

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION,
RGNUL, PUNJAB

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NEWSLETTER

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NEWSLETTER

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION (CADR)

ARBITRATION

INTERNATIONAL NEWS

1. ARBITRATION WILL NOT BE SUSPENDED BY BANKRUPTCY OR JUDICIAL REORGANISATION OF A PARTY: BRAZIL

The Brazilian Bankruptcy Law was amended on 24 December 2020 in order to make the process of bankruptcy and judicial recuperation more efficient after considering the distress caused by the ongoing pandemic. Under normal situations, the declaration of bankruptcy or the granting of the judicial

recuperation stays certain types of lawsuits. However, the recent amendment made it clear that such declaration or grant will not suspend arbitral proceedings and the party who has been declared bankrupt or has been granted judicial recuperation cannot deny the enforceability of the arbitration clause.

[Read more](#)

2. AN ANTI-SUIT INJUNCTION IN RESPECT OF “ON-SHORE” DUBAI COURT PROCEEDINGS GRANTED FOR THE FIRST TIME BY DIFC COURT

In a first of its kind, an anti-suit injunction in favour of the party who has DIFC-LCIA arbitration proceedings pending has been granted by the Courts of the Dubai International Financial Centre. This will restrain the defendant from pursuing any litigation proceedings in the “onshore” Dubai Courts. This decision has been welcomed by the global arbitration community.

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3. ARBITRAL AWARD HOLDING DRUG TEST FOR COCAINE INSUFFICIENT TO PROVE JUST CAUSE CHALLENGED BY THE EMPLOYER

In *Colonial Wholesale Beverage Co. v. Local 59, International Brotherhood of Teamsters*, the arbitrator had ruled that the company did not have just cause for terminating the driver’s position after he tested positive for cocaine. In December 2020, this award was appealed to the federal court by the beverage wholesaler.

[Read more](#)

4. A PETITION ASKING THE SUPREME COURT TO RESOLVE CIRCUIT SPLIT OVER DISCOVERY IN AID OF PRIVATE COMMERCIAL ARBITRATION SEATED OUTSIDE THE UNITED STATES FILED

Servotronics, Inc. on 7 December 2020 filed a petition for writ of certiorari with the Supreme Court asking it to decide if parties can seek discovery in the United States to be used in commercial arbitration proceedings that are seated outside the United States under 28 U.S.C. § 1782. This question has divided the lower courts for a long time. The Seventh Circuit along with the Fifth and Second Circuits reject the use of Section 1782 in order to obtain discovery to aid international private commercial arbitrations that are seated outside the United States. Fourth and Sixth circuits on the other hand hold the view that Section 1782 permits such discovery.

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5. ARBITRATION ATTEMPT IN TRIBAL LOAN USURY DENIED BY THE DISTRICT COURT

The U.S. District Court for the Middle District of Florida on 10 December 2020 denied a motion to force arbitration proceedings filed by a collection company and its chief operations officer. The Court ruled that the arbitration agreements are “unconscionable” and hence “unenforceable” due to the conditions under which the borrower agreed to arbitrate their claims.

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6. ATTEMPT TO BIND REMOTE HOME PURCHASER TO ARBITRATION CLAUSE FAILED

In *Taylor Morrison of Texas, Inc. v. Kohlmeyer*, a Texas Court of Appeals dismissed a contractor's appeal of a trial court order that denied the contractor's motion to force arbitration in a dispute relating to a home construction defect. The appellate court ruled that the theories of direct benefits estoppel and implied assumptions did not allow the contractor to bind a subsequent purchaser to compulsory arbitration proceedings under the original purchase agreement.

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7. BAN ON RUSSIA FROM COMPETING IN MAJOR EVENTS UPHELD BY CAS

The World-Anti Doping Agency's ruling to declare the Russian Anti-Doping Agency non-compliant with the World Anti-Doping Code has been upheld by the Court of Arbitration for Sport. This makes the Russian athletes available to compete as neutrals in upcoming Olympics and Paralympic games and other world championship events organised by signatories to the World Anti-Doping Code including the 2022 FIFA World Cup. However, the ban has been reduced from 4 years to 2 years.

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8. ORAL AGREEMENTS ON EMPLOYMENT ARBITRATION RESTRICTIONS HEARD BY THE NINTH CIRCUIT

In February 2020 the Eastern District of California had granted a preliminary injunction against the enforcement of the Assembly Bill (AB 51) by the State of California. The bill strives to prohibit compulsory arbitration agreements. On December 2020, the Ninth Circuit heard the oral arguments on the appeal by the California Attorney General to overturn the injunction. Now until the Ninth Circuit gives its ruling, the injunction granted in February will continue.

