



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 eighth 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. APEX COURT UPHOLDS THE VALIDITY OF EMERGENCY ARBITRAL AWARDS

On August 6 Supreme Court of India in *Amazon.com NV Holdings LLC v. Future Retail Ltd.* re-emphasised the principle of party-autonomy and ruled that parties are free to agree on the procedure to be followed by an Arbitral Tribunal according to Section 2 read with Section 21 of the Arbitration Act. Further, the SC declared that no appeals lie against an order of enforcement of an emergency arbitrator's orders.

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2. UNILATERAL APPOINTMENT OF ARBITRATOR, VALID OR NOT?

The Delhi High Court in *Sital Dass Jewellers v. Asian Hotels (North) Ltd.* rejected the plea of petitioners to appoint a sole arbitrator unilaterally. The HC stated that such an appointment would defeat the purpose of unbiased adjudication between the parties. The

High Court further appointed the arbitrator for the adjudication of the dispute.

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3. THE TUSSELE BETWEEN SEAT AND VENUE CONTINUES

J&K and Ladakh High Court were presented with the question of excluding the jurisdiction of other courts in the matter of *Supinder Kour v. MDN Edify Education Pvt. Ltd.* Petitioner argued that cause of action would determine the jurisdiction as per Section 9 of the Arbitration Act when parties have agreed to the venue but not the seat. The HC dismissed the petition based on Supreme Court's Judgement in *Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.*

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4. DELHI HIGH COURT ISSUES NOTICE TO AFGHAN EMBASSY OVER 2018 ARBITRAL AWARD

The Delhi High Court issued a notice directing the embassy of Afghanistan to attach movable

and immovable assets in response to a plea moved by KLA Const Technologies Pvt Ltd. towards satisfaction of a Rs. 1.8 crore arbitral award in the case of *KLA Const Technologies Pvt. Ltd. v. The Embassy of Islamic Republic of Afghanistan*. The Hon'ble High Court directed Kotak Mahindra Bank to maintain a minimum

balance of Rs. 1.8 crores in accounts belonging to the embassy in order to safeguard the interests of the decree-holder.

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INTERNATIONAL COMMERCIAL ARBITRATION

1. A \$2.4 MILLION ARBITRAL AWARD GIVEN IN FAVOUR OF TWO CHINESE COMPANIES AGAINST A US TOOL MANUFACTURER

The Northern District of New York confirmed an arbitral award, made by the Chinese International Economic and Trade Arbitration Commission (CIETAC), in favour of two Chinese companies who had contracted to purchase and import machine tools from New Monarch Machine Tool Inc (US-based company). The tool manufacturing corporation had earlier argued that the arbitral award was against the public policy of the USA and that it could not be confirmed.

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2. MEDIMA LLC v. BALASORE ALLOYS LTD: HIGH COURT RECOMMENDS JUDICIOUS USE OF ANTI-ARBITRATION INJUNCTIONS

In the case of *Medima LLC v. Balasore Alloys Ltd.*, the Kolkata HC noted that the mere existence of multiple proceedings before multiple forums would not be a valid reason to render an arbitration agreement inoperative. The issue between the two parties – Medina LLC and Balasore Alloys, was over the seat of arbitration. While Medina LLC took the arbitration proceedings to the ICC, the Indian

company Balasore Alloys moved the Kolkata HC. It sought a restrain on the UK arbitration, and also brought about an injunction against the foreign seated arbitration. The Kolkata HC denied the same, and also cited *Modi Entertainment Network v. WSG Cricket*, to emphasize the importance of judicious use of granting anti-arbitration injunctions, by the courts.

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3. INDIA'S FIRST INTERNATIONAL ARBITRATION CENTRE TO BE ESTABLISHED IN HYDERABAD

The International Centre for Commercial Arbitration and Mediation, a first of its kind, is set to be established in, Hyderabad, the capital city of Telangana. The trust deed of the same was executed by the present Chief Justice of India, NV Ramana, on 20th August 2021. Apart from the various other benefits, the centre will also help in boosting investments and industries in Telangana.

