



# 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 Tenth 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. SECTION 31 (7) OF THE ARBITRATION ACT GRANTS SUBSTANTIAL DISCRETION TO THE ARBITRATOR IN AWARDING INTEREST: SC

In its decision in *Punjab State Civil Supplies Corporation Limited v. Ganpati Rice Mills*, the Apex Court held that the High Court had incorrectly relied upon a case that dealt with arbitration proceedings under the Arbitration Act of 1940. The present dispute pertains to arbitration under the Arbitration Act of 1996, under Section 31 (7) of which an arbitrator possesses "substantial discretion" to award interest.

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#### 2. ARBITRATOR CANNOT AWARD PENDENTE LITE INTEREST WHEN THE CONTRACT SPECIFICALLY PROHIBITS PAYMENT OF INTEREST: SC

In its judgement in *Garg Builders v. Bharat Heavy Electricals*, the Supreme Court held that if the contract between the parties includes a specific

clause that expressly prohibits payment of interest, then the arbitrator is not empowered to grant pendente lite interest for the said period. The Apex Court further noted that such a contractual provision would not violate Section 28 of the Indian Contract Act because of the Exception I mentioned under this section.

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#### 3. ARBITRAL TRIBUNAL CANNOT PASS EX-PARTE AD-INTERIM ORDER WITHOUT ADVANCE NOTICE: BOMBAY HC

In its decision in the case of *Godrej Properties Ltd. v. Goldbricks Infrastructure Pvt. Ltd.*, the Bombay High Court ruled that an *ex-parte ad-interim* order can only be passed after sufficient advance notice has been provided to the parties and they are heard. The Court relied on Articles 18, 19, and 24(2) of the Arbitration Act to hold that the parties must be treated fairly at all stages of the arbitral proceedings and shall be afforded adequate opportunity to present their case.

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4. WHILE BRINGING AN APPEAL UNDER SECTION 34 OF THE ARBITRATION ACT, PRE-DEPOSIT OF 75% OF AWARDED AMOUNT UNDER SECTION 19 OF MSMED ACT IS MANDATORY, RULES SC

The In its decision in the case of *Gujarat State Disaster Management Authority v Aska Equipments Limited*, the Supreme Court held there can be no deviation from the requirement under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 mandating pre-deposit of 75% of the awarded amount while preferring an appeal for setting aside an award. The Appellate Court has the discretion to permit the pre-deposit to be made in instalments, if deemed necessary.

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## INTERNATIONAL COMMERCIAL ARBITRATION

### 1. UK SC CLARIFIES GOVERNING LAW OF ARBITRATION AGREEMENT IN *LEBANON V KUWAIT*

The UK Supreme Court in *Kabab-Ji SAL [KJS] (Lebanon) v. Kout Food Group [KFG] (Kuwait)* unanimously dismissed KJS's appeal, while holding that the law governing the question of whether KFG became a party to the arbitration agreement is English law. This effectively meant that KJS cannot enforce a Paris-seated award granted in its favour by an arbitral tribunal against KFG in England and Wales.

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### 2. NON-FULFILMENT OF PRE-CONDITIONS TO ARBITRATION NOT A GROUND TO SET ASIDE AN ARBITRAL AWARD: UK HC

The UK High Court in *NWA & FSA v NVF & others* has declined to set aside an award on the basis of failure to mediate a dispute before referring it to Arbitration. It was further observed that pre-conditions to arbitration are an issue of admissibility of the claim and not tribunal's substantive jurisdiction and hence, falls to be determined by the arbitral tribunal and not the Court.

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### 3. FIFTH CIRCUIT ENDS DECADES-OLD MARITIME INJURY LITIGATION BY AFFIRMING ORDER CONFIRMING INTERNATIONAL ARBITRATION AWARD

In *Neptune Shipmanagement Services PTE, Ltd. v. Dahiya*, the Fifth Circuit Court affirmed the Order Confirming International Arbitration Award and dismissed the challenge to the Indian Award. The Louisiana district court had confirmed the award and enjoined Dahiya from pursuing further litigation against the non-Neptune plaintiffs. The Court affirmed the district court order in its entirety, putting an end to the two decades long dispute.

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### 4. NO SURPRISES ACT: LAW TO RESOLVE "SURPRISE BILLS" IMPLEMENTED BY INTERIM FINAL RULE:

Severely affected by the pandemic, the Biden administration recently implemented the "No Surprises Act" which became law in December 2020. Notably, the Act's independent dispute resolution (IDR) process is a method of arbitrating disputes between insurers and providers regarding the amount to be reimbursed to the provider by the insurer for certain out-of-network health care items or services. Interestingly, the interim final rule stipulates that the IDR entity must presume that the insurer's median in-

network rate for the medical services or items at issue is the appropriate amount to be paid to the provider. This rule has been criticized due to its one-sided dispute resolution process which appears to be slanted in favour of the insurance industry.

