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CADRadar

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

RGNUL

The Centre for Alternative Dispute Resolution's Quarterly Newsletter

Table of Contents

- About us
- Domestic Arbitration
- International Commercial Arbitration
- Investment Arbitration
- Mediation
- Article
- Events @ CADR
- Achievements

Vol V, Issue 4

01 Article: Prescribing the Impossible: Section 34(3) of the Arbitration & Conciliation Act

02 Publication of the RADR

03 5th Surana & Surana & RGNUL International Arbitral Award Writing Competition, 2024

ABOUT US

The Centre for Alternative Dispute Resolution, RGNUL (CADR-RGNUL) is a research centre dedicated to research and capacity-building in ADR. CADR's ultimate objective 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 Edition of the Fifth Volume of its quarterly newsletter, **"The CADR Radar."** 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. Additionally, the newsletter documents the events at CADR and the achievements of RGNUL students in ADR competitions. The CADR Radar is a one-stop destination for all that one needs to know about the ADR world; a "quarterly dose" of ADR News!

Domestic Arbitration

- Kavya and Vismaya

No requirement of fresh §21 notice for re-commencing arbitration post setting aside of award under §34: Bombay HC

The Bombay HC, in the matter of *Kirloskar Pneumatic Company v. Kataria Sales Corporation* held that there is no requirement of a §21 notice for re-commencing arbitration after the first award has been set aside under §34 of the A&C Act. HMJ Bharati Dangre held that there would be no requirement of a fresh invocation notice in such a situation as the opposite party would already be aware of the existence of the dispute. Read more

Use of the word 'seat' is not compulsory in an Arbitration Clause: Delhi HC

The Delhi HC in the matter of *Anju Jain v. M/s WTC Noida Development Company Pvt. Ltd.* held that the use of word 'seat' in an arbitration clause is not compulsory to determine the Jurisdiction of the Court(s) over the proceedings arising out of the arbitration agreement. HMJ Pratibha M. Singh held that there would be no seat and venue dichotomy when the jurisdiction conferred on other courts is made subject to the arbitration agreement; holding that in absence of any contrary indicia, the preferred place would be the seat of arbitration. Read more

Courts should refrain from delving into hyper-technical aspects of the arbitration agreement at § 11(6) stage: Delhi HC

The Delhi HC has in the matter of *T.V. Today Network Ltd v. Home and Soul Pvt. Ltd.* single bench of HMJ Dinesh Kumar Sharma held that court at the §11(6) stage should refrain from delving into hyper-technical aspects or intricacies of the arbitration agreement. Instead, the bench held that if an agreement visibly contains an arbitration clause and involves a dispute suitable for arbitration, it must be referred to the arbitrator as a matter of course. Read more

Final determination on question of arbitrability should be made by the arbitrator: Delhi HC

The Delhi HC, in the matter of *Prince Chadha v. Amardeep Singh* held that final determination on the issue of arbitrability of the dispute and the subject matter should be made by the arbitrator. It held that the scope of the Court exercising power under §11 of the A&C Act is limited to a prima facie examination of the existence of the agreement. HMJ Prateek Jalan enunciated that the Court can interfere only when the dispute is ex-facie not arbitrable. It held that an agreement prima facie exists when it contains the signature of the parties and attestation by a Notary Public. Read more

An Arbitration Award with contradictory findings is liable to be set aside under §34 of the A&C Act: Delhi High Court

The Delhi HC held that an arbitration award, in which the tribunal rendered findings contrary to its own observations, falls within the rubric of 'Public Policy' under §34 of the A&C Act. HMJ Chandra Dhari Singh enunciated that in a situation wherein the arbitral tribunal has given conflicting awards on an identical issue involving the same parties and with same contractual conditions, the Court would have to set aside the award in such an anomalous situation. Read more

§32(2)(c) of the A&C Act can be exercised only if continuation of proceedings becomes unnecessary or impossible: SC

The case *Dani Wooltex Corporation & Ors. vs Sheil Properties Pvt. Ltd. & Anr.* pertained to a dispute over two land developers over property in Mumbai, which was subjected to arbitration. The central issue of the case was the legality of termination of arbitral proceedings under § 32(2)(c) of the A&C Act, 1996. §32(2)(c) allows the arbitral tribunal to issue an order for the termination of proceedings, if it finds the proceedings to have become unnecessary or impossible. The Court held that mere non-appearance or failure to schedule a hearing did not render the arbitral proceedings unnecessary; instead, abandonment must be established with compelling evidence. Read more

Court does not sit in appeal over the Arbitral Tribunal's interpretation of the terms of the contract: Supreme Court

The case of *National Highways Authority of India v. Hindustan Construction Company Ltd.* dealt with § 34 of the A&C Act, 1996, which states that only the Arbitral Tribunal may adjudicate upon the construction of a contract. The Court held that it does not sit in appeal over the arbitrator's findings. Keeping in mind the restrictions in jurisdiction laid down by earlier judgements, as well as §34 and §37 of the Act, the Court would not be justified in interfering with the award unless specific conditions were fulfilled. Read more

Arbitration clause valid despite providing for even number of arbitrators: Delhi High Court

