally entitled to fix their own fees without the consent of one of the other parties and whether 4th Schedule is the standard fee scale or not. This comes in the backdrop of Attorney General for India KK Venugopal raising concerns about the "exorbitant and arbitrary" fee charged by the arbitrators and pressing that the Court should lay down uniform standards.

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INTERNATIONAL COMMERCIAL ARBITRATION

1. AMAZON-FUTURE DISPUTE ARBITRATION PROCEEDINGS TERMINATED BY SIAC

Following a stay order passed by the Delhi HC, the Singapore International Arbitration Centre (SIAC), in January, terminated the arbitration proceedings in the ongoing Amazon-Future dispute. The division bench was presided by Chief Justice DN Patel and Justice Jyoti Singh, and the arbitration was stayed due to the appeals filed by Future Retail and its promoters.

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2. SHARIAH ADR DIVISION INTRODUCED AT ASIA PACIFIC CENTRE FOR ARBITRATION AND MEDIATION (APCAM)

The Asia Pacific Centre for Arbitration and Mediation (APCAM) introduced a new project "Shariah ADR Division". In almost 35 countries, mostly Middle Eastern, Asian, and South African, Shariah Law is practiced, and the practice of ADR under Shariah Law is recognized. This Shariah Division will be headed by a 3-member committee consisting of Datuk Khutubul Zaman Bukhari, Mr. Fahmi Shahab, Ms. Iram Majid.

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3. SUPREME COURT'S PRONOUNCEMENT ON PATENT ILLEGALITY OF ARBITRAL AWARDS

The SC, in February, through a bench comprising Justices Indira Banerjee and Abhay S. Oka, observed that when the Arbitral Tribunal fails to operate in accordance with the terms of the contract or ignores the contract's explicit stipulations, the award is considered to be patently illegal. The bench also noted that a distinction must be made between failing to act in accordance with the terms of a contract and an erroneous interpretation of those terms.

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4. 4TH WORLD CONFERENCE ON INTERNATIONAL ARBITRATION ORGANIZED BY THE QATAR INTERNATIONAL CENTRE FOR CONCILIATION & ARBITRATION (QICCA)

The Qatar International Centre for Conciliation & Arbitration (QICCA) at Qatar Chamber (QC) hosted the '4th World Conference on International Arbitration' on March 22 and 23 under the patronage of the Prime Minister and Minister of Interior H E Sheikh Khalid bin Khalifa bin Abdulaziz Al Thani. The conference's theme was 'Impact of Arbitration on Achieving a Satisfactory

Investment Environment.' It was the 5th anniversary of the Qatar Arbitration Law's enactment. About 30 notable speakers presented their thoughts and experience on arbitration and its impact on the investment climate during the two-day event, which brought together a galaxy of arbitration senior specialists from Qatar and other nations.

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5. **THE DUBAI INTERNATIONAL ARBITRATION CENTRE RELEASED THE DIAC ARBITRATION RULES 2022**

The DIAC Arbitration Rules 2022 were released by the Dubai International Arbitration Centre on March 2, 2022. The 2022 Rules took effect on March 21, 2022, and replaced the 2007 Rules. Unless the parties have agreed differently, the 2022 Rules apply to arbitrations that begin on or after March 21, 2022, regardless of when the underlying agreement to arbitrate was signed.

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6. **INDIA'S FIRST INTERNATIONAL ARBITRATION CENTRE'S FOUNDATION STONE LAID IN HYDERABAD**

Justice N V Ramana, India's Chief Justice, lay the foundation stone for the Hyderabad International Arbitration and Mediation Centre (HIAMC). According to him, the founding of HIAMC is a "significant step" in the direction of expanding arbitration and mediation in this region of the world. The ceremony was attended by Supreme Court judges Justice Lavu Nageswara Rao, Justice Hima Kohli, former Judge Justice R V Raveendran, Telangana High Court Chief Justice Chandra Sharma, AP High Court Chief Justice Prashant Kumar Mishra, Ministers K T Rama Rao, Mohd Mahmood Ali, and A Indrakaran Reddy.

