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# SAMVAAD 2026

## ABOUT CCADR

The Chanakya Centre for Alternative Dispute Resolution (CCADR) was established at Chanakya National Law University, Patna, in the year 2021, with the objective to promote academic research on themes pertaining to the resolution of disputes. Alternative Dispute Resolution is a new and emerging interdisciplinary field that is concerned with, inter-alia, the following themes: (a) the study of the causative structural factors and the subjective motives of the actors giving rise to disputes; (b) the study of the formal and informal institutions dedicated to the resolution of disputes; and (c) the study of the laws and regulations to produce fair outcomes of disputes.

## THE YEAR IN REVIEW

THE OFFICIAL NEWSLETTER OF CCADR FOR ARBITRATION LAW UPDATES

### GUEST EDITOR

*This edition's Guest Author is Shefali Roy, an advocate, IMI-qualified mediator, and arbitrator with an active practice in dispute resolution and sports arbitration.*

*Ms. Shefali Roy examines the balance between due process and fast-track dispute resolution in sports arbitration through a comparative analysis of the CAS framework in Switzerland and India's National Sports Governance Act, 2025. She discusses procedural safeguards, oral hearing rights, and the need for a more athlete-centric arbitration mechanism in India.*

# GUEST POST

## FROM LAUSANNE TO NEW DELHI: THE GLOBAL STRUGGLE TO BALANCE DUE PROCESS IN COMPULSORY SPORTS ARBITRATION

### PROLOGUE

The administration of sports justice operates within a paradox unknown to ordinary civil litigation. A commercial dispute may wait months for adjudication without the subject matter of the dispute being destroyed by the passage of time. A dispute over an athlete's eligibility to compete in the Olympic Games final, by contrast, cannot wait even forty-eight hours. This phenomenon the 'time-perishable' nature of sports disputes has driven the creation of specialised fast-track arbitral mechanisms across the globe.

The Court of Arbitration for Sport (**'CAS'**) headquartered in Lausanne, Switzerland, established in 1983 and substantially restructured following the Swiss Federal Tribunal's scrutiny in *Gundel v. FEI*. The CAS has developed a two-tiered procedural architecture: i) Ordinary Procedure for disputes that permit deliberation ii) an accelerated mechanism for matters requiring urgent disposition. The CAS Ad Hoc Division, constituted specifically for the Olympic Games and comparable events, rendering a final award within 24 hours.

India recently through the National Sports Development Code of India, 2011 acknowledged the need for specialised dispute resolution but did not create binding arbitral infrastructure. The National Sports Governance Act, 2025 (the **'Act'**) has sought to rectify this deficiency by mandating the Sports Arbitration Centre of India (**'SACI'**) as the primary forum for domestic sports disputes and by incorporating the fast-track procedure codified in Section 29B of the Arbitration and Conciliation Act, 1996 (the **'A&C Act'**)

**By: Shefali Roy**

Shefali Roy is an advocate, IMI-qualified mediator, and arbitrator with an active practice in dispute resolution and litigation before the Delhi High Court and the Supreme Court of India. Her professional work spans a wide spectrum of contentious and advisory matters, with a particular focus on arbitration, mediation, commercial disputes, and alternative dispute resolution mechanisms.

In addition to her litigation practice, she is actively engaged in promoting mediation and dispute resolution initiatives through professional collaborations, conferences, and institutional engagements. Her work reflects a strong commitment to accessible and effective dispute resolution, combining litigation expertise with a growing emphasis on consensual approaches to justice.

### PART I: THE CAS MODEL (SWITZERLAND)

#### A. Ordinary Procedure and Rule R44.4

The standard CAS Ordinary Procedure, governed by Rules R38 through R46 of the CAS Code, provides parties with the full panoply of procedural protections: the right to file written pleadings, to present evidence, to call witnesses, and to request an oral hearing. The average duration of proceedings under the Ordinary Procedure is approximately twelve months, a timeframe entirely incompatible with most sports disputes.