The Delhi HC, in the matter of *M/s Talbros Sealing Materials Pvt. Ltd vs M/s Slach Hydratecs Equipments Pvt. Ltd.* dealt with a petition seeking the appointment of an arbitrator. §10 of the A&C Act, 1996 states that parties are free to determine the number of arbitrators, provided that they are not an even number. Although the arbitration clause at the centre of the instant case violated clause (1) of §10, the Court ruled that the Section was merely a machinery function for the functioning of the arbitration agreement, and specifying that the entire clause was not to be invalidated merely because it was in contravention of it. Following §10(2), the HC appointed a sole arbitrator to adjudicate the dispute. Read more

High Courts without original civil jurisdiction do not have the power to extend the time limit for passing the arbitral award: Supreme Court

The SC decided the merits of a Special Leave Petition, which originally arose from a decision of the Meghalaya HC, wherein the petition of an applicant was rejected on the grounds that it had passed the time limit for passing an arbitral award. §29A of the of the A&C Act, 1996, inserted in 2015, prescribes a maximum period of 18 months for any arbitral tribunal to pass the award. Citing sub-section(4) of § 29A as well as §2(1)(e), a two-judge bench of the SC had held that only HCs with original civil jurisdiction have the power to extend the time limit for passing an arbitral award under §29A of the Act. Upholding the decision of the Meghalaya HC, the SC dismissed the Special Leave Petition. Read more

Parties cannot be forced into arbitration if the arbitration clause unambiguously requires discretion of parties: Madhya Pradesh HC

The dispute central to the case *Yeshwant Boolani v. Sunil Dhameja* was one between the son of a deceased partner of a firm and a partnership firm the deceased was a part of. The son of the deceased considered himself to be entitled to inheriting his father's share in the firm. The partnership deed included an arbitration clause, which stated that any dispute arising during the partnership may be referred to arbitration, subject to the mutual consent of the parties. The HC held that both appointment of a new partner as well as participation in arbitration was at the discretion of the remaining partners. Read more

Delhi HC imposes costs of Rs. 50,000 for unnecessarily challenging and questioning of arbitrator's mandate.

The Delhi HC bench of HMJ Pratibha M. Singh, in the matter of *Ms. Sarika Chaturvedi v. Agarwal Auto Traders & Ors.* imposed costs of Rs.50,000/- on a party for unnecessarily challenging and questioning the mandate of the arbitrator. The bench enunciated that the party's intent was to create a stalemate. It held that repeated interventions of the court in arbitral proceedings are to be avoided and parties cannot force the arbitrators to recuse/withdraw. Read more

The arbitration clause would be valid despite an even number of arbitrators and hence §11(6) Petition under such clause can be allowed: Delhi High Court

The Delhi HC bench of HMJ Jasmeet Singh has in the matter of *M/s Talbros Sealing Materials Pvt. Ltd. v. M/S Slach Hydratecs Equipments Pvt. Ltd* held that the arbitration clause is not invalidated merely on the ground that the number of arbitrators, as per the arbitration clause, was an even number and therefore, was in contravention of §10 of the A&C Act, 1996. §10 states that the parties are free to determine the number of arbitrators, provided that such number shall not be an even number. Read more

Ministry of Finance releases guidelines recommending restriction of Arbitration, preferring Mediation instead

The Ministry of Finance recommended that arbitration clauses be included only in large scale government procurement contracts, with a value more than Rs. 10 Crores. For contracts of lesser value, other methods of alternative dispute resolution were recommended. While recognising the merits of arbitration, the Ministry reasoned that governmental processes were intricate and time-consuming, and they involved personnel that were liable to be transferred regularly, hindering the process. It advised government entities to adopt mediation as per the Mediation Act, 2023, or to negotiate amicable settlements. Additionally, the guidelines recommended the establishment of high-level committees comprising of technical experts and retired judges to scrutinise solutions and ensuring that they aligned with public interests. The Arbitration Bar of India (ABI) and the Indian Arbitration Forum expressed concern regarding the guidelines, stating that the non-binding nature of mediation would cause problems. Read more

Judicial review and re-appreciation of evidence impermissible under § 34 of the A&C Act, 1996: Gujarat HC

In a dispute between the ONGC Ltd. and David Parkar Construction Ltd., the Gujarat HC held that arbitral awards containing detailed reasoning and interpretation of contractual terms are to be treated with substantial reverence, under §34 of the A&C Act, 1996. The High Court ruled that the District Judge had overstepped the bounds of judicial review under § 34 of the Act, and found the Arbitrator's Award to be reasoned and supported by evidence. Thus, the High Court overturned the lower court's orders and allowed the appeal. Read more

International Commercial Arbitration

- Ritwik and Inika

English Court Denies Rare 'Anti-Anti-Arbitration' for Discretionary Reasons

In *Euronav Shipping NV v. Black Swan Petroleum* DMCC [2024] EWHC 896 (Comm), the England and Wales High Court denied Euronav's request for an 'anti-anti-arbitration injunction' (AAAI) against Black Swan Petroleum. Despite finding a high probability that an arbitration agreement existed and was breached, the court refused the AAAI due to comity with the Malaysian court, voluntary submission by Euronav, and undue delay. The decision highlights the impact of party conduct on the availability of discretionary remedies. Read More

BVI Court Rules Against Dual Proceedings in Debt Dispute

A British Virgin Islands Court has ruled that it is abusive for a US litigation funder to pursue insolvency proceedings against a client while simultaneously bringing a claim before the Dubai International Arbitration Centre (DIAC) over the same alleged debt. In *Arius v. WPIL*, the Court found that pursuing both avenues concurrently was an improper use of the legal process, aiming to pressure the client unfairly. This decision emphasizes the importance of choosing a single legal route when dealing with debt disputes. Read More.

