



CADR NEWSLETTER

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

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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 seventh 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. ARBITRAL AWARD BASED ON ABSENCE OR IGNORANCE OF VITAL EVIDENCE FALLS UNDER THE AMBIT OF PATENT ILLEGALITY: SUPREME COURT

In *PSA SICAL Terminals (P) Ltd. v. V. O. Chidambranar Port Trust*, the Supreme Court opined that an arbitral award that rewrites a contract or ignores vital evidence would be set aside on grounds of patent illegality, under Section 34 of the Arbitration and Conciliation Act, 1996. The court observed that a finding based on no evidence at all or an award that ignores vital evidence in arriving at its decision would be perverse.

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2. COURTS CANNOT MODIFY ARBITRAL AWARDS UNDER SECTION 34 OF THE A&C ACT: SUPREME COURT

In *NHAI v. Hakeem*, the Apex Court held that Section 34 of the Arbitration and Conciliation Act, 1996 does not give any power to Courts to modify arbitral awards. The bench comprising Justices RF Nariman and BR Gavai dismissed all previous appeals concerning the issue and observed that “If one were to include

the power to modify an award in Section 34, one would be crossing the Lakshman Rekha.”

[Read more](#)

3. CONSIDER ARBITRATION LAWYERS FOR SENIOR POSITIONS AND APPOINTMENT AS JUDGES: IAF TO THE CJI

Convenors of the Indian Arbitration Forum wrote a letter to CJI NV Ramana, stating that arbitration practitioners should be placed on the same footing as litigation lawyers as regards their promotion as Senior Advocates and elevation as Judges. The Forum acknowledged the lack of requisite criteria to make such appointments, but suggest adopting criteria such as redacted versions of arbitral awards.

[Read More](#)

4. SOURAV GANGULY APPROACHES BOMBAY HIGH COURT TO ENFORCE ARBITRAL AWARD AGAINST FORMER MANAGING COMPANY

The President of the BCCI, Sourav Ganguly, moved to the Bombay High Court for enforcing an arbitral award of Rs. 35 crores against Percept Talent Management Ltd. and Percept D Mark (India) Ltd. He approached the Court with an execution petition, seeking

disclosure of the company's assets and an injunction order, restraining the latter from transacting on their properties until the petition is pending.

[Read more](#)

5. AMAZON CHALLENGES THE ORDER OF DELHI HIGH COURT AGAINST FUTURE RETAIL'S GROUP

Amazon challenged an order of the Division Bench of the Delhi High Court staying a Single- Judge order that had upheld the

Emergency Award passed by a Singapore Tribunal stopping the Reliance- Future deal. Amazon informed the bench comprising Justices RF Nariman and BR Gavai that the High Court faltered in staying the order of the Single Judge to enforce the Emergency Arbitrator's injunction against the transaction between the companies.

[Read more](#)

INTERNATIONAL COMMERCIAL ARBITRATION

1. SHAREHOLDERS ALLOWED TO SERVE OUT APPLICATION TO JOIN JUDGEMENT FOR ARBITRAL AWARD ENFORCEMENT

The English High Court in *DevasMultimedia America Inc and others v. Antrix Corporation Ltd.*, decided whether it has the power to permit parties to serve an application to “join third parties” to a judgement passed by a court to enforce an arbitral award. The court allowed the shareholders of the claimant to serve out the “joinder application” to join to the judgement four of its associated companies. The court opined that these companies were “interested parties” in the award and their joining was imperative for its proper enforcement.

[Read more](#)

2. REVISED DRAFT PRC ARBITRATION LAW PUBLISHED BY MINISTRY OF JUSTICE

The Ministry of Justice on 30 July 2021, released its “proposed revisions” to the PRC Arbitration Law for public comment. Explanatory notes relating to the same were also published by the ministry. The concerned law has been in force for 26 years without any considerable amendment.