Under Rule R44.4 of the CAS Code the President of the Panel is vested with authority to abridge the time limits prescribed by the Rules and to conduct the proceedings in such a manner as to achieve a decision within the required timeframe. Critically, it does not dispense with the requirement of an oral

hearing; it compresses it. The procedural guarantees remain applicable in their essence even under the accelerated timeline.[1]

**B. The CAS Ad Hoc Division**

The CAS Ad Hoc Division is constituted at each Olympic Games under the Arbitration Rules and is empowered to receive applications, constitute a Panel of three arbitrators drawn from the CAS list, conduct hearings, and render a final award, all within twenty-four hours. The procedure is deliberately streamlined: submissions are oral or, if written, confined to a single round; witness evidence is exceptional; and reasons, if given, are brief.

The Swiss Federal Tribunal in Lazutina v. IOC which confirmed that CAS constituted an independent and impartial tribunal capable of satisfying the requirements of Article 6(1) of the European Convention on Human Rights. The European Court of Human Rights in *Mutu & Pechstein v. Switzerland* subsequently introduced an important qualification: where an arbitration clause is not freely entered into, the right to a public hearing under Article 6(1) cannot be waived.

**C. Semenya v. Switzerland: Recalibrating Judicial Review of CAS Award**

The most consequential intervention came from the Grand Chamber of the European Court of Human Rights in Semenya v. Switzerland. Caster Semenya challenged World Athletics' DSD (Differences of Sexual Development) Regulations before the Court of Arbitration for Sport (CAS), which upheld the regulations. The Swiss Federal Supreme Court declined to interfere within the limited framework of review available under Article 190 of the Swiss Private International Law Act (PILA). Semenya subsequently brought proceedings against Switzerland before the ECtHR.

The Grand Chamber held that Switzerland had violated Article 6(1) ECHR by failing to ensure a sufficiently rigorous judicial review of the CAS award. The Court emphasised several considerations that are highly significant for the future of sports arbitration and other forms of mandatory arbitration:

- elite athletes are, in practical terms, compelled to accept CAS arbitration clauses;
- the limited scope of review exercised by the Swiss Federal Supreme Court may be inadequate where arbitral awards significantly affect fundamental rights;
- in such circumstances, Switzerland has a positive obligation to ensure a "particularly rigorous examination" of the arbitral award.

The judgment does not invalidate the CAS system or require athletes to prevail on the merits. However, it signals that where compulsory arbitration engages serious questions of bodily integrity, dignity, equality, or professional livelihood, Swiss courts may be required to scrutinise CAS awards more intensively than before, including whether the arbitral process afforded the athlete an effective opportunity to be heard.[2]

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[1] Mavromati, D., & Reeb, M. (2015). The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials. Wolters Kluwer, at pp. 198-204.

[2] ECtHR Grand Chamber Ruling in Semenya v. Switzerland: Joint Statement of Third-Party Interveners_https://www.icj.org/ecthr-grand-chamber-ruling-in-semenya-v-switzerland-joint-statement-of-third-party-interveners/

### D. Standard of Review by the Swiss Federal Tribunal

Awards rendered by the CAS, whether under ordinary or accelerated procedure, are subject to challenge before the Swiss Federal Tribunal (**'SFT'**) under Article 190 of the Private International Law Act (**'PILA'**). The grounds of challenge are intentionally narrow: lack of jurisdiction, irregular composition of the tribunal, excess of mandate, violation of equality of the parties or their right to be heard, and incompatibility with public policy. The SFT does not review the merit of the award. It ensures finality but simultaneously limits the avenues through which a substantively unjust award may be corrected.[3]

## PART II: THE INDIAN LANDSCAPE

### A. Legislative Evolution: 2011 to 2025

The National Sports Development Code of India, 2011 introduced a requirement for sports federations to establish internal grievance mechanisms, but provided no enforcement architecture and no dedicated arbitral forum. Athletes seeking redress were frequently compelled to approach the High Courts under Article 226 of the Constitution, a remedy that, while constitutionally robust, is neither designed nor equipped for the time-sensitive demands of sports disputes. The Supreme Court's engagement with sports governance in *Board of Control for Cricket in India v. Cricket Association of Bihar* underscored the institutional inadequacy of the existing framework and catalysed the legislative reforms that culminated in the National Sports Governance Act, 2025.