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7. **THE CENTRE FOR EFFECTIVE DISPUTE RESOLUTION (CEDR) AND OMAN COMMERCIAL ARBITRATION CENTRE (OAC) SIGN AN AGREEMENT OF COOPERATION**

The Centre for Effective Dispute Resolution (CEDR), based in the United Kingdom, and the Oman Commercial Arbitration Centre (OAC), based in Oman, have announced their intention to collaborate on research and education, as well as facilitate exchanges between professionals involved in ADR (Alternative Dispute Resolution) programmes, particularly mediation, facilitation, and negotiation. OAC has teamed exclusively with CEDR to provide high-quality mediation skills training to a new generation of mediators in Oman and the wider region, ensuring that

parties involved in commercial disputes in the country can trust the mediation process. The initial training programs will take place between June 14 and 21, 2022, and will last six days.

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8. THE NATIONAL COMMERCIAL ARBITRATION CENTRE AND THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE SIGNED A MEMORANDUM OF UNDERSTANDING (MOU)

On March 24, the National Commercial Arbitration Centre (NCAC) and the Singapore International Arbitration Centre (SIAC) signed an agreement to promote international arbitration as a "preferred option" for resolving commercial disputes. The two organizations shall assist each other with marketing support and, where possible, logistical support, including onsite staff support, for all events organized by either the NCAC in Singapore or vice versa, based on mutual interests, respect, and understanding.

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INVESTMENT ARBITRATION

1. DAMAGES AWARD AGAINST TAIWANESE PHARMACEUTICALS GROUP SET ASIDE

The German Federal Court of Justice has set aside a €142 million damages award against Pharma Essentia, a Taiwanese pharma company, which was ordered by the International Chamber of Commerce to pay damages to an Austrian company, AOP Orphan Pharmaceuticals GmbH, for attempting to terminate a license agreement for a new blood cancer drug. The German Court held that the ICC ruling was procedurally flawed and based on incomplete information.

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2. KOSOVO TELECOM LOSES ARBITRATION AGAINST DARDAFON

London-based International Chamber of Commerce has ordered Kosovo Telecom to pay €13 million to Dardafon, the privately-owned claimant, for a contract termination that took place in July 2019. Kosovo Telecom had lost another arbitration to the same company in 2016, and was ordered to pay around €30 million.

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3. MALAYSIA ORDERED TO PAY US$ 15 BILLION BY SPANISH ARBITRATOR

Sole arbitrator Gonzalo Stampa has ordered Malaysia to pay US$14.92 billion-plus interest and costs to the successors to the last Sultan of Sulu. If Malaysia refuses to make the payment, the Claimant has the right to enforce the award against Malaysian state assets in any of the signatory state parties of the New York Convention, which could lead to Malaysian assets overseas being seized.

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4. INVESTORS IN DEVAS MULTIMEDIA ISSUE ARBITRATION NOTICE TO INDIAN GOVERNMENT

An Arbitration notice under UNCITRAL has been issued to the Government of India on behalf of three Mauritius-based Devas investors, who allege that the Government is resorting to unlawful measures to prevent them from collecting the $1.2 billion compensation awarded for the cancellation of a 2005 satellite deal between Devas Multimedia and Antrix Corp.

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5. THE US ALLOWS SOUTH KOREA TO PAY THE IRANIAN AWARD

South Korea's foreign ministry has said that the United States of America has cleared the way for South Korea to pay compensation to Iran's Dayyani Group without violating the US

sanctions against Tehran. Dayyani Group had filed an investor-state dispute settlement complaint in 2015, and was awarded $61.4 million in compensation by the World Bank's International Centre for Settlement of Investment Disputes.

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6. AMENDED ICSID RULES APPROVED BY ADMINISTRATIVE COUNCIL

On 21st March, Member States of the ICSID approved its modernized rules, marking the fourth and the most extensive amendment to the rules yet. The approved amendments have brought in expedited arbitration rules, electronic filing of documents, and mandatory timeframes for rendering orders, decisions and awards, among other changes. The 2022 ICSID Regulations and Rules will come into effect on 1st July, 2022.

