NATIONAL LAW UNIVERSITY DELHI

CADR NEWSLETTER

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NATIONAL

Supreme Court upholds setting aside of award in SEPCO-GMR fiasco (26 September 2025)

SEPCO Electric Power Construction Corporation ("SEPCO"), an Engineering, Procurement and Construction (“EPC”) Contractor, entered into various agreements with GMR Kamalanga Energy Ltd. ("GMRKE”), for the purpose of construction of thermal power plants in the state of Odisha. There were delays in construction, which led to the initiation of Arbitration. The tribunal rendered an award directing payment of approx. 995 Crores to SEPCO. This was based on the finding that GMRKE had allegedly waived the contractual requirement for SEPCO which required them to issue notices for their claims, due to an email exchange starting from March 2012. Crucially, this was in ignorance of the explicit "No Oral Modification" and "No Waiver" clauses in their agreement.



The award was challenged, firstly, under Section 34 of the Arbitration and Conciliation Act, 1996, wherein a Single Judge of the High Court upheld the award. Secondly, GMRKE approached the Division Bench of the High Court, under Section 37 of the Act. The Division Bench set aside the award and the order of the Single Judge. The Division Bench found that the tribunal had exceeded its jurisdiction, and its approach had essentially re-written the contract. This also led to an unfair treatment of both parties. This was, finally, challenged in an appeal to the Supreme Court.

A bench of Chief Justice B.R. Gavai and Justice Augustine George Masih upheld the Division Bench’s setting aside of the award. The Judges found that the Division Bench had correctly noted that the tribunal had exceeded its jurisdiction and had acted in manifest disregard of the terms of the agreement. The same amounted to a violation of Section 28(3) of the Act. Through an attempt of creating a waiver, on the basis of an email, the Tribunal had effectively rewrote the clauses which gave effect to the contrary. This, inter alia, amounted to unequal treatment of parties, which is in violation of S.18 of the Act. These actions were, therefore, held perverse and contrary to the fundamental policy of Indian Law, and hence the award remained set aside.

Post-award interest claim is barred, when interest rate until payment is specified in the Award, holds the Supreme Court (24 September 2025)

The Case reached the Supreme Court through a Special Leave Petition filed by Executive Trading Company Pvt. Ltd. against Grow Well Mercantile Pvt. Ltd. seeking the setting aside of an order made by the High Court of Bombay. The dispute started through a Memorandum of Understanding ("MOU") for the sale of land. Pertinently, the MOU had expired which led to these proceedings. The MoU stipulated that upon termination, the seller (appellant) must refund the advance of Rs. 15.5 crores with 21% annual interest from the date of disbursement until the date of actual repayment. An arbitral tribunal passed an award in favour of the buyer (respondent), granting the refund with interest at 21% per annum "from the date it was given to the date it is paid," mirroring the MoU. During the execution of the award, the respondent claimed that in addition to the 21% interest, it was also entitled to post-award compound interest under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996. The Executing Court rejected this claim, but the High Court remanded the matter for reconsideration.





The Supreme Court set aside the impugned judgment and upheld the idea of party autonomy. The judges held that the interest rate that the parties had initially agreed upon in their Memorandum of Understanding (MoU), were to be applied until the entirety of the amount was paid. The Court relied on Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, holding that a particular exception permits a regular interest rate unless the award specifically specifies otherwise. Previous jurisprudence for post-award interest was not applicable in the present case because the arbitrator's award provided sufficient guidance as to the payment of interest. Additionally, the Court distinguished this from earlier cases such as *Hyder Consulting*, which permitted interest on the total amount awarded, but was only a default option for when an award is completely silent about post-award interest. Since the present award had clarified the interest rate and the period for which it would be applicable, the attempt to introduce a new claim at this belated stage of execution, for compound interest would be illegal.

Supreme Court rules that the execution of an arbitral award cannot be stopped on the basis of a pending appeal (18 September 2025)

An award-holder began execution proceedings after the judgment-debtor's application to set aside the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 was dismissed. That rejection was thereupon appealed against by the judgment-debtor under Section 37 of the Act. Importantly, in this pending appeal there was no interim stay on the implementation of the award. Although there was no stay, the Delhi High Court, which served as the implementing court, postponed the execution proceedings because of the pending Section 37 appeal. This adjournment was appealed by the award-holder.