[Read more](#)

3. NEW VIAC ARBITRATION AND MEDIATION RULES COME INTO FORCE

The new arbitration rules of the Vienna International Arbitration Centre (VIAC) entered into force on 1 July, 2021. These rules will apply to arbitrations that have commenced after 30 June 2021. The VIAC is one of only four foreign arbitral institutions that qualify as “Permanent Arbitration Institutions” in Russia and are therefore allowed to administer arbitrations seated in Russia.

[Read more](#)

4. RETAILERS NOT AN INTENDED THIRD-PARTY BENEFICIARY OF A CREDIT CARD ARBITRATION PROVISION

The U.S. District Court for the Central District of California on 8 July 2021, denied a motion filed by a retailer to force arbitration in a consumer data sharing “putative class action”. The court ruled that the retailer was not an intended “third-party beneficiary” to the arbitration clause in a credit card agreement.

[Read more](#)

5. SHIFT IN ARBITRATION LANDSCAPE FOR NON-SIGNATORIES SIGNALLED BY THE NINTH CIRCUIT

On 7 July 2021, the US Court of Appeals for the Ninth Circuit in *Setty v. Shrinivas Sugandhalaya LLP* confirmed the denial of a motion filed by a non-signatory to compel arbitration. This decision was considered the same as the now-withdrawn opinion given on 20 January 2021 relating to a similar matter.

[Read more](#)

6. IMPACT OF PARTY'S CONDUCT ON ITS ABILITY TO ENFORCE AN ARBITRATION AGREEMENT DECIDED BY A CANADIAN COURT

On 7 July 2021, Justice Sharma of the Ontario Superior Court of Justice in *CSI Toronto Car Systems Installation Ltd. v. Pittasoft Co., Ltd.* declined to permit a stay of proceedings in favour of arbitration owing to the defendant's conduct. The decision estopped the defendants from enforcing the arbitration agreement.

[Read more](#)

INVESTMENT ARBITRATION

1. FRENCH COMPANY VICAT TAKES DISPUTE WITH EGYPT TO THE ICSID

France based cement manufacturing company Vicat has taken up its dispute with the Egyptian government, to the International Centre for Settlement of Investment Disputes (ICSID). It is reported that Vicat was forced to reduce its shares in its subsidiary, Sinai Cement, due to a law against foreign ownership of companies in the Sinai Peninsula region, citing security reasons.

[Read more](#)

2. THE NICARB ORGANIZED A ROUND-TABLE ON TRADE AND DISPUTE RESOLUTION

The Nigerian Institute of Chartered Arbitrators (NICArb) held a round-table talk event to confer on dispute resolution mechanisms involving non-state parties, with a

focus on the impact of the current arrangement and its impact on these non-state parties. This happened against.

[Read more](#)

3. WINSHEAR GOLD CORP FILES MEMORIAL WITH ICSID AGAINST TANZANIA

Winshear Gold Corp, a Canada based junior gold exploration company, has filed its memorial with the International Centre for Settlement of Investment Disputes (ICSID). Winshear has sought the amount of C\$124,781,945 in damages, and has outlined the nature and quantum of this claim against Tanzania for the expropriation of the company's retention licenses over the SMP Gold Project, located in SW Tanzania. This act breached Tanzania's obligations under the 2013 Tanzania-Canada Bilateral Investment Treaty.

[Read more](#)

MEDIATION

1. CCHI NV RAMANA CALLS FOR MAKING MEDIATION AS THE FOREMOST METHOD TO SETTLE DISPUTES

While addressing the huge pending case log that has burdened the three-tier justice delivery system, CJI remarked, “Given the growing scope of mediation, it is time for India to enter mission mode. To popularise mediation as cheaper and faster dispute resolution mechanism, a movement needs to be launched.”.

[Read more](#)

2. EXPLORE THE OPTION OF MEDIATION TO SETTLE FAMILY DISPUTES: SC ADVISES KIRLOSKAR

The Supreme Court advised the feuding members of the renowned Kirloskar family to explore mediation route to settle all disputes. The festering Kirloskar family feud is over the implementation of a deed of family settlement (DFS) relating to the assets of a 133-year-old corporate group, in which the richest family group where the chasm runs between Sanjay, CMD of Kirloskar Brothers Ltd (KBL), on one side and all other family members on another side.

