



CADR NEWSLETTER

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

NATIONAL NEWS

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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 fifth 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. PROVISIONS OF LIMITATION ACT TO BE APPLICABLE TO ARBITRATION PROCEEDINGS UNDER SECTION 18(3) OF THE MSMED ACT: SUPREME COURT

The Supreme Court in *Silpi Industries v. Kerala State Road Transport Corporation* held that the provisions of the Limitation Act, 1963 will apply to Arbitration Proceedings initiated under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006. The bench comprising Justice Ashok Bhushan and Justice R. Subhash Reddy observed that the provisions of the ACA, 1996 are made applicable such that the arbitration is in furtherance of the arbitration agreement under Section 7(1) of the ACA, 1996.

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2. THE DEFENCE OF SOVEREIGN IMMUNITY CANNOT BE CLAIMED BY A FOREIGN STATE AGAINST THE ENFORCEMENT OF AN ARBITRAL AWARD: HIGH COURT OF DELHI

The High Court of Delhi in *KLA Const. Technologies Pvt. Ltd. and Ors. v. The Embassy of*

Islamic Republic of Afghanistan and Ors. opined that a foreign state cannot invoke a plea against the execution of an arbitral award arising out of a commercial transaction. The single judge bench of Hon'ble Mr. Justice J.R. Midha also observed that the prior consent of the Central Government under Section 86(3) of the Code of Civil Procedure is not necessary to enforce an arbitral award against a foreign state.

[Read more](#)

3. ARBITRATOR CAN ACT AS AN AMIABLE COMPOSITEUR ONLY WHEN THE UNDERLYING CONTRACT PERMITS THE SAME: BOMBAY HIGH COURT

The High Court of Bombay in *BCCI v. Deccan Chronicle Holding Ltd.* held that an arbitrator could act as an amiable compositeur only when the same is permitted by the underlying contract. The Court further held that the 'minimal curial intervention' principle could not be treated as a license on the purest speculation to take shortcuts and give awards without sufficient reasons.

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INTERNATIONAL COMMERCIAL ARBITRATION

1. THIRD-PARTY FUNDING IN DOMESTIC ARBITRATION PERMITTED BY SINGAPORE

Singapore has permitted “third-party funding” of domestic arbitration proceedings, SICC proceedings and mediation proceedings related to the same. Earlier, Singapore only allowed third-party funding in international arbitration proceedings and related mediation proceedings. The current changes were made applicable from 28 June, 2021.

[Read more](#)

2. NEW ARBITRATION RULES LAUNCHED BY AIAC FOR PUBLIC CONSULTATION

The Asian International Arbitration Centre (AIAC) on 20 June 2021, released its draft on new “International Arbitration Rules” for public comment. The rules were launched after extensive discussions with the “External Advisory Committee for the Revision of the AIAC Arbitration Rules”. The draft illustrates AIAC’s focus on modernising its rules in order to appeal the international arbitration arena.

[Read more](#)

3. PRO-ENFORCEMENT APPROACH TO FOREIGN ARBITRAL AWARDS RECEIVES A BOOST BY THE FEDERAL COURT OF AUSTRALIA

The Federal Court of Australia in *Neptune Wellness Solutions, Inc v. Azpa Pharmaceuticals Pty*

Ltd, solidified the position of Australian courts in relation to their pro-enforcement approach to foreign arbitral awards under the New York Convention. The New York Convention was enforced efficiently by the Federal Court which allied perfectly with the existing practices in UNCITRAL Model Law jurisdictions.

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4. SUPERVISORY COURT’S POWER TO SET ASIDE ARBITRAL AWARDS ON GROUNDS OF PUBLIC POLICY CONSIDERED BY THE PRIVY COUNCIL

The Judicial Committee of the Privy Council in *Betamax Ltd v. State Trading Corporation (Mauritius)*, held the Supreme Court of Mauritius wrong in setting aside an international arbitration award on the ground that it was against the public policy of Mauritius. The arbitral tribunal had found the underlying contract to be legal and it had the jurisdiction to decide the same. The Supreme Court later set aside the award under section 39(2)(b)(ii) of the Mauritian International Arbitration Act, 2008.