### B. The National Sports Governance Act, 2025 and Section 29B

The Act is the most comprehensive legislative intervention in Indian sports governance to date. It also led the establishment of SACI as a statutory arbitral institution with jurisdiction over disputes between athletes, coaches, sports agents, and national sports federations. The Act mandates that SACI adopt the fast-track procedure prescribed under Section 29B of the A &C Act for disputes arising from selection decisions, disciplinary proceedings, and eligibility determinations.

Section 29B provides for a fast-track procedure in which disputes are decided by a sole arbitrator on the basis of written pleadings and documentary evidence alone, without an oral hearing, within a maximum period of six months. However, the documents-only procedure under Section 29B may be insufficient for disputes involving complex factual matrices, such as selection disputes where the assessment of an athlete's performance requires expert testimony.[4]

The tension is immediately apparent. The documents-only procedure under Section 29B may be insufficient for disputes involving complex factual matrices such as selection disputes where the assessment of an athlete's performance requires expert testimony, or anti-doping matters where chain-of-custody evidence must be tested through cross-examination.

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[3] Rigozzi, A., & Hasler, E. (2018). 'The CAS Procedural Rules.' In M. Arroyo (Ed.), Arbitration in Switzerland: The Practitioner's Guide. Kluwer Law International.

[4] Vidhi Centre for Legal Policy. (2026). 'Reconciling the National Sports Governance Act with International Sports Arbitration.

## PART III: COMPARATIVE ANALYSIS OF DUE PROCESS

### A. The Right to Be Heard: Oral vs. Documents-Only Proceedings

The most consequential procedural divergence between the two systems concerns the right to an oral hearing. Under the CAS Code, Rule R44 guarantees the parties the right to be heard. This guarantee is preserved even under Rule R44.4's accelerated timeline. In contrast, the default position under Section 29B of the A&C Act is a documents-only procedure; an oral hearing may only be held if the sole arbitrator considers it necessary. This inversion of the default position from oral hearing as a right to oral hearing as an exception represents a structurally significant diminution of procedural protection in the Indian framework.[5]

| Feature | CAS (Switzerland) | SACI (India, Section 29B) |
|---|---|---|
| **Default procedure** | Oral hearing with written submissions | Documents-only, no oral hearing |
| **Right to be heard** | Guaranteed even under accelerated timeline (Rule R44.4) | Exceptional – only if sole arbitrator considers it necessary |
| **Judicial review** | Narrow (Article 190 PILA) but post-*Semenya* "particularly rigorous" on human rights | Broad (Article 226/227) but practically unusable due to delay |

### B. Jurisdictional Overlaps and Institutional Competence

Both systems face structural tensions arising from jurisdictional overlap with superior courts. In Switzerland, the narrow grounds of challenge before the SFT under Article 190 PILA ensure that the CAS functions as a genuine terminal forum in almost all cases. The CAS Code's Rule R47, which requires exhaustion of internal remedies before recourse to CAS, further rationalises the institutional hierarchy.

In India the High Courts' power of judicial review under Article 226 of the Constitution is a constitutionally entrenched remedy that cannot be ousted by statute or contract. The Delhi High Court's intervention in *Sushil Kumar v. Union of India* and the examination of selection fairness in *Manika Batra v. Table Tennis Federation of India* illustrate that Indian courts have demonstrated both the willingness and the institutional capacity to intervene in sports disputes on due process grounds.

However, this constitutional safety net is operationally useless if the athlete must wait six months for a fast-track award, then appeal to the High Court for another twelve months. Constitutional remedy without temporal proximity is no remedy at all.

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[5] Rose, Z. (2024). 'Sports Disputes and Arbitration in India.' CMR University Journal for Dispute Settlement and Arbitration, 3(1), 158-166.