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9. DELEGATION OF ARBITRABILITY TO BE REVISITED BY THE SUPREME COURT IN HENRY SCHEIN II

On 8 December 2020, the Supreme Court heard the oral arguments in *Henry Schein, Inc. v. Archer & White Sales, Inc. (Henry Schein II)* after it had originally given a ruling in January 2019 in the first iteration of the dispute. It is for the second time in two years that the US Supreme Court will hear a case where the main issue is if a court or an arbitrator should decide if a dispute falls in arbitration or in the courts.

The case arose in 2012 from an antitrust dispute between a supplier of dental equipment and its distributor. The lawsuit was brought by the distributor against the supplier on the ground that the supplier had improperly restricted the distributor's sales. The supplier argued that the distributor was bound to arbitrate the disputes as agreed upon in an agreement signed by the supplier's predecessor.

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10. EU LAWS ON STATE AID IN SETTING ASIDE PROCEEDINGS TO BE TAKEN INTO ACCOUNT: POLISH COURT

While considering if the EU state aid regulations form part of the Polish public policy when an application to set aside an arbitral award has been filed, the Appellate Court in Warsaw decided that the EU Competition Law has to be taken into consideration when deciding an issue of public policy breach by an arbitral award.

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NATIONAL NEWS

1. TENANCY DISPUTES UNDER TRANSFER OF PROPERTY ACT ARE ARBITRABLE: SUPREME COURT

In *Vidya Drolia v. Durga Trading Corporation*, the Supreme Court has held that the Landlord-tenant disputes governed by the Transfer of Property Act, 1882 are arbitrable. The Court has overruled the ratio laid down in *Himangni Enterprises v. Kamaljeet Singh Ahluwalia*. The Court ruled that the landlord-tenant disputes pertain to subordinate rights in personam that arise from rights in rem. Thus, these disputes do not affect third-party rights and do not relate to inalienable and sovereign functions of the State.

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2. IT CANNOT BE HELD THAT AN EMERGENCY ARBITRATOR IS OUTSIDE THE SCOPE OF SECTION 2(1)(D) OF THE ARBITRATION AND CONCILIATION ACT, 1996: DELHI HIGH COURT

In *Future Retail v. Amazon*, the Delhi High Court has held that the provision of Emergency Arbitration under the SIAC rules, per se, cannot be said to be contrary to the 1996 Act. Thus, the 1996 Act does not prohibit parties from obtaining emergency relief from the emergency arbitrator.

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3. ESSAR COMPANIES DIRECTED TO DEPOSIT OVER 80 CRORES AS SECURITY AMOUNT FOR ARBITRATION.

Essar Services India Private Limited (ESIPL) has been directed to deposit an amount of Rs. 47.41 crores, whereas, Essar House Private Limited (EHPL) has to deposit an amount of Rs. 35 crores as a security deposit in an arbitration dispute with Arcelor Mittal Nippon Steel India Ltd. Justice GS Patel noted that “there is no reason why the Petitioner should be left, pending arbitration, with no security for its claim.” Moreover, he added that it is an eminently reasonable relief sought by the Petitioner and therefore, must be granted.

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4. INDIA CHALLENGES THE VODAFONE ARBITRATION AWARD IN SINGAPORE

India has challenged the award passed by the Permanent Court of Arbitration in the Vodafone case. It has been contended by the revenue that the rulings by international tribunals cannot override the sovereign authority of the legislature to frame the tax policies.

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5. CLAIM BARRED BY LIMITATION IS A QUESTION OF LAW AND FACTS WHICH ARBITRAL TRIBUNAL OR ARBITRATOR HAS TO CONSIDER ON THE BASIS OF RECORD: HIMACHAL PRADESH HIGH COURT

In *Shivalaya Construction (P) Ltd. v. State of Himachal Pradesh*, the Himachal Pradesh High Court has held that “it shall be open for the arbitrator to determine his own procedure with the consent of the parties.” The Court also highlighted that the entire procedure with regard to fixing of time limit for filing pleadings or the passing of Award has been prescribed under Sections 23 and 29A of the Act.

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INVESTMENT ARBITRATION

1. INDIAN ORDERED TO PAY \$ 1.4 BILLION TO CAIRN ENERGY

The Indian government lost an international arbitration over the retrospective levying of taxes, against Cairn Energy plc of the United Kingdom. India will have to pay up to \$ 1.4 Billion to Cairn Energy. The 3-member tribunal unanimously ruled that India’s claim was not valid. The tribunal asked the government to compensate Cairn “for the total harm suffered” along with the interest and the cost of arbitration.

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2. MINING FIRM TCC APPROACHES COURT IN VIRGIN ISLANDS AGAINST PAKISTAN

The mining firm Tethyan Copper Company (TCC) approached the High Court of Justice of the Virgin Islands, against Pakistan, in the case of RekoDiq, for the enforcement of \$ 5.97 billion awards by a tribunal of ICSID. A final hearing will take place in May 2021.