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4. PRO-BUSINESS MOVE: SAUDI CENTER FOR COMMERCIAL ARBITRATION LAUNCHED SUPPORT PACKAGE

In a pro-business move, the Saudi Center for Commercial Arbitration (SCCA) launched a package of enhancement and made changes to

make its services more business-friendly, accessible and pro-investment. It included a reduction in arbitration fees, a reduction in the cost of initiating arbitral proceedings, and more flexibility to parties in discussing the arbitrator's fee. The centre also reduced its costs for its online dispute resolution services, making it more-so accessible to businesses big and small, alike, all across the world.

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5. ENFORCEMENT OF ARBITRAL AWARD AGAINST A NON-SIGNATORY

Supreme Court in *Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Services Ltd. & Anr.* dismissed the appeals and upheld Bombay High Court Division Bench judgement to enforce an arbitral award against a non-signatory to the arbitration agreement. The Court quashed the objection of Gemini that they were not bound by the arbitration agreement in accordance to with Section 48(1)(a) of the Arbitration Act.

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INVESTMENT ARBITRATION

1. IRAQ RATIFIES THE MAURITIUS CONVENTION

After the deposit of its instruments of ratification at UN headquarters, Iraq has become the latest state to ratify the Mauritius Convention on Transparency in Treaty based Investor State Arbitration. It may be stated that this convention will come into force for Iraq in Feb.2022 and shows Iraq's willingness to adhere to International Dispute resolutions.

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2. LEGAL PROCEEDINGS INITIATED AGAINST EL SALVADOR AGAINST THE BREACH OF BILATERAL INVESTMENT TREATY

Latin American Holdings of HSBC has initiated legal proceedings against El Salvador on the allegation of breach of an Investment treaty with the UK and is seeking damages to the tune of \$ 49.3 million on the premise that the Supreme Court of El Salvador wrongly awarded this amount against it. This dispute will be heard by International Centre for Settlement of Investment disputes (ICSID).

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3. INDIA MOVES TO NULLIFY RETROSPECTIVE TAX LAW THAT LED TO HIGH-PROFILE TREATY AWARDS

Following the introduction of a provision in Tax Law to impose retrospective taxes on some foreign investments, India's image as an attractive place to do business had been damaged. But now, the Government of India has taken initiative to repair the damage by introducing a bill in Parliament to rescind that provision. An International Tribunal had awarded compensation to Cairn India against the seizure of its 10% stake by the Government and a French court had ordered for freezing of Indian Government properties in France for the realization of the award amount.

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4. A US COURT HAS GRANTED DEVAS SHAREHOLDERS' REQUEST FOR ANTRIX ASSETS TO BE DISCOVERED

In an attempt to enforce a billion-dollar ICC award, a US court has ordered an Indian state-owned satellite provider to deliver discovery to Mauritian owners in Bangalore telecoms company Devas Multimedia.

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MEDIATION

1. MEDIATION OFF THE TABLE IN ANDHRA PRADESH-TELANGANA RIVER DISPUTE

Andhra Pradesh has refused to settle the Krishna River Dispute with Telangana through mediation, as suggested by the Supreme Court. It urged the Apex Court for the adjudication of the writ petition against Telangana for indiscriminately drawing water for power uses contrary to the rules of the integrated operation of the Reservoirs and the provisions of the 2015 Agreement between the states.

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2. SECTION 12-A OF COMMERCIAL COURTS ACT NOT A COMPULSORY PROVISION

The Madras High Court in the case of *Shahi Exports Pvt Ltd. v. Gold Star Line Ltd. & Ors.* held that Section 12-A of the Commercial Courts Act relating to Pre-Institution Mediation and Settlement, is not a mandatory provision. The Court observed that the right to access justice, which is a constitutional right, cannot be denied or deprived for not resorting to mediation.

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3. FORMER PAK AMBASSADOR TO INDIA, ABDUL BASIT, SUGGESTS THIRD-PARTY MEDIATION BETWEEN IND-PAK

Erstwhile Pakistani Ambassador to India, Abdul Basit advocated the need for “third-party” mediation between India and Pakistan as the bilateral efforts have not yielded favourable outcomes. He also said that in Pakistan there is thought to resile from the *Simla* Agreement of 1972 as it serves no purpose.