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## INVESTMENT ARBITRATION

### 1. REPARATION PROVIDED FOR DENIAL OF JUSTICE IN INVESTOR STATE ARBITRATION UNDER NAFTA

In the dispute between Lion Mexico Consolidated L.P. (“LMC”) v. United Mexican States, the Mexican court had illegally cancelled foreclosed mortgages ex-parte. Unable to revert the cancellation, LMC, a Canadian entity, lodged an investment arbitration under The North American Free Trade Agreement (NAFTA). The tribunal held that LMC was denied access to justice and ordered the State to pay US\$ 47 million for “full reparation.”

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### 2. HAVING AN INVALID ARBITRATION CLAUSE IN BILATERAL INVESTMENT TREATY IS A VIOLATION OF EU LAW: CJEU

In the dispute between PL Holdings v. Poland where the matter related to the suspension of PL Holding's shares in a Polish bank. This was deemed a breach of Poland's Bilateral Investment Treaty commitments, and Poland was forced to pay damages to PL Holdings. The Court of Justice of the European Union (CJEU) held that having an invalid arbitration clause in BIT is not in consonance with EU law

and hence the domestic courts have the power to set aside such arbitral award.

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### 3. IN A SETBACK, COLUMBIA TO GIVE COMPENSATION TO ECO ORO MINERALS

In the *Eco Oro v. Republic of Colombia* environmental mining ban dispute concerning the environment protection, climate change and human rights, the arbitrators disagree on police powers and the scope of the minimum standard of treatment in the Canada-Colombia Free Trade Agreement. The arbitrators found breach in the Minimum Standard of Treatment (MST), and decided that general exceptions do not relieve Colombia from giving the requisite compensation.

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# MEDIATION

## 1. THE DRAFT MEDIATION BILL, 2021 ISSUED IN PUBLIC DOMAIN TO SEEK FEEDBACK AND SUGGESTIONS FROM STAKEHOLDERS

The Ministry of Law and Justice released the Draft Mediation Bill, 2021, inviting comments and suggestions from all stakeholders. The bill aims to promote, encourage and facilitate mediation in the country, particularly institutional mediation. The bill also includes provisions to promote community mediation and to make online mediation an acceptable and cost-effective method of resolving disputes. In addition, the bill provides for the establishment of the Mediation Council of India as an umbrella body, as well as the registration of mediators.

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## 2. MEDIATION EFFORTS INITIATED TO RESOLVE THE SUDAN CRISIS

The military coup of Sudan and dissolution of the provincial government to be resolved through mediation as told by UN Special Representative for the country, Volker Perthes. A week after the civilian government was deposed in a military coup, mediation efforts in Sudan and abroad are underway to establish a feasible settlement for the country.

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## 3. OPT FOR MEDIATION FOR RESOLVING MINOR DISPUTES, SAYS DSLA

Mr. Prasad Kulkarni, secretary of the mediation clinic said that on the orders of the Supreme Court, DSLA has started a mediation clinic to aid people in resolving minor, non-cognizable disputes so that these disputes can be sorted out on time and may not become mammoth offences in the future.

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## 4. FREE MEDIATION SERVICES TO MICHIGAN FARMERS BY USDA

The United States Department of Agriculture (USDA) has started the Michigan Agricultural Mediation Program which has been awarded to The Michigan Community Mediation Association. They will be working with the Michigan Department of Agriculture and Rural Development and will cover contract issues, estate and probate complications, adverse determinations by the USDA, bankruptcy, and all other issues farmers may face.

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## 5. SC INFORMED THAT SETTLEMENT OF ACCIDENTAL INSURANCE COMPENSATIONS



## WILL NOW TAKE PLACE THROUGH MEDIATION

The Centre government and insurance companies have assented to settling compensation claims of victims of traffic accidents within three months through mediation in order to facilitate speedy resolution of cases pending under the Motor Accidents Claims Tribunal (MACT).

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## 6. UNCITRAL WG III TO ORGANISE A SESSION ON STRENGTHENING MEDIATION IN ISDS

The Forty-first session of the United Nations Commission on International Trade Law Working Group III (Investor-State Dispute Settlement Reform) will be held hybrid mode in Vienna, from the 15th to 19th November 2021. The agenda for the same would be the discussion of the draft code of conduct and guidelines on mediation which revolves around strengthening the use of mediation in ISDS disputes. This follows a previous meeting in September, wherein counter claims in investment arbitration were discussed.

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## 7. INSURANCE CLAIM DISPUTES CAUSED BY HURRICANE IDA TO BE SOLVED THROUGH A MEDIATION PROGRAM