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3. PHILLIP MORRIS FILES A BILATERAL INVESTMENT ARBITRATION LAWSUIT AGAINST UKRAINE

Philip Morris International has filed a lawsuit against the government of Ukraine, for bilateral investment arbitration. The lawsuit was filed on the 21st of December at the ICSID, in connection with the alleged violated bilateral agreements, with the USA and Switzerland, on mutual protection of investments.

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4. CHINESE INVESTORS BROUGHT A \$ 3.5 BILLION ARBITRATION CASE AGAINST UKRAINE

Chinese Investors brought a \$ 3.5 billion arbitration case against Ukraine for blocking the sale of a strategic aircraft engine maker. This arbitration case was filed by the Chinese investor who was involved with Skyrizon. The Chinese investors behind Skyrizon have

accused Kyiv (capital of Ukraine) of expropriating their investment in Motor Sich after the government froze the shares of Motor Sich in the company.

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5. UBER CONSIDERING TAKING DISPUTE WITH COLUMBIA TO INTERNATIONAL ARBITRATION

The famous company Uber has decided to take its dispute with Columbia to international arbitration. It cited the violation of trade deal with the United States for taking the dispute to the next level. It has calculated its damages from suspending its services in Columbia to be more than \$250 million and is considering this, as well as other legal recourses.

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MEDIATION

1. THE SUPREME COURT OF INDIA HAS OFFERED A PROPOSAL FOR SETTING UP A MEDIATION PANEL TO BRING ABOUT AN END TO THE FARMERS' PROTEST

The aforementioned panel has been proposed to end the ongoing protest by a huge number of North Indian farmers for demanding the repeal of new agricultural laws that can potentially drive down prices of crops and take a hit on their earnings. The Court sent

notices to the government and the farmers' representatives across the nation for seeking their views on the said proposal and set Thursday as a deadline for a possible decision.

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2. A DISPUTE RELATING TO THE SALE OF LEAWOOD NPC INTERNATIONAL INC. RESTAURANTS WORTH \$816 MILLION HAS PROCEEDED TOWARDS MEDIATION

Leawood's NPC International Inc. filed for Bankruptcy Proceedings Reorganisation under Chapter 11 during the month of July. The said corporation was hoping to sell almost 900 Pizza Hut and 400 Wendy's locations and had received a bid of \$816 million from Flynn Restaurant Group. However, the deal fell through due to competition issues amongst different brands whose locations were managed by the Flynn Group. The bankruptcy judge in charge of this case passed an order for initiating mediation proceedings in the matter.

[Read more](#)

3. AN INNOVATIVE PROGRAM IN MASSACHUSETTS HAS BEEN ANNOUNCED TO EDUCATE REALTORS IN MEDIATION TECHNIQUES

Owing to a rise in eviction filings in the American state of Massachusetts since the

statewide moratorium expired in October, the Massachusetts Association of Realtors (MAR) came up with a first-in-the-nation scholarship program for funding mediation training to its members through the Massachusetts Office of Public Collaboration (MOPC). A combination of state and national grants has enabled the MAR to secure funds sufficient for 16 of its members to complete the 35-hour mediation training and supervised mentorship. Prior to the same, these realtors will become qualified to assist be a high number of evictions in the months ahead.

[Read more](#)

4. PHILADELPHIA'S EVICTION MEDIATION PROGRAM HAS BEEN EXTENDED DUE TO HIGHLY POSITIVE RESULTS

At the end of the summer, and Eviction Diversion Program was launched by Philadelphia which required landlords to request a mediation session with tenants before filing for eviction proceedings. As per data that was provided by the Philadelphia City Council, 399 mediations have been held till date which has resulted in 261 agreements so far with another 29 mediations resulting in further negotiation and only 17 such proceedings resulted in no agreement being reached. It should also be noted that an additional of 320 mediations have been

currently scheduled or are in the process of being initiated.

[Read more](#)

5. AZERBAIJAN'S LAW ON MEDIATION WILL COME INTO FORCE FROM THE 1ST OF JANUARY, 2021

The Law on Mediation was adopted by Azerbaijan on March 29, 2019, which provided for attendance of initial mediation sessions before bringing an action concerning family, labour and business disputes before the court of law. This law aims to promote the use of mediation in civil, commercial, family, labour and administrative matters. So as to ensure a convenient and experience for users, the framework is premised upon a centralized quality assurance mechanism and therefore only accredited members of the Mediation Council are allowed to act as mediators, mediation organizations and mediation training organizations. As far as family, employment or business cases, starting from January 1, 2021, are concerned, the claimant will be made to invite the respondent for agreeing upon the choice of a mediator and attend the first mediation session.

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