The ICC Upholds Pakistani Law in Oil and Gas Arbitration Dispute

The International Chamber of Commerce (ICC) upheld Pakistani law as governing arbitration agreements related to Petroleum Concession Agreements (PCAs) and Joint Operating Agreements (JOAs) in oil and gas exploration. Frontier Holdings Limited must bear $250,000 in arbitration costs. The Tribunal ruled it lacks jurisdiction over the dispute, affirming Pakistani legal sovereignty and competence of the ICC court under Article 6(3) of the ICC Rules. The Tribunal directed each party to bear their own costs and dismissed all other claims. Read More.

FAA Mandates Court Stays Over Dismissals for Arbitration: US Supreme Court

The US Supreme Court in *Smith v. Spizzirri* ruled that courts must stay, not dismiss, lawsuits when claims are sent to arbitration, resolving a federal circuit split. Justice Sotomayor emphasized that Section 3 of the Federal Arbitration Act (FAA) mandates staying proceedings, aligning with the FAA's intent. This decision ensures federal courts retain jurisdiction post-arbitration, impacting employers' strategies, especially after the *Badgerow v. Walters* decision on federal court jurisdiction over arbitration award motions in 2022. Read More.

Court Enforces LCIA Arbitration Clause Against Sanctioned Russian Bank

The English Court upheld an anti-suit and anti-enforcement injunction against VEB, a sanctioned Russian bank, which had initiated proceedings in a Russian court despite an LCIA arbitration clause in its agreement with Barclays. The Court, making the Interim Order permanent, found no frustration of the arbitration agreement, dismissing VEB's claims of impediments due to sanctions. It also ruled that Barclays' eight-month delay in seeking the injunctions did not impact the case, as the Russian proceedings were not significantly advanced. Read More.

·St. Petersburg Court Seizes €700M in Assets from UniCredit, Deutsche Bank, Commerzbank Amid Legal Dispute

A St. Petersburg court in *UniCredit v. RusChemAlliance* seized over €700 million worth of assets from UniCredit, Deutsche Bank, and Commerzbank following a claim by RusChemAlliance, a Gazprom subsidiary. The seizures include €463 million from UniCredit, €238.6 million from Deutsche Bank, and unspecified amounts from Commerzbank. The assets were frozen due to the banks' refusal to pay guarantees under a contract with Linde, citing EU sanctions, and defying UK court rulings that the litigation should be heard in ICC arbitration. Legal challenges are complicating the banks' efforts to exit Russia. Read More.

Privy Council Instructs English Courts to Implement New Test for Staying Creditor's Winding-Up Petition

The Privy Council ruled in *Sian Participation Corp v. Halimeda International* that a creditor's winding-up petition should be stayed for arbitration only if the debt is "genuinely disputed on substantial grounds." This overturns the Salford Estates decision, which allowed stays even for insubstantial disputes. The ruling supports creditors by allowing insolvency proceedings despite arbitration agreements, thus preventing debtors from using arbitration to delay insolvency without genuine disputes. This decision also promotes arbitration's objectives of efficiency and cost reduction. Read More.

Brazilian Creditor Achieves Successful Judgment Enforcement Against Chinese Solar Panel Manufacturer

A Brazilian award creditor in *Risen Energy Co. v. Focus Futura Holding Participacoes S.A.* is pursuing enforcement against a Chinese solar panel maker over a contentious contract dispute. The complex case spans multiple jurisdictions, highlighting the challenges of cross-border arbitration award enforcement. The Chinese company is resisting with various legal defences, complicating the process. This situation underscores the need for understanding international legal frameworks and meticulous contract drafting. Despite arbitration's potential as a dispute resolution tool, its effectiveness hinges on the enforceability of its awards. Read more

Ecuador's Top Court Rules Homologation Unnecessary for Foreign Awards

The Procedural Code of Ecuador in *CW Travel v. Seitur* set requirements for recognizing and enforcing foreign awards, but the 2018 Organic Law reinstated the Arbitration Act's provisions, treating foreign awards like domestic ones. Despite this, homologation is still required for enforcement, as confirmed by a 2019 amendment. A notable case saw a trial judge and the Court of Appeals in Quito reject enforcement of a non-homologated ICC award, emphasizing the need for homologation and adherence to public policy in Ecuador. Read More.