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7. CANADA'S BARRICK GOLD AND PAKISTAN SETTLE ICSID DISPUTE

After the resolution of an 11-year-old dispute, Barrick Gold has agreed in principle to restart the development and mining operations of the RekoDiq project in Pakistan, which contains one of the world's largest undeveloped open pit copper-gold porphyry deposits. The dispute had arisen in 2011 when a mining lease application made by Tethyan Copper - a joint venture between Barrick and a Chilean mining firm - was rejected by the Government of Pakistan.

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8. EGYPT SETTLES INVESTMENT DISPUTE WITH A FRENCH CEMENT COMPANY

Egypt's Minister of International Cooperation signed an agreement with the Chairperson and CEO of French cement maker Vicat, to bring an end to the arbitration case between Egypt and Vicat before the ICSID. The case had been filed by Vicat seeking compensation for damages caused to its investments in Egypt. The event was witnessed by the Egyptian Prime Minister and the Egyptian Minister of Justice.

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9. THE HIGH COURT OF AUSTRALIA ALLOWS SPAIN TO APPEAL THE RECOGNITION OF THE ICSID AWARD

The High Court of Australia has granted special leave to Spain to appeal the decision of the Full Federal Court of Australia in the case of Kingdom *of Spain* in*frastructure Services Luxembourg*. The Full Federal Court had recognized a €101 million ICSID arbitral award against Spain obtained by the Luxembourgish

investor affected by Spain's renewable energy reforms.

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MEDIATION

1. SUPREME COURT: STATEMENTS MADE DURING MEDIATION CANNOT BE TAKEN ON RECORD

The Bench comprising of Justice Sanjiv Khanna and Justice Bela M Trivedi observed that taking on record, the comments made during the mediation or settlement proceeding would impede conciliation and is contrary to and impinges on the principle of confidentiality.

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2. MEDIATION BILL NOT TO BE RESTRICTED TO THE LAWYERS ALONE: LAW MINISTER

While speaking at the 15th NUALS Convocation Ceremony, Union Law Minister Kiren Rijiju remarked that the upcoming mediation bill would not be restricted to the law professionals alone, he said that the reputed people of the society can also play a role as a mediator in the upcoming regime.

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3. CONSENT DECREE BY COURTS CANNOT BE ALTERED UNLESS THE MISTAKE IS PATENT OR OBVIOUS

The Apex Court in the case of *Ajanta LLP* v. *Casio Computer Co. Ltd.* held that a settlement agreement arrived at by the parties cannot be altered unless the mistake in the agreement is patent or obvious in nature. The decision came after the parties were referred to a mediation by Delhi High Court and a consent decree by the Court bearing a typographic error was challenged by the Appellant.

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4. MEDIATION ORDER CANNOT EXTEND LIMITATION FOR AN APPLICATION UNDER IBC

The NCLAT Delhi in the case of *Ravi Iron Ltd.* v. *Jia Lal Kishori Lal &Ors*. noted that the bar of limitation for an application under Section 9 of the Insolvency and Bankruptcy Code cannot be extended due to a mediation order. The court also noted that the date of limitation cannot be extended unless the application is supplied with a reason for the extension.

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5. MEDIATION OF HIJAB ROW ONLY TO BE CONSIDERED IF BOTH PARTIES AGREE TO IT

The Karnataka High Court on February 17 while hearing a petition on highly debated Hijab Row had noted that the Mediation of the dispute it is only possible if both parties assert their consent for the mediation proceedings as mediation is a mutually inclusive process. Furthermore, the High Court noted that the issue was Constitutional in nature hence mediation of this issue would be highly unlikely.

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6. ASIA PACIFIC CENTRE FOR ARBITRATION & MEDIATION ANNOUNCES A SHARIA ADR DIVISION

With a unique and historic initiative, APCAM has now formed the "Shariah ADR Division", which is to be headed by a 3-member committee comprising of Datuk Kuthubul Zaman Bukhari, Chairman (Co-Chairman Malaysia Mediation Centre), Mr. Fahmi Shahab, Vice-Chairman (Director, PMN Indonesian Mediation Center) and Ms. Iram Majid, Secretary-General (Director, Indian Institute of Arbitration & Mediation). The new ADR division is set up by APCAM to specifically cater to the member-states where Sharia Law is extensively followed.