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4. QATAR EMERGES AS A KEY MEDIATOR BETWEEN THE TALIBAN AND THE REST OF THE WORLD

According to analysts, Qatar is well-positioned to be the go-to mediator for regional and international players who want to explore the possibility of engaging with the Taliban. Recently, a US military commander met with the Taliban in Doha to negotiate the safe passage of thousands of people wanting to leave Afghanistan, underscoring the crucial role of Qatar in mediation.

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5. TURKEY OFFERS TO MEDIATE BETWEEN ETHIOPIA AND SUDAN OVER THE AL-FASHAGA REGION

Turkey expressed its willingness to mediate between Ethiopia and Sudan to resolve the dispute over the al-Fashaga region. It also backed a peaceful resolution to Ethiopia's Tigray conflict which, according to the UN, has pushed 400,000 people into famine-like

conditions, and it is estimated that more than 100,000 children in Tigray could suffer life-threatening malnutrition in the next 12 months.

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CASE ANALYSIS

AMAZON v. FUTURE

-Rohan Gajendra Pratap Singh and Avishikta Chattopadhyay

INTRODUCTION

The conflict between the American behemoth Amazon and Kishore Biyani led Future Group is one of the biggest lawsuits in the history of Indian business. The major bone of contention was the Indian consumer retail market, which has trapped the debt troubled Future Group in its midst. The Apex Court recently ruled in favour of Amazon, settling some important questions under the Indian Arbitration and Conciliation Act (hereinafter “the Act”). However, the final award is yet to be passed by the Singapore International Arbitration Centre (SIAC).

THE BACKGROUND

The dispute revolves around three issues. *Firstly*, in October 2019, Amazon entered into a share purchase agreement and a shareholders’ agreement with Future Coupons Ltd, a promoter entity of Future Retail, whereby it acquired a 49% equity stake in Future Coupons for around Rs. 1500 crore. *Secondly*, the deal,

which was approved by the Competition Commission of India in November of 2019, effectively meant that Amazon indirectly held a 3.58% stake in Future Retail, given that Future Coupons holds a 7.3% stake in Future Retail. The contract put in place certain transfer restrictions on the parties’ shares in Future Retail by way of a call option, a right of first refusal, and a non-compete clause. As such, Amazon was granted the option to acquire all or any of the promoters’ holdings in Future Retail within three to ten years of the agreement, and also the right of first refusal to invest in Future Retail in case any of its shares were sold by Future Group. *Thirdly*, in August of 2020, Future Group reached an agreement with Reliance Retail, a subsidiary of Reliance Industries Limited, to sell off the entirety of its retail, wholesale, logistics, and warehousing businesses, including brands like Big Bazaar, Brand Factory, and fbb, for a humongous consideration of Rs. 24,713 crore. Amazon, objected claiming that Future Group had violated the Right of First Refusal pact and the

non-compete clause of the agreement entered into between Amazon and Future Coupons whereby it was prohibited from selling its assets to a group of companies, including Mukesh Ambani's conglomerate.

THE INTERMEDIATE HAPPENINGS

Given this conflict, Future sought resolution through SIAC (Singapore International Arbitration Centre) in October 2020. The Emergency Arbitrator (hereinafter "EA") issued an interim award in favour of Future Retail in October, prohibiting the company from disposing of or encumbering its assets or issuing securities to acquire money from a restricted party. Amazon and Future Group have also filed lawsuits in Indian courts, including the Supreme Court. Amazon sued Future Group, alleging that it breached contracts by agreeing to sell retail assets to market leader Reliance Industries for over Rs 27,000 crore last year. In February, a New Delhi court handed Amazon a blow by overturning an earlier court ruling that effectively barred the purchase, prompting Amazon to launch an appeal in the Supreme Court.

THE JUDGEMENT

On 6th August, a bench of Justices B.R Gavai and R.F Nariman held that SIAC's emergency arbitrator's award is valid. It was held that an

EA appointed under institutional rules would fall within the scope of the term "arbitral tribunal" under agreed-upon institutional rules and would be covered under Section 17(1) of the Act. Referring to the principle of *estoppel*, it was concluded that after a party expressly agrees to be governed by institutional rules that provide for EA and participates in such EA proceedings, it cannot contend later that it will not be bound by that EA's ruling.