Investment Arbitration

- Kartikey and Mustafa

48th session of Working Group III of UNCITRAL held in New York

The United Nations Commission on International Trade Law (UNCITRAL) is one of the subsidiary bodies of the United Nations tasked with the responsibility of facilitating international trade and investment. It produced a report outlining the progress of its Working Group III on Investor-State Dispute Settlement (ISDS), during its 48th session in New York, held from April 1 to 5, 2024. Emphasis was laid on updating the Draft Guidelines on Prevention and Mitigation of Investment Disputes to maintain its non-binding nature. Deliberations were also held regarding draft statutes of an advisory center on international investment dispute resolution, and a standing mechanism for the same. Read More.

9th Annual Conference of EFILA

The European Federation for Investment Law and Arbitration (EFILA), established in Brussels, is a think-tank which actively strives to facilitate exchange of information to develop and promote European and international investment and arbitration laws. The 9th Annual Conference of EFILA took place in Frankfurt on 25 April 2024, which included two panel sessions on “Domestic courts and the review of awards: recent trends” and “Geopolitical uncertainties and their impact on arbitration”. Read More.

Martina Polasek appointed as Secretary General of ICSID

The International Center for Settlement of Investment Disputes (ICSID) was established by the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was formulated by the World Bank to promote international investment. The ICSID was established to settle international investment disputes through conciliation, mediation, arbitration or fact-finding. On 30 April 2024, Martina Polasek was appointed as the new ICSID Secretary General. Read More.

Spain withdraws from the ECT

The Kingdom of Spain officially withdrew from the Energy Charter Treaty (ECT) on 14th May, 2024. This follows the Europe-wide withdrawal from the treaty. The ECT came into force in 1998 and was initially planned to secure investment in the energy sector. The treaty soon became an eyesore for governments, acting as a barrier in bringing green investment. The treaty was declared invalid to be used in Intra-EU disputes by the Court of Justice of the European Union in 2021 and was already in news due to the EU’s prospective withdrawal. Read More

Decree No. 442 issued by Russia regarding "unjustified" deprivation of rights

On 25 May 2024, the Russian President issued Decree No. 442 on "special procedure for compensating damage caused to the Russian Federation in connection with the unfriendly actions of the United States of America". Under the Decree, the Russian government and the Russian Central Bank can apply to Russian courts to determine any "unjustified" deprivation of property rights by US authorities. If there are no justifiable grounds for the deprivation of said rights, the courts shall send a request to the Commission on Control over Foreign Investments to formulate a list of assets that can be utilized to compensate for losses. Read More.

Equitorial Guinea becomes the newest country to join ICSID Convention

The central African state of the Republic of Equatorial Guinea became a signatory of the International Centre for Settlement of Investment Disputes (ICSID) Convention on 13 June, 2024. This update is a continuing display of readiness towards adapting a more trusted Investment arbitration framework in the African continent, with Angola and Djibouti ratifying the Convention in 2022 and 2020 respectively. The ICSID Convention came into force on October 14, 1966. It is interesting to note that India is not a signatory of the Convention. Read More

Gazprom Export to pay +13 Bn to Uniper post arbitration proceeding

The German electricity supplier won big after it brought the dishonor of its gas contract with Gazprom to arbitration. Gazprom Export, owned majorly by the Russian Government had in 2022 stopped the supply of natural gas to Uniper after the government's offensive in Ukraine began, which brought Uniper's electricity supply to a standstill. The arbitration proceedings, held in Stockholm, brought relief to Uniper and empowered the company to end its longstanding contract with Gazprom. Read More

EU notifies withdrawal from the ECT

The EU on 27th June. 2024 notified the Energy Charter Treaty depository in portugal of its withdrawal from the treaty. The update comes after Italy, UK, Spain and others had already made individual exit from the agreement. The EU executive council had reached the consensus for the same on 30th May, 2024. The exit would take an year to become effective. Read More

EU approves signature of the Mauritius Convention on Transparency in ISDS

The European Union Council approved the step of signing the UN Convention on Transparency in Treaty-based Investor-State Arbitration, also known as the Mauritius Convention on Transparency, on 25 June, 2024, followed by the signature on 2 July, 2024. The Convention came into force in 2014 and aims to increase transparency and public access to the resources related to the process of Investor- State Dispute Resolution.. Read More

Mediation

- Raima and Kirdar

China's Marriage and Family Cases down [E.1] by 17% y-o-y after rise in Mediation efforts

There has been a drop of 17.24 per cent in China's marriage and family cases in the first quarter of 2024. This drop comes amidst the pre-litigation mediation efforts, and the People's Court's efforts that have continued to intensify pre-litigation mediation in marital and family disputes, as well as carrying out investigations, mediation and psychological counselling ahead of family trials, said the Supreme People's Court. Moreover, these courts have been making efforts to strengthen the "government and court linkage" by holding special meetings with housing and construction departments on housing-related disputes, in order to promote the standardization of real estate enterprises and reduce the occurrence of disputes. Read more.

