



CADR NEWSLETTER

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

NATIONAL NEWS

Get your monthly dose of everything related to ADR that is happening nationally.

INTERNATIONAL NEWS

Global trends, awards, and a plethora of relevant information.

EVENTS HELD IN THE WORLD OF ADR

Stay updated about recent events.

UPCOMING EVENTS

Never miss an event related to ADR.

RECENT PUBLICATIONS

Information regarding the latest posts on the CADR Blog and more.

CONTACT US AT:
adrc@rgnul.ac.in

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. CALCUTTA HIGH COURT HELD A FORUM SELECTION CLAUSE TO OVERRIDE SEAT OF ARBITRATION IN DOMESTIC ARBITRATION

The Calcutta High Court held that party autonomy being an imperative aspect of arbitration, it is only just, that in an arbitration, the forum mutually selected by parties, must take precedence over the seat of arbitration. This order was passed while deciding a plea under Section 9 of the Arbitration and Conciliation Act, 1996.

[Read More](#)

2. DELHI HIGH COURT HELD THAT A DISPUTE OVER THE DOUBT OVER THE NON-EXISTENCE OF A VALID ARBITRATION AGREEMENT IS TO BE REFERRED TO ARBITRATION

The order passed by a single-judge bench of Justice Jayant Nath, held that a dispute over doubt over the non-existence of a valid Arbitration Agreement is to be referred to an

Arbitral tribunal. The court held that for not referring a dispute to Arbitration, there has to exist a 'prima-facie case of non-existence of a valid arbitration agreement', and in case of any doubt, Arbitration is to be resorted to.

[Read More](#)

3. DELHI HIGH COURT HELD THAT AN ORDER FOR THE TERMINATION OF ARBITRATION PROCEEDINGS IS NOT AN AWARD

The Delhi High Court held that an order for termination of arbitration proceedings under Section 32(2)(c), Arbitration and Conciliation Act, 1996, is not an award and hence can be challenged under Section 14(2) of the same Act. The court cited Supreme Court judgments such as *Lalit Kumar v. Singhavi* and others, in considering that an award is considered to be the final decision in any arbitration claim.

[Read More](#)

4. SUPREME COURT OBSERVED THAT THE HC'S POWER TO INTERFERE WITH ARBITRATION PROCEEDINGS UNDER

ARTICLE 226 AND 227 SHOULD BE EXERCISED JUDICIOUSLY

The Supreme Court observed that exceptional rarity must be observed by the High Courts in their power to interfere with an arbitration process under Article 226 and 227 of the Constitution of India. The Court observed that this interference should only be resorted to in case either of the parties is left remediless (under the law) or clear ‘bad faith’ has been shown by the parties, so as to not interfere with the efficiency of the process.

[Read More](#)

5. SUPREME COURT REFERRED THE QUESTION OF VALIDITY OF APPOINTMENT

OF AN ARBITRATOR BY AN INELIGIBLE PERSON TO A LARGER BENCH

The Supreme Court has referred the question of the ‘validity of appointment of an arbitrator’. Initially, a division bench in the case of *Central Organization of Railway Electrification* had held that such appointments by a disqualified authority can be considered valid on a case-to-case basis, but this stance was refuted by a three-judge bench headed by Justice Nariman stating that an ‘incapacitated’ appointing authority cannot render valid appointments.

[Read More](#)

INTERNATIONAL COMMERCIAL ARBITRATION

1. NEW ICC RULES COME INTO FORCE AS ON 1ST JANUARY 2021

The revised International Chamber of Commerce 2021 Arbitration Rules have come into force as on 1st January, 2021 and will be applicable to all ICC arbitrations commencing thereon. A revised Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration also came into force on the same day. Notably, the Rules provide for virtual hearing and e filing systems.

[Read More](#)

2. BRAZIL COURT ANNULS ARBITRAL AWARD AFTER ARBITRATOR VIOLATES THE DUTY OF DISCLOSURE

On the request of the claimant insurance company, the Sao Paulo Court of Appeals annulled an arbitral award due to the presiding arbitrator violating his duty of disclosure. The arbitrator failed to disclose the fact that he had been appointed by the Respondent as a co-arbitrator in another arbitration involving a similar contract, for more than 18 months.

[Read More](#)

3. EU UK TRADE AND CORPORATION AGREEMENT PROVIDES FOR INTER STATE ARBITRATION MECHANISM

The EU-UK Trade and Cooperation Agreement came into force on the 1st of January, 2021. Since the UK would no longer be bound by the decisions of the European Court of Justice, the agreement provides for an alternative dispute resolution mechanism — inter-state arbitration. However, not all disputes under the agreement are arbitrable.