The Supreme Court in *Chakardhari Sureka v. Prem Lata Sureka Through Spa & Ors*. reversed their order, and it was found that the simple pendency of an appeal pursuant to Section 37 does not automatically stay the execution of the award. The Court laid out that an executing court should not stay when an appeal is pending unless a stay order is granted. The award is not voided and the award-holder is at liberty to enforce the award. The Court ordered the execution to proceed in compliance with the law, and that any reservations that might be made against the executability of the award, should be addressed, and determined on their own merits, by the court in which the award was to be executed.



Karnataka High Court rules that a modification of arbitration rules is not enough to attenuate an existing arbitration agreement (26 September 2025)

L&T Infra Investment Partners ("L&T Infra") and Bhoruka Power Corporation Limited ("BPCL") entered into a CCD Subscription and Securities Holders Agreement that included a clause on arbitration which provided that any disputes that might arise between the parties would be referred to an authority appointing a tribunal to adjudicate the dispute in accordance with the "London Court of International Arbitration India Rules then in effect." Following the cessation of LCIA India's operations in 2016, L&T Infra moved to initiate arbitration through the London Court of International Arbitration (LCIA) in London, on the basis of a recent change in the rules that meant such cases were now to be brought to LCIA London. BPCL, together with its promoters, instituted proceedings in the Bengaluru Commercial Court alleging that the arbitration agreement had become frustrated in view of the said arbitral institution (LCIA India) no longer in existence and that they had not given consent to arbitration administered by LCIA London. The Commercial Court agreed with BPCL's stance, and awarded an anti-arbitration injunction to prevent L&T Infra from continuing with the LCIA proceedings.

Karnataka High Court overturned the injunction of the Commercial Court stating, inter-alia, that the suit for injunction was not maintainable. Under Section 5 of the Arbitration and Conciliation Act, 1996, courts are prohibited from interfering in domestic arbitrations except as envisaged in the provisions expressly laid down in the Act; any objection to the jurisdiction of an arbitral tribunal including any objection to the existence or validity of the arbitration agreement shall be raised before the tribunal itself on the principle of *kompetenz - kompetenz*. Second, the Court held that the phrase "then in effect" within the arbitration clause refers to the rules in effect at the time the arbitration is invoked, rather than the rules prevailing at the time of the signing of the agreement. Accordingly, since the LCIA India rules had been amended with a view to directing disputes to LCIA London under the LCIA Rules 2020, the LCIA Rules 2020 were held to be applicable. The Court found that a procedural change in the rules is not enough to frustrate the substantive agreement among the parties to take a dispute to arbitration. Finally, the Court refused to accept the argument that the LCIA arbitration was vexatious or oppressive because it found any concern about high fees to be unsubstantiated and not amount to unconscionable conduct.

INTERNATIONAL

Three member Tribunal rejects claims against India in a UNCITRAL Award following the 2G Spectrum Scandal. (19 September 2025)

Mauritius-registered Khaitan Holdings had filed a case against India under the Mauritius-India Bilateral Investment Treaty 1998 in 2013. The Permanent Court of Arbitration administered case pertained to the 2G Spectrum scandal and cancellation of licenses to operate mobile services. In the scandal, the Indian Telecom Ministry allowed certain companies with licenses at discounted rates on a first-come, first-serve, causing an estimated US$ 7 Billion loss to the Indian Government. The scandal saw litigation in domestic courts across India, while Khaitan Holdings filed a separate arbitration case under the Mauritius-India BIT claiming that it was an innocent by-stander in the licensing process. During the procedural hearing, India had filed for an anti-arbitration injunction against the investment arbitration in Delhi High Court which was rejected. It had also challenged the claimant's appointee to the tribunal and was successful in its claim of conflict of interest.

In the meantime, both Mauritius and India both had also issued a joint statement on interpretation of the BIT. The statement clarified that "investor" under the BIT excludes entities linked to fraud, corruption, or money laundering, and also those owned or controlled by persons from the same or other contracting state. It further clarified that an arbitral tribunal cannot review domestic court decisions and that it can only grant monetary compensation for actual losses, not future profits or intangible damages.

The proceedings finally came to an end with the tribunal rejecting Khaitan Holdings' claims against India. The award or its reasoning is not publicly available yet.



UK Court Denies Mongolia's Request to produce Documents related to corruption allegations in the Oyu Tolgoi Arbitration (22 September 2025).