England introduces compulsory mediation for small claims

The Ministry of Justice announced free mandatory mediation in money disputes valued at up to £10,000 made on paper and through HMCTS online systems. Parties will be compelled to attend the mediation sessions facilitated by trained mediators. The objective is to identify cases which may benefit from mediation, foster constructive communication between the parties and reach mutually acceptable resolutions where possible, without the need for litigation. It also aims at relieving the backlogs of courts and initiate focus on more complex matters. It will apply to claims under standard procedures. Attendance to the procedure is given more significance than engagement in the process. Read more.

Changes to UK Family Procedure Rules (FPR) encourage mediation for family disputes

Family lawyers welcome the changes to the updated FPR, which could result in more disputes being resolved away from courts. The rules now include a broader definition of non-court dispute resolution (NCDR), extending beyond mediation to include collaborative divorce, arbitration, and private financial dispute resolutions. The parties need to be open to considering NCDR as a means of resolving their dispute before and throughout the court proceedings. Failure to do so may be penalised in costs. Although, the Court cannot force the parties to engage in NCDR, there is a 'strong encouragement' to do so. The court can only encourage parties to 'reasonably engage' in NCDR. Read more.

Consumer Affairs Ministry looking at Mediation to solve complaints and resolve disputes

The Department of Consumer Affairs (DoCA), Ministry of Consumer Affairs, Food and Public Distribution is "seriously looking" at resolving consumer complaints through mediation. This would help the consumers looking for help in complaints like getting refunds for travel tickets or e-commerce-related grievances to avoid taking the legal route and resorting to a pre-litigation approach of which mediation is going to be a major part. The DoCA is also planning to strengthen the consumer helpline to resolve the complaint process using the Mediation Act 2023. It is considering to tap into National Law Universities and Indian Institute of Management and offer law courses to identify people who could be empanelled for the helpline so as to fasten the online mediation, where consumers will get the option of consulting mediators for quick online dispute redressal. Read more.

American Arbitration Association acquires ODR.com and Mediate.com to expand and revolutionize dispute resolution

The American Arbitration Association, on May 30, 2024, announced the acquisition of ODR.com Inc. and its parent company Resourceful Internet Solutions Inc. (RIS), which owns Mediation.com. The American Arbitration Association along with its international division, the International Centre for Dispute Resolution (AAA-ICDR) is the largest international provider of dispute resolution services. With ODR.com being the leading technology company in mediation and arbitration, this move of AAA-ICDR is in line with its mission to expand and revolutionize innovative dispute resolution. The companies said that the immediate focus of the alliance will be on expanding AAA's mediation services by developing a suite of ODR products. Read more.

UNDP has launched the regional network for "sustaining peace through insider mediation in Arab States"

The First Arab Regional Dialogue was hosted by the UNDP Regional Bureau for Arab States (RBAS) and Country Offices in Jordan, Lebanon, and Sudan from 19th to 21st May 2024 in Amman, Jordan. The Regional Dialogue took place as part of the event "Sustaining Peace Through Insider Mediation in Arab States", and was funded by the French Ministry for Europe and Foreign Affairs. Insider Mediation can be defined as a localised dispute resolution approach that is used to prevent and sustain peace. This localised approach empowers trusted community members to facilitate dialogue within their communities. The Insider Mediators include people from the civil, social, religious, and political structure of the society, who are able to monitor, analyse, and assess instances of tensions to reach to a peaceful and an amicable solution. Read more.

Govt. is expected to establish the Mediation Council of India (MCI)

A committee formed by the Insolvency and Bankruptcy Board of India (IBBI) has suggested a voluntary mediation framework in the form of the Mediation Council of India. The MCI will be established under the Mediation Act and can reduce the burden of cases on courts, thus enhancing the ease of doing business in India. It will also be responsible for conducting training and certification of mediators. As per the Mediation Act, such proceedings have to be completed within 180 days of their commencement. The council will consist of a chairperson and two members with expertise in mediation, who will set the rules for the process. Read more.

Ministry of Finance issues guidelines for arbitration and mediation in DOMESTIC public procurement contracts

The guidelines are in response to the Mediation Act, 2023, and aim to improve the government's approach to arbitration, considering its unique position as a litigant, the high costs involved, and the frequent challenges to arbitral awards. The advantages and disadvantages of arbitration and mediation have been discussed to improve the resolution process. While arbitration is recommended to be restricted to disputes valued below 10 crores, mediation and negotiation is encouraged for high value disputes. The guidelines aim to streamline the dispute resolution process while making it more efficient and cost-effective. Read more.

FAI updates Mediation Rules for improved accuracy

The Finland Arbitration Institute (FAI) updated its Mediation Rules to ensuring coherence and accuracy with the revised FAI Arbitration Rules. The Finnish Rules adopt the same gender-neutral terminology for arbitration-related terms as the FAI Arbitration Rules. The English version of these rules did not require this update. To expedite the process and ensure fairness, the Rules include measures like informing the FAI of the timetable of mediation. The rules encourage sincere efforts by the mediators and amicable settlements. The updated FAI Mediation Rules apply to all FAI Mediations commenced on or after 15 June 2024, unless otherwise agreed by the parties. Read more.