[Read More](#)

4. NEW YORK DISTRICT COURT HOLDS THAT IT LACKS JURISDICTION WHERE PARTIES HAVE AGREED THAT ARBITRATOR WILL DETERMINE THE QUESTION OF ARBITRABILITY

In an arbitration agreement between two companies CleanSpark, Inc. and Discover Growth Fund, LLC, it was provided that all disputes, including any dispute regarding arbitrability, would be determined by arbitration. The court held that even though questions of arbitrability are usually decided by courts, since the parties had explicitly agreed otherwise, the same will be decided by arbitral tribunal itself.

[Read More](#)

INVESTMENT ARBITRATION

1. THE STATE IS NOT BOUND BY THE CONSENT TO ARBITRATE PRESENT IN PROVISIONALLY APPLICABLE TREATIES: RUSSIA'S CONSTITUTIONAL COURT

Recently, the Constitutional Court of Russia has ruled that the state cannot be said to be bound by the consent to arbitrate present in a provisionally applicable treaty.

[Read More](#)

2. US APPEAL COURT UPHOLDS THE ENFORCEMENT OF US\$58 MILLION AWARD AGAINST MOLDOVA

The enforcement of the Ukrainian company's US \$58 million Energy Charter Treaty award was upheld against Moldova by the US Appeal Court. However, the Court remanded the issue as to whether the final judgment should be denominated in US Dollars or Moldovan Lei.

[Read More](#)

3. ICSID TRIBUNAL HAS DISMISSED A US\$354 MILLION CLAIM AGAINST CHILE BROUGHT BY COLOMBIAN INVESTORS IN A PUBLIC BUS SYSTEM NETWORK

On 11th January 2021, the ICSID Tribunal dismissed the claim brought by the Columbian investors over the bus networks. The claims

were dismissed in their entirety and a reimbursement of 100% of the costs of the arbitration and 40% of the legal fees were awarded to Chile.

[Read More](#)

4. THE TREATY CLAIM AGAINST THE PHILIPPINES IS NOW DROPPED BY CHEVRON

The claim against the Philippines regarding the offshore gas field is withdrawn by Chevron. This was an aftermath of Chevron selling its stake in the concerned project.

[Read More](#)

5. PARIS COURT UPHOLDS THE \$646 MILLION AWARD AGAINST A COMPANY OWNED BY BILLIONAIRE ISABEL DOS SANTOS

The \$646 million awards against a company owned by Isabel Dos Santos was upheld by a Paris Court. The allegations of bias against two arbitrators were dismissed. Moreover, it was held that the ICC was correct in appointing a five-member tribunal.

[Read More](#)

6. FRANCE'S HIGHEST COURT UPHOLDS THE ENFORCEMENT OF THE ANNULLED CAIRO AWARD

The awards against an Egyptian state entity has been upheld by France's highest court. This award was earlier annulled by the courts of Cairo. The French Court rejected this view and stated that the arguments pertaining to the domestic or international character of the arbitration were irrelevant.

[Read More](#)

7. ITALY APPLIES TO ANNUL THE SOLAR AWARD

Italy has challenged the ICSID award which required it to pay over €18 million as compensation for changes made in the incentives regime for renewable energy.

[Read More](#)

MEDIATION

1. A HIGH COURT IN IRELAND HAS URGED FAMILY EMBROILED IN A DISPUTE OVER HOTEL BUSINESS TO MAKE USE OF MEDIATION MECHANISMS FOR SOLVING THE SAME

The said order was passed by Justice David Barniville while directions were being made towards progressing court proceedings in an appeal filed under section 212 of the Irish Companies Act, 2014. Owing to the nature of dispute and relationship that the parties shared as well as the substantial impact on the business involved, the Court opined in favour of re-engaging in mediation so as to quickly sort the matter.

[Read More](#)

2. THE INTERNATIONAL CHAMBER OF COMMERCE OBSERVES A RECORD YEAR IN TERMS OF ARBITRATION AND MEDIATION CASES

The Paris-based body's International Court of Arbitration celebrated a 9% increase in the number of arbitration cases while its ADR Centre recorded its 400th case. The Arbitration Court received 946 cases out of which 929 had been filed under the new Arbitration Rules. A similar sight was observed in ICC's ADR

Centre wherein 77 cases had been recorded out of which 45 were mediations.

[Read More](#)

3. THE CATHOLIC CHARITIES, HAWAII HAS ANNOUNCED A \$6 MILLION RENT RELIEF PROGRAM

The Social Service organization announced a Rent Assistance and Mediation Program for providing assistance to tenants who are at the risk of eviction owing to the pandemic circumstances such as reduced income, reduced work hours or unemployment. The organization is estimated to offer maximum support of two months in past due and ongoing rental requirements.