Since both the parties had agreed to paragraph 12 of Schedule 1 of the SIAC Rules, which provides that parties are bound by any award or order by an EA from the date it is made and has to carry the same out without delay. Thus, the Future Group argument on *coram non iudice or nullity* due to lack of jurisdiction was turned down.

Further, the notion that an EA under the SIAC rules is not an independent judicial body like an arbitral tribunal constituted under the same rules was also dispelled, with the SC observing that an EA is vested with all the powers of an arbitral tribunal, including the authority to rule on its own jurisdiction, under paragraph 7 of Schedule 1. The EA is free to rule independently of any other administrative authority under the SIAC Rules.

The bench also declared that an order of a court passed under Section 17(2) of the Act for enforcement of the interim award of an EA is

not appealable under Section 37 of the Act. Resultantly, the Singapore EA's interim award stands approved, and Future Retail and Reliance industries have been forced to stall their mega-deal.

IMPLICATIONS

The resultant effect of this judgment has a two-fold implication, Firstly, under section 9 of the Act, in most cases, after an arbitral tribunal has been established, an Indian court would not consider an application for interim remedies. However, pursuant to the decision in cases involving arbitrations held outside of India, Indian courts may consider a section 9 motion for interim relief in order to indirectly enforce an EA ruling. Secondly, the ruling does not hold that all EA judgments are enforceable in India under Section 17. Part I of the Act contains Section 17, which only applies to arbitrations held in India (with a few exceptions). As a result, the Indian courts will only be allowed to enforce EA judgments made in India-based cases. Section 17 would not apply to EA judgments made in arbitrations held outside of India.

The Supreme Court's ruling has significantly increased the efficacy of EA judgements in the Indian setting and reaffirms India's stand of becoming an arbitration hub.

UPCOMING EVENTS

The Centre for Alternative Dispute Resolution, Rajiv Gandhi National University of Law (CADR-RGNUL) has always taken upon itself the responsibility of promoting scholars', researchers', academicians' and working professionals' interest in gaining knowledge and building new skills in the field of ADR. For this purpose, CADR has always been the frontrunner in coming up with several stimulating events which contribute to the ADR community at large.

The forthcoming months of September and October prove the same with multiple events on CADR's plate. The Centre is conducting an *Assignment-Based Workshop on "Importance of Seat of Arbitration"* in association with the **Beihai Asia International Arbitration Centre (BAIAC)**, Singapore.

The last date of submission for the flagship **2nd Surana & Surana & RGNUL International Arbitral Award Writing Competition 2021** is 25th September 2021 (11.59 PM).

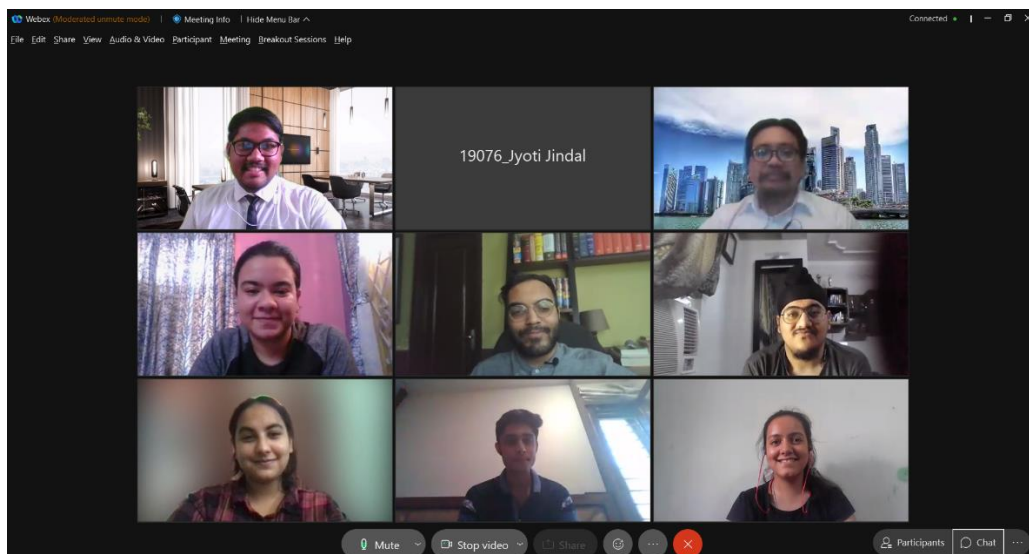
Embarking on a new journey, CADR is also set to host the **1st edition** of the **RGNUL National Negotiation Competition 2021** (RGNUL NegComp '21) with **Shardul Amarchand Mangaldas (SAM)** as the Chief Knowledge Partner. The new flagship competition guarantees to be exhilarating, exciting and refreshing!