A London Commercial Court has refused Mongolia's bid to compel Rio Tinto to disclose documents in support of corruption allegations it is making in a London-seated UNCITRAL arbitration over the Oyu Tolgoi copper and gold project. It was held that Mongolia's requests were overly broad, imprecise, and failed to establish that the documents sought were relevant and necessary for the arbitration. The court also noted that section 43 of the UK Arbitration Act 1996 does not allow speculative or overly burdensome document requests from non-parties, especially where privilege and relevance are unproven.

The arbitration, brought by Oyu Tolgoi LLC, based in Rio, challenges hundreds of millions of dollars in taxes and penalties imposed by Mongolia, alleging breaches of the 2009 investment agreement's tax stability clause. Mongolia counterclaimed that the agreement was void due to corruption and mismanagement, implicating Rio Tinto entities and seeking documents relating to an internal Baker McKenzie report and materials from a settled US shareholder suit.



ICSID Tribunal orders provisional measures against Niger in favour of French Nuclear Group, Orano (26 September 2025).

An ICSID tribunal has issued provisional measures in favour of French state-owned Orano Mining in its arbitration against Niger over the nationalisation of the Somaïr uranium mine. The three-member tribunal has ordered Niger to refrain from selling or transferring uranium which is allegedly seized from the mine. It had also ordered Niger to release Orano's detained representative, Ibrahim Courmo, in line with a prior Nigerien court ruling. Niger's earlier jurisdictional challenge to disqualify Mantilla Serrano (the arbitrator nominated by Orano) was rejected as time-barred and without merit. The dispute in this case concerns the alleged violations of contractual rights following the junta's broader push to assert control over natural resources after the military coup in 2023 in Niger.

Ecuador defeats claim by US Casino Investor in a UNCITRAL Arbitration (30 September 2025)

Ecuador has successfully defeated a US$214 million UNCITRAL claim by Lynton Trading, over losses from Ecuador's 2011 gambling ban. Lynton is a Nevada-based company that has invested in casinos. The tribunal at the Permanent Court of Arbitration upheld Ecuador's jurisdictional objections, ruling that Lynton did not qualify as an investor under the US–Ecuador BIT 1993 because it had no substantial business activity in the US. It also accepted Ecuador's denial of benefits argument, interpreting the treaty under public international law and Nevada law.



Egypt proposes international arbitration with Ethiopia over the Renaissance Dam dispute (03 October 2025)

Egypt, at the UN General Assembly, has proposed submitting its long-standing dispute with Ethiopia over the Grand Ethiopian Renaissance Dam (GERD) to international arbitration, accusing Ethiopia of violating international law by unilaterally filling and operating the dam., The GERD, situated on the Blue Nile near the Ethiopian-Sudanese border, is Africa's largest hydroelectric project, with an expected annual generation capacity of 16,000 GWh of electricity. Ethiopia maintains that the dam will drive regional development and energy security, while Egypt fears it will diminish its vital share of the Nile's waters, on which the country depends for 97% of its water needs. The dispute is rooted in colonial-era treaties, particularly the 1929 Nile Waters Agreement, which granted Egypt dominant rights over the river and veto power over upstream projects.



UPDATES

India ADR Week Focuses on AI and Foreign Law in India

From the 15th to 19th of September 2025, India ADR Week took place in Bengaluru, Mumbai and Delhi with more than 30 events from partner organisations and no parallel sessions to ensure people could fully participate! The sessions were diverse, covering topics such as aviation dispute, MSME/ arbitration reforms, ESG, the evolving BIT regime, renewable energy arbitration, expert evidence, pandemic related supply chain disputes, mining, and maritime arbitration in the Indo-Pacific. The forum, spanning over multiple cities, brought together leading practitioners, corporate counsels, academics and government decision-makers to engage in discussions and networking. The significant overlap with international participants pointed to India's rising prominence as an international arbitration centre as well as the ongoing modernization of dispute resolution practices in India.

Arbitration Experts Converge in New York: ICC Conference Spotlights AI, Due Process, and Global Construction Disputes

The 20th ICC New York Conference on International Arbitration was held on September 18–19, 2025, at 583 Park Avenue, New York City, and gathered high-level practitioners, in-house counsels, arbitrators, and academics to discuss state-of-the-art topics that will continue to shape the landscape of international arbitration. There were panels that discussed artificial intelligence in dispute resolutions, due process concerns related to technology, and complexities of international construction disputes. An advanced course on interim measures, exciting networking sessions, and extensive reporting from the ICC International Court of Arbitration also took place. Overall, this conference showcased its significance to the future of international arbitration.