[Read More](#)

4. OFFICIALS OF HOPEDALE, MASSACHUSETTS TO INITIATE MEDIATION TALKS WITH THE LOCAL RAILROAD TO PEACEFULLY SORT THE LAND DISPUTE

The Hopedale officials aim to end the lawsuit against Grafton and Upton Railroad over the 150-acre land and owing to the lack of judicial precedent, the Court ordered a mediation screening process. While the railroad wants to take over the land for expanding its business

operations, the town administration aims to lay claim to the land keeping in mind recent environmental studies pointing towards the crucial role of the disputed property in water conservation.

[Read More](#)

CASE REVIEW

ANTRIX v. DEVAS

-Rohit Guru, Member, CADR

ANTRIX-DEVAS DEAL

In January 2005, ISRO's commercial arm, Antrix Corporation Ltd. ("Antrix") signed an agreement ("deal") with Devas Multimedia Pvt. Ltd. ("Devas") when the Department of Space was headed by G. Madhavan Nair. According to the agreement, Antrix was required to supply 70 MHz of the scarce "S-band space segment" to Devas for its digital multimedia services. Furthermore, Antrix had also agreed to lease "satellite transponders" to Devas in order for them to provide the aforementioned services via the "S-band wavelength (spectrum)" which is usually reserved for strategic purposes. In return, Devas was required to pay Antrix a sum of USD 300 million over a span of 12 years.

SCANDAL, CORRUPTION AND A TOTAL BREAKDOWN

The Controversy surrounding the deal first emerged in 2011 when there were reports of irregularities in relation to financial

mismanagement, non-compliance of rules, conflict of interest among others. It was also alleged that the spectrum was prearranged for Devas without prior permission from the DoT and the Wireless Planning and Coordination Wing. Moreover, all these developments took place right after the 2G spectrum scam which led to heavier scrutiny. Hence, in February 2011 the Central Government terminated the contract by acting in its sovereign capacity and citing it as a force majeure.

ARBITRATION PROCEEDINGS: A LONG BATTLE

- In June 2011, Devas approached the International Chamber of Commerce ("ICC") through its Rules of Arbitration as well as the Permanent Court of Arbitration ("PCA") in order to commence arbitration proceedings against Antrix for repudiating the contract. Antrix challenged the jurisdiction of the ICC to arbitrate the dispute, however, the Supreme Court of India in May 2013 ruled that the

arbitral proceedings initiated could not be interfered with.

- In September 2015, ICC passed an award of USD 672 million in favour of Devas ruling that Antrix wrongfully terminated the deal. Following this Devas approached the Delhi High Court to enforce the award.
- In November 2015, Antrix approached the Civil Court of Bangalore under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Act”) to challenge the ICC arbitral award. It also approached the Supreme Court with an aim to commence a separate arbitral proceeding against Devas and contended that the Civil Court of Bangalore lacked jurisdiction over the dispute. However, Antrix did not succeed in its plea.
- In September 2018, Devas filed a plea with the U.S. federal court for the Western District of Washington (“U.S. Court”) seeking enforcement of the award.
- In November 2018, the proceedings filed by Antrix before the Civil Court of Bangalore under section 9 and section 34 of the Act was put on stay by the Supreme Court.
- In October 2020, the U.S. Court ordered Antrix to pay Devas a sum of USD 1.2 billion as compensation in accordance with the ICC award.
- In November 2020, the Supreme Court of India stayed the enforcement of the arbitral award and further ruled that it would be kept

in abeyance until the Delhi High Court decides on the section 34 application.

WINDING-UP PETITION: AN ACT OF GENIUS OR A HOPELESS ATTEMPT?

In January 2021, Antrix was directed by the Central Government to file a winding-up petition under Sections 271 and 272 of the Companies Act, 2013 against Devas and the same was admitted by NCLT, Bengaluru. The grounds for the winding up petition were that Devas was conducting its affairs in a “*fraudulent manner*”, “*the company was formed for fraudulent and unlawful purpose*”, “*the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct*”.

The Tribunal also acted quite swiftly by appointing a provisional liquidator just a day after the petition was filed. The bench also held that the proceedings that are pending against the arbitral award, do not stand as a bar to initiate the current proceedings. Devas’ management has to cooperate fully with the Provisional Liquidator. The Provisional Liquidator has also been permitted to take charge of Devas’ management and to take control of Devas’ property, effects, etc. in accordance with the provisions of the Companies Act, 2013.

The case has taken many interesting turns and it remains to be seen where it leads to. On one

hand Devas is trying to enforce the arbitral award, and on the other hand, Antrix has initiated winding-up proceedings against Devas. The case is listed to be heard in February and time will tell if the Central Government's move was a masterstroke or just another desperate attempt before the arbitral award is enforced.