All this and a lot more in store for the ADR community, stay tuned.

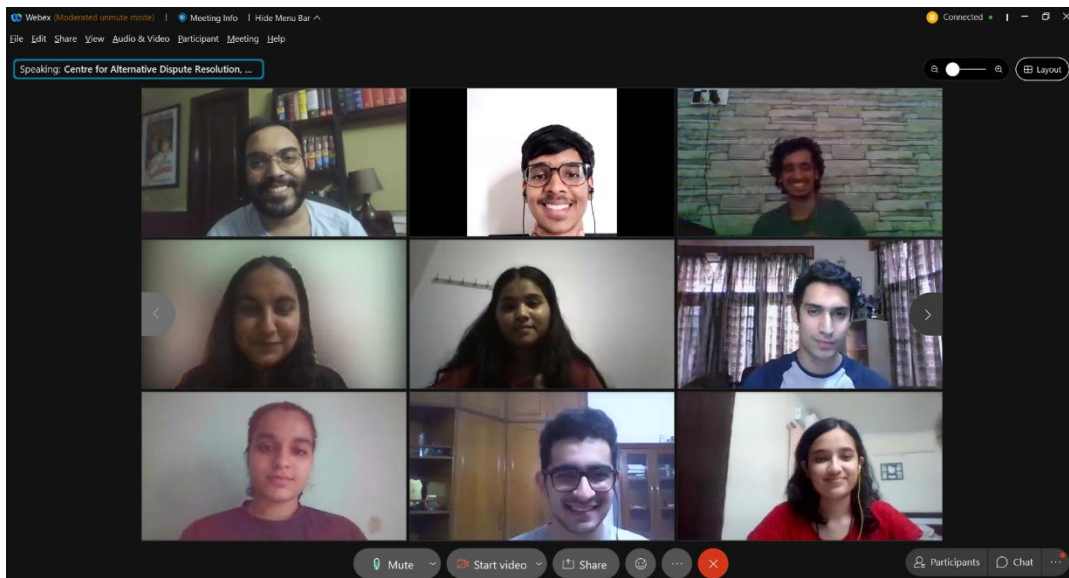
HIGHLIGHTS OF THE MONTH

Centre for Alternative Dispute Resolution, Rajiv Gandhi National University of Law (CADR-RGNUL) in order to continue its commitment towards serving the ADR Community to the best of its abilities has reconstituted for the year 2021-22. With the reconstitution, we renew our commitment to make strides in the field of ADR this year with utmost passion, zeal and enthusiasm. Moreover, in order to consolidate our efforts towards addressing the existing lacunae in the field of ADR and to contribute to the existing literature more constructively, this year CADR has formed a Research Team. We look forward to a great year, filled with astounding triumphs and many great new learning experiences.

In order to fulfil our purpose for striving towards inculcating excellence in the students regarding all things ADR, CADR successfully held a two-fold webinar series on **Capacity Building in Arbitration** on the topic of "Deconstructing Ad Hoc and Institutional Arbitration" and "Essentials in the framing of Arbitration Agreements". These sessions were conducted in association with the **Beihai Asia International Arbitration Centre (BAIAC)**. The sessions were taken up by **Prof. Steve Ngo**, President, Beihai Asia International Arbitration Centre and Council Member of Hong Kong International Mediation Centre. The sessions were very insightful and we look forward to having the same engagements in the future.



Moreover, CADR-RGNUL conducted an **Orientation Session** for the incoming batch of 2026 under the guidance of our convenors Mr. Kushagra Gupta and Ms. Jannat Deep Bhaura. This session was aimed at sparking an interest in ADR among the newcomers. Towards that, our team familiarised the incumbent batch with Arbitration, Mediation, Negotiation and much more. Furthermore, our team addressed all the questions put up by these inquisitive minds ranging from the relevance of ADR and the qualities one should possess to be a member of CADR.



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