Prescribing the Impossible: Section 34(3) of the Arbitration & Conciliation Act

- Raiyyan and Nachiketa

INTRODUCTION

The eminent jurist HLA Hart asserted that Courts inevitably have to confront what he called the problem of penumbra. These are legal questions 'that arise outside the hard core of standard instances or settled meaning'. Simply put, he talks about legal problems the solutions to which are not readily available under the existing corpus of 'Law'. Once in every while, Courts have to steer the Law through these patchy and unplumbed terrains to find the answers to questions that lie 'outside' of the Law. This has remained a fundamental function of Courts of Common Law, for, as Lord Scarman once said, "it[common law] knows no gap".

One such 'peculiar circumstance' that the Hon'ble Supreme Court has encountered concerns Section 34(3) of the Arbitration & Conciliation Act, 1996 ("A&C Act"). The provision stipulates that any application to set aside an arbitration award may not be filed after three months from the date of the passing of the award. However, it vests the Courts with the authority to extend this period by up to 30 days, but not after that. The question now arises as to what if this period of these additional 30 days falls on a Court holiday? Section 4 of the Limitations Act, of 1963, caters to this problem. It provides that if a suit, appeal, or application has a 'prescribed period' that falls on a day when the court is closed, it may be taken up the next day; if the court is open. The chief question thus trickles down to– to what extent does Section 4 of the Limitation Act apply to Section 34(3) of the A&C Act?

THE APPROACH OF THE COURT

The Court had the opportunity to deal with this issue on multiple instances. It first came across this lacuna legis in the Assam Urban Water Supply & Sew. Board vs M/S. Subash Projects & Marketing Ltd. In this case, the plaintiff wanted to file an appeal against an Arbitration Award received by them on 26th August, 2003. According to Section 34(3), the fourth month, or the additional 30-day period would fall on 26th December, 2003. However, the Court's vacation started on 24th December, and as a result, the Plaintiffs were compelled to approach the Court on the first day since its re-opening. The primary question before the Court was whether the appeal could be entertained. After unfavourable decisions from the subordinate Courts, the Plaintiff approached the Supreme Court.

To its credit, the Supreme Court acknowledged the peculiarity of the issue and refused to singularly rely on the tradition of stare decisis et non quieta movere. The court, to settle the law on this point, decided to depend upon the meaning of Section 2(j) of the Limitation Act, 1963, which states, '"Prescribed period" means the period of limitation computed in accordance with the provisions of this Act'. Interpreting this provision, the Court derived that this 'prescribed period' merely refers to situations where the appeal is filed as a matter of right and, thus, the period where the Court's discretion is involved, such as the 30-day extendable period under Section 34(3), will not be included.

Therefore, though Section 4 of the Limitation Act would apply to the first part of Section 34(3) of the A&C Act, it would not cover the latter part, i.e., the 30-day extendable period. As a result, the appeal was rejected. This interpretation was later consolidated in the Bhimashankar Sahakari Sakkare Karkhane Niyamita vs. Walchandnagar Industries Ltd. ("Bhimshankar") case, where the question before the Court was almost identical.

THE ANOMALY OF THE LAW

This interpretation leads to deleterious results, considering that the discretion provided under Section 34(3) of the Arbitration Act both empowers and constricts the Courts. This was emphasised by the Supreme Court in State Of Maharashtra vs M/S Hindustan Construction Co.Ltd, where it found that an application for setting aside an Arbitral Award under Section 34 of the Arbitration Act ought to be made within the time prescribed under sub-section (3) of Section 34, i.e., within three months and a further period of 30 days on sufficient cause being shown and not thereafter. Interestingly enough, the prescribed period here seems to include both the three months and the 30 days. Even more interesting is the fact that the Court in Bhimashankar relied upon the case to reach its conclusion, but missed this pertinent implication.

In such a situation, the Court's interpretation would lead to an anomaly. It would follow that if an arbitral award is made adequately prior to Court vacation, the parties would have been statutorily entitled to appeal against the decision for up to 3 months, and additionally, a period of 30 days. Indeed, this additional period would be subject to the Court's discretion, nevertheless, the party would at least have their plea considered instead of being rejected ab initio. In cases where the award is rendered 3 months prior to Court vacations, then the parties would not have an option to extend the period no matter how justified their reason for delay might be. This would, in effect, render the latter part of Section 34(3) inapplicable to such parties. This 'anomaly' essentially discriminates between the two groups of parties, without any reasonable ground, violating the principles of natural justice.

PLAUSIBLE ALTERNATIVES

'Let justice be done, though heaven may fall' has been the adage, but we propose a few much simpler alternatives to this particular issue. These can be subdivided into short-term and long-term solutions.

Short-term solutions are temporary and should be imbibed until a final long-term solution is arrived at. This particular solution should abide by the principle of actus curiae neminem gravabit, essentially meaning that an act of the court shall prejudice none. Therefore, the apt approach would be to consider the 'discretionary period' as a period 'prescribed' for discretion. This would lead to an interpretation of the provision in a manner that is in consonance with the aforementioned maxim since it would be included in the definition of 'prescribed period' as per the Limitation Act and nothing prevents it from being within the ambit of Section 4 of the Limitation Act pertaining to condonation of delay.