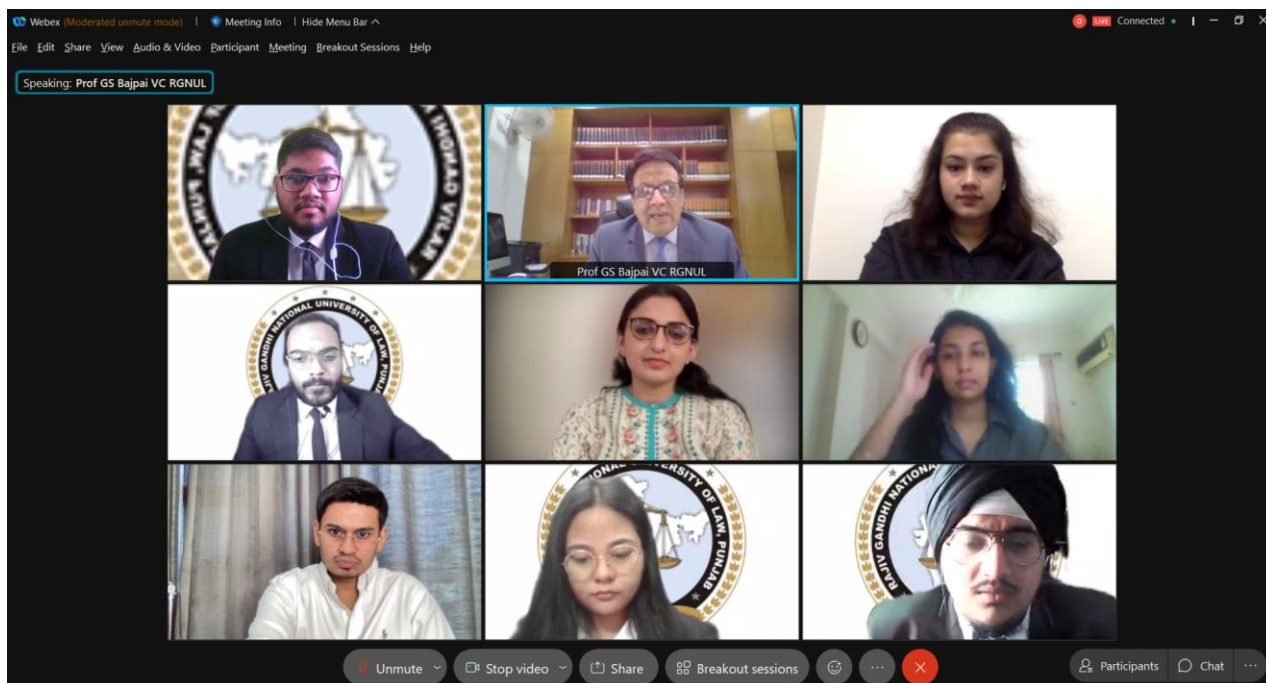
Louisiana has implemented a voluntary mediation programme to resolve property/casualty insurance claim disputes resulting from Hurricane Ida, which hit Southeast Louisiana as a category 4 hurricane in late August and caused significant damage. Similar mediation programs were established during the 2005 Hurricane Katrina and Hurricane Rita too.

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# HIGHLIGHTS OF THE MONTH

## EVENTS

The Centre for Alternate Dispute Resolution, Rajiv Gandhi National University of Law (CADR-RGNUL) organised the **1<sup>st</sup> RGNUL National Negotiation Competition, 2021** from **8th to 10th October, 2021**. A total of 68 stupendous law undergrads from different law colleges across India registered for the competition in 34 teams. Over the period of three days, the preliminary, quarter-final, semi-final and the final rounds were conducted; aftermath, we had our distinctive winners. The competition was won by Chanakya National Law University (CNLU), Patna. Along with winning the title, they bagged a cash prize of Rs. 20,000 and a stellar surprise award of an internship opportunity at 'Shardul Amarchand & Mangal Das'. National Law University (NLU), Delhi was the 'Runners-up Team' and won a cash prize of Rs. 15,000 whereas Symbiosis Law School, Nagpur was awarded the 'Best Negotiation Plan'. While Dakshita Dubey from Chanakya National Law University (CNLU), Patna was named the 'Best Negotiator' of the competition.



The problem for the competition revolved around Aviation Law & Industry. Shardul Amarchand Mangaldas was the Chief Knowledge Partner, CAMP was the Supporting Partner, and Justice Kuldip Prakash Bhandari Foundation, Chandigarh was the Knowledge Partner for the competition. The closing ceremony of 1st RGNUL National Negotiation Competition, 2021 was graced by Prof. (Dr.) G.S. Bajpai, Vice Chancellor, Rajiv Gandhi National University of Law, Punjab, Mr. Prakhar Deep, Senior Associate, Shardul Amarchand & Mangal Das, New Delhi, Mr. Gauhar Mirza, Partner at Shardul Amarchand & Mangal Das, New Delhi, Ms. Iram Majid, Executive Director, Asia Pacific Centre for Arbitration and Mediation, Dr. P.C. Markanda, Senior Advocate, P&H High Court, Prof. Shanthakumar, Director, Gujarat National Law University, Gujarat, and Prof. (Dr.) Naresh Kumar Vats, Registrar, Rajiv Gandhi National University of Law, Punjab. Dr. Gurmanpreet Kaur, Faculty Coordinator, CADR, RGNUL delivered the vote of thanks marking the end of the extraordinary event.

#### ACHIEVEMENTS

We, at CADR, are pleased to share that the RGNUL team comprising of **Nishi Kaur** and **Tulika Bhattacharya** were adjudged as the **Runners-Up** at the **7th National Client Consultation Competition** organised by the School of Law, North Cap University from 29th-30th October, 2021. We heartily congratulate the winners and wish them best for their future endeavours.

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Vice-Chancellor, RGNUL, Punjab

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