

Weekly Newsletter

August 12 - 16 2024

National

Kerala High Court launches Arbitration Centre to enhance dispute resolution services:

Union Law Minister Arjun Ram Meghwal inaugurated the Arbitration Centre at the Kerala High Court, designed to offer specialised, cost-effective arbitration services, especially for government-related commercial disputes. Acting Chief Justice A Muhamed Mustaque emphasised the need to adopt hybrid dispute resolution methods like Med-Arb, allowing courts to focus on larger public issues. The event also saw the launch of the Centre's website, which will provide easy access to arbitration services and information.

India's first Med-Arb Centre inaugurated at Gujarat High Court by Chief Justice Sunita Agarwal:

Chief Justice Sunita Agarwal inaugurated India's first Med-Arb Centre at the Gujarat High Court Arbitration Centre on August 15, 2024. The Centre aims to settle disputes through a combination of mediation and arbitration. Eleven lawyers, trained under Supreme Court Justice Vikram Nath, will serve as mediators. A significant financial dispute has already been successfully resolved at the Centre.

Madurai Bench recommends retired high court judge for NHAI Land Acquisition Arbitration:

The Madurai Bench of the Madras High Court suggested that the Union government appoint a retired high court judge as an arbitrator for land acquisition compensation by the NHAI. The court observed that district collectors, who currently oversee such matters, are overburdened with various responsibilities, potentially leading to unfair compensation assessments. In an appeal involving land along the Madurai-Trichy highway, the court upheld a decision to increase the compensation, rejecting NHAI's claim that the Arbitration Tribunal lacked jurisdiction to do so.



Delhi High Court rules unilateral arbitrator appointment invalid without mutual consent:

The Delhi High Court, led by Justice C. Hari Shankar, ruled that the appointment of an arbitrator requires mutual consent, emphasising the principle of consensus ad idem. The court found the respondent's unilateral appointment of Mr. M.P.S. Kasana as Arbitrator, based on the petitioner's silence, to be illegal and ex facie invalid. The case arose from a construction MoU that required mutual arbitrator appointment. The petitioner's challenge led to the court setting aside the arbitral award, declaring the proceedings null and void ab initio. The decision highlighted that silence cannot be presumed as consent in arbitration appointments. [*M/s SK Builders vs M/s CLS Constructions Pvt. Ltd.*, O.M.P. (COMM) 297/2023]

Gujarat High Court rules delay in seeking arbitration constitutes waiver of rights under Section 8(1):

A Gujarat High Court bench, led by Justice J. C. Doshi, ruled that under Section 8(1) of the Arbitration and Conciliation Act, 1996, an application for arbitration must be filed before submitting the first statement on the dispute's substance. In the case involving Prabhudas Jesangbhai Patel, the court found that the respondent's delay in seeking arbitration, after actively participating in court proceedings and filing comprehensive statements, constituted a waiver of their right to arbitration. The court referred to precedents emphasising timely invocation of arbitration rights, ultimately correcting a jurisdictional error by the lower court and allowing the petitions. [*Prabhudas Jesangbhai Patel vs Vinodbhai Mohanbhai Togadiya*, Special Civil Application No. 9673 of 2023]

Bombay High Court affirms jurisdiction for extending arbitration periods under Section 29-A(4):

The Bombay High Court, comprising Justice M. S. Karnik and Justice Valmiki Menezes, ruled that when an arbitral tribunal is constituted by the High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, the High Court has the jurisdiction to extend the arbitration period under Section 29-A(4). Further, if the tribunal is formed through a party agreement, the principal civil court, including the High Court in its ordinary original jurisdiction, can handle extension requests. The decision aligns with the principles of party autonomy and minimal court intervention, ensuring judicial oversight to prevent delays in arbitration proceedings. [*Sheela Chowgule vs Vijay V. Chowgule and ors.*, Writ Petition No. 88 of 2024)]



Global

SICC voids arbitration award over arbitrator's bias and breach of natural justice:

The Singapore International Commercial Court (SICC) annulled an arbitration award due to a breach of natural justice, highlighting significant concerns over the presiding arbitrator's impartiality. The arbitrator was found to have copied large portions of the award from a previous, unrelated arbitration, raising suspicions of apparent bias and prejudgment. This copying led the SICC to conclude that the claimant was denied a fair, independent, and impartial hearing. The court emphasised that a tribunal's obligation to fairness requires it to focus exclusively on the specific facts and arguments presented in the case at hand, without drawing on extraneous matters. The decision underscores the critical importance of maintaining impartiality and independence in arbitration proceedings to ensure that justice is not only done but is seen to be done. [*DJO vs DJP and others*, [2024] SGHC(I) 24]

US Court of Appeals confirms jurisdiction over enforcement of arbitral awards against sovereign states:

The US Court of Appeals for the DC Circuit ruled that it has jurisdiction to hear enforcement proceedings for arbitral awards against sovereign states, including those involving intra-EU disputes under the Energy Charter Treaty (ECT). In *Nextera Energy v Spain*, the court rejected Spain's argument that US courts lack jurisdiction, affirming that Spain's signing of the ICSID and New York Conventions implied a waiver of sovereign immunity. The ruling supports European energy companies like NextEra, which seek to enforce arbitral awards against Spain in the US after the EU effectively banned intra-EU investor-state arbitration. The case has been remanded for further proceedings, with future litigation expected. [*NextEra Energy Global Holdings B.V. vs Kingdom of Spain*, No. 23-7031 (D.C. Cir. 2024)]

CAS denies Vinesh Phogat's petition for joint silver medal in 2024 Olympics:

The Court of Arbitration for Sport (CAS) rejected Vinesh Phogat's petition for a joint silver medal in the 2024 Olympics. Initially disqualified for being 100 grams overweight, Phogat's appeal for reinstatement was denied. She then sought a joint silver medal,



but CAS declined, citing procedural limitations. The verdict, delayed multiple times, was finally issued on August 14, though a detailed order is pending. Phogat, who announced her retirement after the disqualification, faced disappointment as her final plea was also rejected. The CAS also upheld Vinesh Phogat's disqualification from the 50 kg freestyle category, emphasising that it was her responsibility to stay within the weight limit on 19th August. The ruling led to American Sarah Ann Hildebrandt claiming the gold medal after Phogat's disqualification. [*Vinesh Phogat vs United World Wrestling and IOC, CAS OG 24/17*]

The Australian High Court limits the powers of the arbitral tribunal and upholds the court's power to interfere and set aside an arbitral award: The High Court upheld the ability of courts to step in during commercial arbitrations in accordance with statutes pertaining to commercial arbitration. It implies that parties that consent to private arbitration do not consent to the arbitral tribunal ruling outside their jurisdiction to resolve the issues raised. The arbitral tribunal in this case had determined "all issues of liability" during a bifurcated hearing but then claimed to have resolved other matters of liability. The High Court determined that the arbitral tribunal lacked jurisdiction to address the other issues. [*CBI Constructors Pty Ltd vs Chevron Australia Pty Ltd., [2024] HCA 28*]