In the normal course of proceedings, the court, while condoning the delay of application for setting aside the Arbitral Award would analyse the circumstances and reasons for the delay in application. The same can be applied even when this additional 30-day period falls on a court holiday. The relevant court can analyse the reasons given by the applicant justifying the delay in filing the application; if the reasons are genuine, the court may condone the delay and adjust the additional 30-day period after taking note of the court holiday.

The long-term approach should be to eliminate this ambiguity. The feasible solution would be to amend the provision in question in order to make the A&C Act a self-contained code in itself. This can be ensured by specifying that the time period is to be understood as 'working days' of the court. Presently, the 3 months, plus 30 days scheme entails 3 calendar months (and not 90 days) in addition to 30 days that is subject to the court's discretion. This can be reformed by removing the additional 30-day period altogether, defining days as 'working days' and further reducing the prescribed time period.
In order to refine the time period, the provision could define days as 'working days' to avoid hassles pertaining to delay condonation. Since this definition would elongate the span of the time period, the revised time period should be carefully reduced to offset the addition of the time period due to its definition as working days. Inspiration for reducing the time period can be taken from laws around the globe, most pertinently from the UK given the Common Law roots.
As per Section 57 of the Arbitration Act, 1996 of the UK, the time limit for filing an application for setting aside an Arbitral Award is just 28 days. This is in conformity with the spirit of arbitration as a 'fast-track' dispute resolution mechanism. India can take cues from the aforementioned legislation in order to further refine and align its laws with the spirit of arbitration as a dispute resolution mechanism.

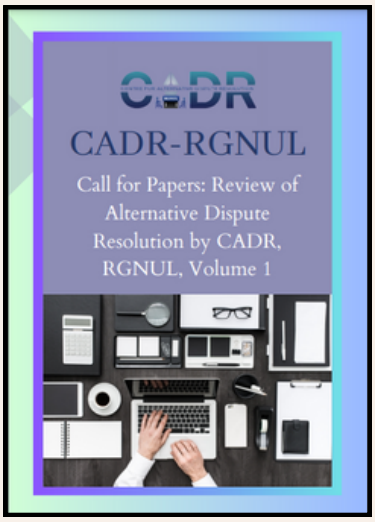
CONCLUSION

The present interpretation of the Supreme Court fails to accomplish the spirit of the law and more specifically the maxim actus curiae neminem gravabit. Therefore, the need of the hour is to interpret the provision in a manner that does no harm to the aggrieved. In the short term, the court must evolve its interpretation of the discretionary period as a period prescribed for discretion. With change being the life of law, this should not become the final solution; the legislature must amend the provision to remove the ambiguity and to further align the A&C Act with global practices.

Events @ CADR

Upcoming Events

Publication of the Review of Alternative Dispute Resolution (RADR)

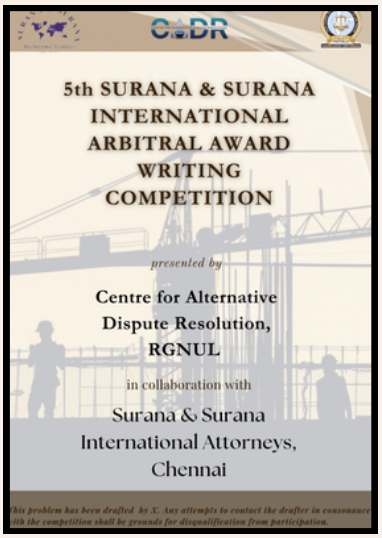


The Centre is all set to release the maiden edition of the Review Of Alternative Dispute Resolution (RADR). The Journal has been founded with the vision to take forward discussions on contemporary issues surrounding Alternative Dispute Resolution. RADR is an independent, annual, student-run, double-blind, and peer-reviewed publication. The theme of the first edition of the journal is "Navigating the Expanding Role of Mediation and Arbitration in Dispute Resolution".

Fifth Edition of the Surana & Surana & RGNUL International Arbitral Award Writing Competition, 2024

The Centre for Alternative Dispute Resolution (CADR) is collaborating with Surana & Surana International Attorneys, a renowned law firm in Chennai, India, to organize the Fifth Edition of the Surana & Surana & RGNUL International Arbitral Award Writing Competition, 2024.

The competition, recognized in the arbitration field, offers law students, legal professionals, and arbitration enthusiasts a platform to showcase their arbitral award drafting skills. Participants will tackle complex legal issues, applying their arbitration knowledge to draft an award based on a hypothetical case scenario. Notably, there is no registration or participation fees, making it accessible to participants.



Events @ CADR

Upcoming Events

RGNUL Intra Client Counselling Competition, 2024

To boost RGNUL students' skills and provide a platform for talent, the Centre for Alternative Dispute Resolution is organizing the Intra Client Counselling Competition, 2024, this September. The event will develop practical lawyering skills through simulated client counseling, focusing on client relations, ethics, and communication—crucial for aspiring lawyers.

With over 200 students expected, the competition reflects increased interest from previous years. Participants will handle realistic counseling sessions, addressing legal issues and offering advice with professionalism and empathy. This experience aims to prepare them for future legal careers in a supportive, competitive setting.