UPCOMING EVENTS

RGNUL INTRA MEDIATION AND CLIENT COUNSELLING COMPETITION

CADR is organising the annual Intra RGNUL Mediation and Client Counselling Competition from the 18th - 21st of February, 2021. The Competition is open to RGNUL students only and aims to not only acquaint the students of RGNUL with mediation and client counselling competitions but also provide the basis on which mediation and client counselling competitions will be allotted to teams in the coming year.

3RD RGNUL SPORTS AND ENTERTAINMENT LAW MEDIATION COMPETITION

The 3rd edition of the RGNUL - PACT Sports and Entertainment Law Mediation will be organised by CADR and PACT and held from the 6th - 8th of March, 2021. SIMI and Krida Legal are the Chief Knowledge Partner and the Chief Advisory Organisation respectively. The purpose of the competition is not only to promote Mediation but also provide an opportunity to students to familiarise themselves with the niche area of sports and entertainment disputes

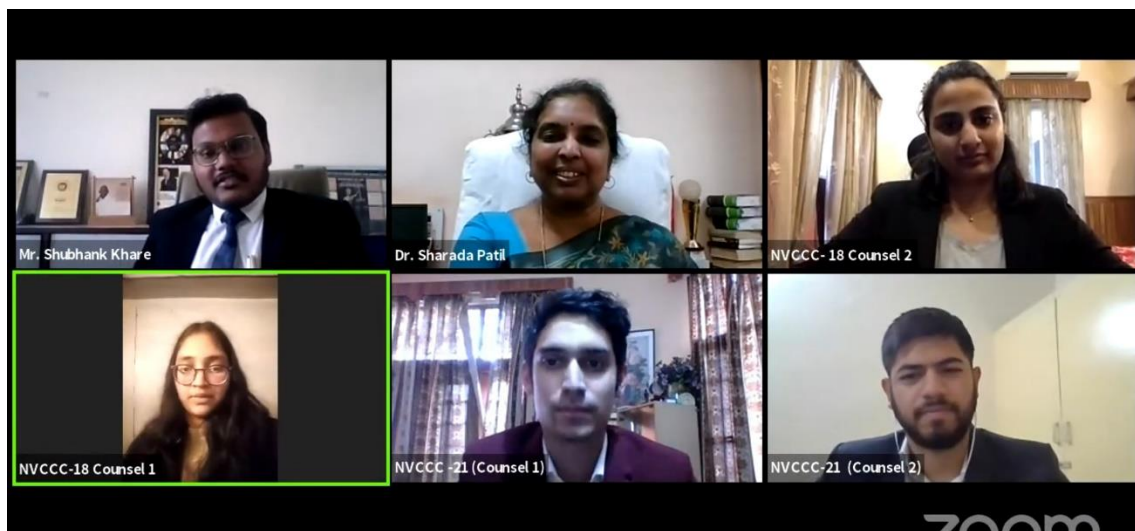


HIGHLIGHTS OF THE MONTH

STUDENTS UPDATE

The students of the Rajiv Gandhi National University of Law, Punjab have time and again proven their mettle at various competitions, national as well as international, by bagging multiple accolades at different levels. It is only natural that these awards are recorded and celebrated in the best manner possible in today's virtual world.

The entire CADR team takes immense pleasure in congratulating Wamic Wasim Nargal and Rudra Pratap Singh Jamwal for **winning** the Late (Shri.) T.J. Varghese Thakaran National Virtual Client Counselling Competition, 2021 organized by LawInternships from January 22- January 24, 2021, Wamic Wasim Nargal for bagging the award for the **best counsel**. We also congratulate Kohsheen Saraf and Nandini Jain who emerged as the **runners up** in the same competition.



Patron-in-Chief

Prof. (Dr.) Anand Pawar
Vice-Chancellor, RGNUL, Punjab

Patron

Prof. (Dr.) Naresh Kumar Vats,
Registrar, RGNUL, Punjab

Faculty Co-Coordinator

Dr. Gurmanpreet Kaur
Assistant Professor of Law

CADR NEWSLETTER TEAM**EXECUTIVE EDITORS**

ADITYA MATHUR

NIKITA AGGARWAL

CONTENT EDITORSABHIGYAN TRIPATHI
ANANYA SINGH

MALVEKA

ROHIT GURU
SHIVALI SHAH**DESIGN EDITORS**

ARJUN GOYAL

RUDRA PRATAP SINGH

QUALITY EDITORSSHIVALI SHAH
AASTHA**CONTACT DETAILS:**EMAIL US AND SUBSCRIBE TO THE NEWSLETTER: adrc@rgnul.ac.inSUBMIT ARTICLES: submissions.cadr@rgnul.ac.in**FOLLOW US:****INSTAGRAM****TWITTER****BLOG****FACEBOOK****LINKEDIN****YOUTUBE**