[Read more](#)

3. 13 YEARS AFTER LEGENDARY SINGER JAMES BROWN’S DEMISE, FAMILY SETTLES

THE DISPUTE OVER HIS ESTATE THROUGH MEDIATION

The family of entertainer James Brown has reached a settlement ending a 15-year battle over the late singer’s estate. David Black, an attorney representing Brown’s estate, confirmed to The Associated Press that the agreement was reached on July 9. Legal wrangling over the Godfather of Soul’s estate has been ongoing since his death at the age of 73 on Christmas Day 2006.

[Read more](#)

4. IMI GETS A NEW EXECUTIVE DIRECTOR: SERBIA BORN IVANA NINCIC TO ASSUME CHARGE

After almost four and a half years with International Mediation Institute (IMI), the current Executive Director Laura May Skillen will shortly be departing the organisation and be replaced by Ivana Nincic. Ivana is Serbian by birth and legal training, predominantly Canadian by education, and international by professional aspiration.

[Read more](#)

5. FLORIDA’S TRIAL COURT IMPLEMENTS PRE-SUIT MEDIATION AND ARBITRATION PROVISIONS IN ACCORDANCE WITH CONDOMINIUM DECLARATION

According to the court's order, the condominium declaration in *Coach Homes II* at *Gran Paradiso Condominium Association, Inc. v. Lennar Homes, LLC ("Coach")*—as well as the purchase and sale agreements for each unit—contained a pre-suit mediation and arbitration requirement for construction defect claims. The trial court found that the association was bound by these provisions and granted the motion.

[Read more](#)

6. WITH MORE THAN 40 UNSOLVED TOPICS TO DISCUSS, PORTLAND AND ITS POLICE UNION ENTER INTO MEDIATION

The city of Portland and the Portland Police Association are slated to enter mediation for their collective bargaining agreement on July 28, according to Oregon's Employment Relations Board. The police union and the city

initially began the bargaining process in early 2020 prior to the start of the COVID-19 pandemic.

[Read more](#)

7. BOMBAY HC ASKS FOR YUSUF LAKDAWALA'S OPINION ON MEDIATION

Bombay High Court directed the Arthur Road prison authorities to make arrangements for builder Yusuf Lakdawala to inform if he is willing to opt for mediation to amicably settle disputes with his second wife, Sabina Lakdawala. With the economic offences wing and Enforcement Directorate instituting cases against Lakdawala, who is in prison due and ailing with prostate cancer, his children are forcing him to transfer his assets, claims Sabina in her petition.

[Read more](#)

HIGHLIGHTS OF THE MONTH

In a landmark feat, a Memorandum of Understanding (MoU) was signed between the Rajiv Gandhi National University of Law, Punjab (RGNUL) and Beihai Asia International Arbitration Centre Pte Ltd (BAIAC) with a desire to promote the learning, teaching and research of Alternative Dispute Resolution methods along with strengthening and expanding the mutual contacts between both the organizations on 20th July 2021.

The agreement was entered into by Prof. (Dr.) G.S. Bajpai, Vice-Chancellor, RGNUL and Prof. Steve Ngo, President, BAIAC. The virtual occasion was also graced by Prof. (Dr.) Naresh Kumar Vats, Registrar, RGNUL, Mr. Sameer Shah, Committee Member, BAIAC and Director CIArb, India Branch, Dr. Gurmanpreet Kaur, Co-Ordinator, Centre for Alternative Dispute Resolution (CADR-RGNUL), many other faculty members, and students of RGNUL Punjab.

The collaboration between both the organisations is aimed at organizing various workshops, seminars, webinars, conferences, training programmes, competitions, credit courses, publications, student internships and mentorship etc., both online and offline in the field of Alternative Dispute Resolution



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