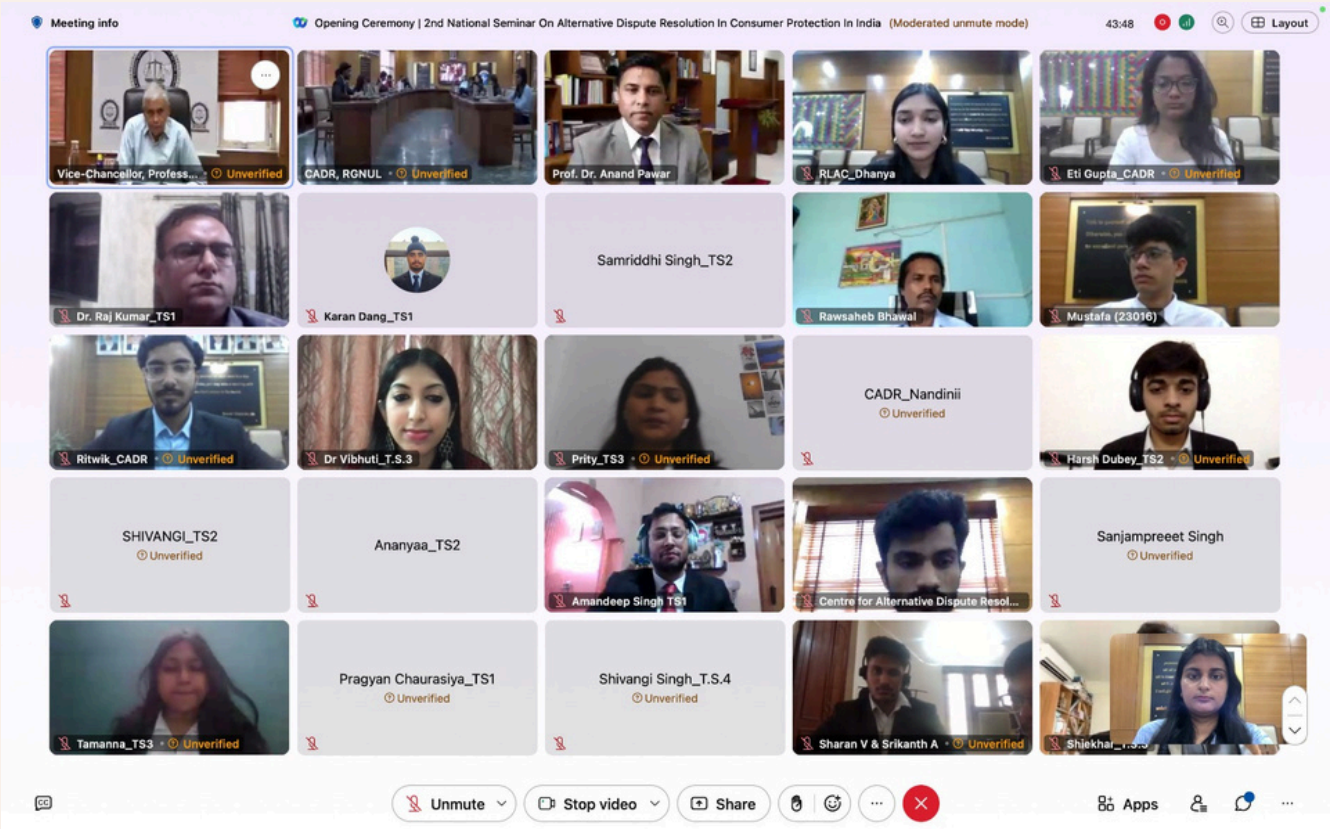
Events @ CADR

Completed Events

2nd National Seminar on Alternative Dispute Resolution in Consumer Protection in India

The second National Seminar on ADR in Consumer Protection, organized by CADR at RGNUL, effectively addressed India's backlog of consumer cases. The event emphasized the Consumer Protection Act, 2019, which advocates mediation for faster dispute resolution. With 23 papers presented by 41 participants, the seminar offered varied insights into consumer rights and ADR.

RGNUL's ongoing initiatives, such as the Dr. P.C. Markanda Chair on ADR and the Centre for Consumer Protection Laws and Advocacy (CCPLA), continue to promote ADR, conduct research, and provide legal aid. CADR is dedicated to advancing ADR as a tool for socio-economic justice, enhancing access to justice, and improving consumer welfare in India.



Achievements

Students of Rajiv Gandhi National University of Law bring Laurels to the University, bagging top positions at ADR Competitions

The team comprising Kartikey Shukla and Chaitanya Vohra from the Batch of 2027 emerged as **Semi-Finalists** in the **1st National Competition on Negotiating Transactional Documents** at UPES, Dehradun. Kartikey Shukla emerged as the **Best Negotiator.** We congratulate the team for the achievement and wish them best for their future endeavors!

The team comprising Aditi Saxena and Priya Sharma from the Batch of 2028 emerged as **Quarter-Finalists** in the **1st National Mediation Competition, 2024** by NMIMS, Indore. We congratulate the team for the achievement and wish them best for their future endeavors!

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