[Read more](#)

5. APPLICATION FOR FURTHER EXTENSION OF TIME TO CHALLENGE AN AWARD DENIED BY THE ENGLISH HIGH COURT

The English High Court in *STA v. OFY*, denied an application seeking extension of time to challenge an arbitral award under section 68 of the Arbitration Act, 1996. The court denied

the application on the ground that the applicant had let a previous extension order to lapse and set a precedent laying out the high standards Section 68 applicants face when they fail to abide by the deadlines.

[Read more](#)

6. INCONSISTENT AWARD IN PARALLEL ARBITRATION HELD TO BE INVALID BY THE HONG KONG COURT

The Hong Kong High Court in *W* v. *AW* held an HKIAC arbitration award to be “manifestly invalid” on the ground that the arbitral tribunal’s findings were “inconsistent” with an earlier award passed in a different arbitration. It was held to be a “highly unusual case” as the earlier award was passed in an arbitration proceeding where the involved parties and one of the arbitrators were the same.

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INVESTMENT ARBITRATION

1. PAKISTANI PM IMRAN KHAN HAS APPROVED A NEW BILATERAL INVESTMENT TREATY (BIT) TEMPLATE

The Pakistani PM Imran Khan recently approved the new Bilateral Investment Treaty (BIT) template in Pakistan. Under this template, any relevant disputes will be dealt with and remedied via local arbitration. The BIT template has been developed through the assistance of the law and justice division, the attorney general of Pakistan, and all other stakeholders. Currently, Pakistan has signed 32 bilateral investment treaties with different countries.

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2. DEVAS MULTIMEDIA PVT. SEEKING TO SEIZE AIR INDIA'S USA ASSETS

The company Devas Multimedia Pvt. was seeking to seize Air India's assets in the USA

so as to enforce the \$1.2 billion worth arbitral award it had won against India. It considered "Air India" as the alter-ego of the Indian state and hence found it valid enough to be held liable for the country's debts.

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3. VIENNA INTERNATIONAL ARBITRATION CENTRE (VIAC) LAUNCHES NEW INVESTMENT ARBITRATION AND MEDIATION RULES

The Vienna International Arbitration Centre (VIAC) launched new VIAC Rules of Investment Arbitration, and VIAC Rules of Investment Mediation, w.e.f. 1st July, 2021. This has been done to provide an efficient and cheaper alternative for resolving investor-state disputes. The new Investment Arbitration Rules provides a high level of party autonomy and procedural flexibility.

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MEDIATION

1. TURKEY OFFERS TO MEDIATE IN THE GRAND ETHIOPIAN RENAISSANCE DAM DISPUTE

Ethiopian effort to construct a 4.2-billion-dollar project, called Grand Ethiopian Renaissance Dam (GERD), a massive hydroelectric Project in entire Africa is being viewed as damaging to interests of Egypt. This project has given rise to a problem between the two countries. Even UNSC has discussed the problem and now Turkey has offered to mediate and reduce tensions.

[Read more](#)

2. HEALTH CARE SYSTEM IN MANITOBA SAVED THROUGH MEDIATION

The health care system in Manitoba will not be disrupted following an agreement between its Health care employers and the Manitoba Nurses Union. This has become possible when both sides came on the negotiating table and an expert mediator was appointed.

[Read more](#)

3. AN ATTEMPT AT MEDIATION FAILS IN THE FLORIDA CDC CRUISE DISPUTE

An impasse has arisen in mediation proceedings despite concerted efforts, by both parties in a dispute in which Florida had challenged the Centres for Disease Control and Prevention's cruise shutdown. This has resulted in Florida asking for more time to respond to the original complaint.

[Read more](#)

4. HOPE FOR HUMANITY AFRICA (HHA) AND SOUTH SUDAN ATTEMPTS TO RESOLVE THE DISPUTE THROUGH MEDIATION

Leaking spills from oil pipes due to South Sudan's Oil exploration efforts gave rise to dispute with Hope for Humanity Africa and South Sudan. This resulted in matter landing in court where compensation was sought for communities that had suffered due to pollution but now resolution of the problem is being sought through mediation.

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