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CASE ANALYSIS

I-PAY CLEARING SERVICES PVT. LTD. v. ICICI BANK LTD.

-Dhanya Jha

FACTUAL MATRIX OF THE CASE

I-Pay Clearing Services Pvt. Ltd. (hereinafter "I-Pay") and ICICI Bank Ltd. (hereinafter "ICICI") entered into an agreement to provide technology and manage the operations and processing of a Smart Card to a third party i.e., Hindustan Petroleum Corporation Limited (HPCL). The processing of the smart card was based on loyalty-centric programs in order to improve fuel sales at the retail outlets of HPCL. ICICI later abruptly terminated this agreement which resulted in heavy losses to the Appellants (I-Pay). Thereafter, the parties opted for arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 Act . A sole arbitrator was appointed who directed ICICI to pay to the Appellant an amount of Rs.50,00,00,000/- together with interest at18% per annum from the date of award till payment and further directed to pay an amount of Rs.50,000/- towards the costs of arbitration. This award was challenged by ICICI under Section 34(1) of the Act as it was claimed that the termination of contractual obligations between the parties was done "mutually and amicably" since no finding in the award showed that ICICI had "illegally" and/or "abruptly" terminated the contract.

Meanwhile, a Notice of Motion was moved by I-Pay under Section 34(4) of the Act, as the sole arbitrator had not recorded detailed reasons on the issue of the legality of the termination of the agreement. It was claimed by the Appellants that there was "no accord and satisfaction between the parties" over the termination of the agreement, and the only shortcoming in the decision was that sole arbitrator had omitted to give adequate reasons in support of it. A Notice of Motion was filed by I-Pay to cure this defect and was dismissed by the High Court of Bombay.

The current appeal was filed by I-Pay, the aggrieved party; against dismissal order passed by the High Court of Bombay.

ISSUE OF LAW

Following were the issues raised before the Hon'ble Supreme Court of India:

- Whether the appeal should be dismissed?
- Whether the absence of recorded reasons nullifies the arbitral award?
- Whether the defect in the award can be cured by resuming the arbitral proceedings again?
- Whether an already passed award can be altered?

JUDGMENT

The Hon'ble Supreme Court of India primarily discussed and differentiated between the words 'reason' and 'finding', upholding the Bombay High Court order in favour of ICICI. "Finding" means "determination on an issue," whereas "Reasons" means "connections between the materials that specific conclusions are founded on and the actual findings." The court came to this analysis by relying on a number of judgments such as *Dyna Technologies Pvt. Ltd.* v *Crompton Greaves Ltd*, which refer to the difference between an award being illegal and award with deficient reasoning. Similarly, for deducing the difference between the words 'finding' and 'reasons' the *Income Tax Officer, A Ward, Sitapur* v *Murlidhar Bhagwan* was relied on.

The Court further held that no award can be remitted to the Arbitrator under the cover of further explanations and filling in the gaps in the reasoning if there are no findings on the contested issues in the award. The court's explanation of section 30 of the Act said that the arbitral award must identify the grounds on which it is based unless the parties agree that no reasons are to be disclosed or the outcome is an arbitral decision on agreed circumstances. Further, section 34(4) makes it plain that the court has discretion over whether or not to refer the issue to the Arbitral Tribunal for resumption of the proceedings. It is not always necessary for the Court to remit the issue to the Arbitral Tribunal only because a party files an application under Section 34(4) of the Act.

ANALYSIS

The court explained the applicability of section 34(4) of The Arbitration and Conciliation Act 1996, deducing whether the Court has the authority to remit the issue to the Arbitral Tribunal for a chance to restart the proceedings. The Hon'ble court found that the basic premise for remission of the award is not to change the finding in the award but to ensure that proper reasoning has been used while making the arbitral award. Furthermore, in order to substantiate and enhance the quality of the reasoning, section 34(4) gives discretion to the Tribunal to rectify such faulty or

inadequate reasoning. This however, is not an obligatory provision and it is there to ensure that the award is accompanied with the proper reasoning.

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