Washington Arbitration Week 2025 Highlights Cutting-Edge ISDS Mediation, Life Sciences, and AI Arbitration Trends.

Washington Arbitration Week 2025 is scheduled to take place October 6-10 in Washington, D.C. This year’s week's theme brings together some of the most prominent international arbitration topics, including ISDS mediation, rising issues in life sciences arbitration, consideration of particular AI technologies in arbitration, and complicated sectoral arbitration disputes (e.g. mining, space law). The week includes panels discussing issues such as arbitration seats, public sector mediation, valuation in ISDS climate transition cases, and enhanced workshops on AI tools, featuring leading experts, arbitrators, and corporate counsel.

WIPO Conference Promotes Specialized Dispute Resolution in Fashion and Luxury Industries

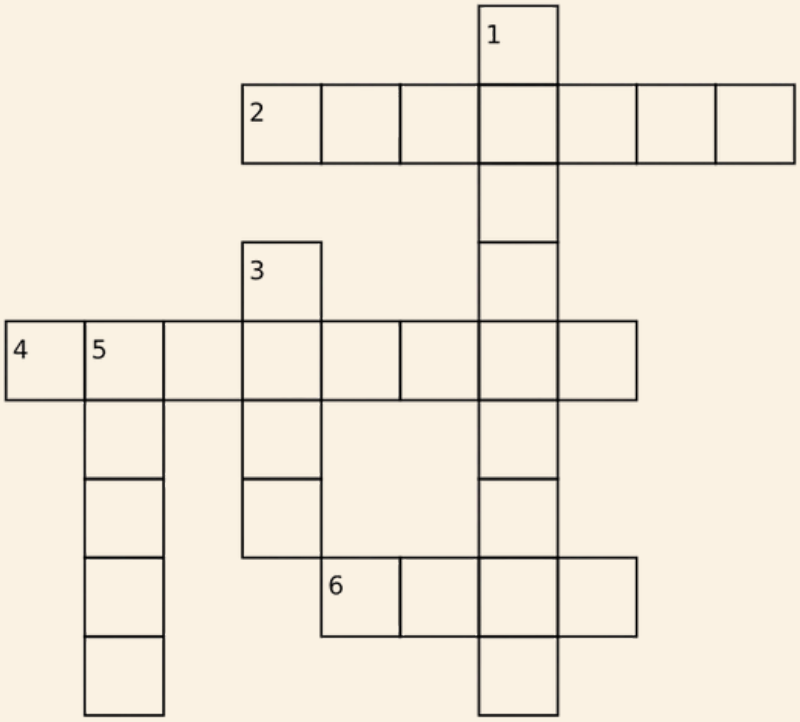
The WIPO-CIArb Conference held on September 30, 2025, at WIPO Headquarters in Geneva, addressed mediation and arbitration for the fashion and luxury industry. They explored the unique needs in dispute resolution for the fashion and luxury sectors of the industry where brand identity, creativity and reputation matter, including current dispute trends, deciding between the ADR options of arbitration, mediation or litigation, and negotiating ADR clauses for fashion and luxury contracts. The conference addressed sustainable fashion and ethical luxuries with panels, discussions, live Q&A and social networking among top fashion practitioners and legal experts.

New National ADR Competition Launched to Honor Arun Jaitley's Legacy in Dispute Resolution

The Singapore Convention Week, held from August 25-29, 2025, brought together a global community of dispute resolution professionals. The event featured seminars on the viability of investor-state dispute settlement (ISDS) in the Asia-Pacific and the road to successful mediation in ISDS cases. The week provided a key platform for policymakers, academics, and practitioners to exchange ideas and strengthen international legal cooperation, with a focus on promoting Singapore's role as a major ADR hub.

CROSS-EXAMINATION!

We are pleased to formally introduce a refreshing addition to the newsletter: Cross-Examination!
This concise word puzzle is constructed exclusively from the subject matter and recent developments detailed in this issue and one clue from the previous issue.
We hope you enjoy this exercise!



Down:

1. ad idem may be inferred despite its absence (look back) (9).
3. From catwalk to contract clause, this body mediates in style (4).
5. Park (Arbitral) Avenue on AI and Access (2, 3).

Across:

2. Investor left on hold after 2G call drops (7).
4. Arbitral tribunal playing dealer when Ecuador won the bet (8).
6. Requirement not fulfilled by freestyle email artistry (4).

1.SIGNATURE 2. KHAITAN 3.WIPO
4.UNCITRAL 5.NYICC 6. FORM

THE TEAM

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