## EPILOGUE: THREE PROPOSALS FOR A GENUINELY PRO-ATHLETE FAST TRACK IN INDIA

The comparative analysis undertaken in this article reveals a fundamental tension that neither the CAS nor the Indian legislative framework has fully resolved: between the operational necessity of speed and the constitutional and human rights imperative of procedural fairness. The CAS Ad Hoc Division achieves genuine speed- twenty-four-hour resolution at the cost of depth of procedure. Section 29B of the Indian Act contemplates a six-month window that is operationally inadequate for pre-competition disputes and procedurally deficient for complex post-competition matters.

This article proposes three reforms for a genuinely 'Pro-Athlete Fast Track' in India. *Firstly*, SACI should establish a tiered procedure analogous to the CAS model: an emergency division for pre-competition disputes, capable of rendering decisions within forty-eight to seventy-two hours while guaranteeing at minimum a telephonic oral hearing, and a standard fast-track division for post-competition matters operating within a ninety-day, rather than six-month, window. *Secondly*, the documents-only default under Section 29B should be reversed for disputes involving individual athlete rights; an oral hearing should be the default, waivable only by express agreement of both parties. *Thirdly*, SACI should establish a Legal Aid Fund, financed by a statutory levy on national sports federations, to ensure that economically disadvantaged athletes are not structurally excluded from meaningful participation in fast-track proceedings.

The international obligations assumed by Olympic Charter and the World Anti-Doping Code require that domestic dispute resolution mechanisms meet minimum standards of procedural fairness. The fast-track arbitration in sport is legitimate only insofar as its speed does not become a proxy for the suppression of substantive rights.[6] The creation of a genuinely pro-athlete fast-track mechanism in India is not merely a matter of institutional design; it is a constitutional and international law imperative.

## CONCLUSION

The fast-track arbitration in sport is legitimate only insofar as its speed does not become a proxy for the suppression of substantive rights. Switzerland, post-Semenya, is recalibrating its standard of review to ensure that even a 24-hour award undergoes "particularly rigorous examination" when fundamental rights are at stake. India, with its new National Sports Governance Act, 2025, has an opportunity to learn from both the Swiss efficiency model and the Swiss due process deficits.

The creation of a genuinely pro-athlete fast-track mechanism in India is not merely a matter of institutional design; it is a constitutional imperative under Article 21 (right to livelihood, of which sport is a recognised part) and an international law obligation under the ECHR jurisprudence emanating from Strasbourg, which India, as a global sporting nation and host of major international events, cannot afford to ignore.

The question is not whether India will have fast-track sports arbitration. The Act has already answered that. The question is whether Indian athletes will receive a fast-track that is also a fair track. On the current Section 29B documents-only, six-month default, the answer is no. The three proposals above offer a blueprint for a different answer.

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[6] Kaufmann-Kohler, G. (2003). 'Arbitration at the Olympics: Issues of Fast-Track Justice.' Kluwer Law International.

# EDITOR BLOG

**CASE COMMENT: ANKHIM HOLDINGS PVT. LTD. V. ZAVERI CONSTRUCTION PVT. LTD. (2026 INSC 137)**

*--Ankita Kumari & Priyanshu Lucky (Senior Associate Ediitor)*

**INTRODUCTION**

Modern Indian commercial litigation has increasingly been compelled to navigate the contested territory between two statutes of formidable reach and internal coherence: The Insolvency and Bankruptcy Code, 2016 (the **'IBC'**) and The Arbitration and Conciliation Act, 1996 (the **'Act'**). Both regimes are deliberately architected as comprehensive, self-regulating systems. The IBC pursues the twin constitutional objectives of expeditious insolvency resolution and maximisation of asset value, operating largely through the National Company Law Tribunal (the **'NCLT'**) and its appellate hierarchy. The Act, particularly as reformed by the 2015 and 2019 Amendments, is animated by a deep commitment to party autonomy, minimal curial intervention, and the finality of the arbitral process.

The moratorium under *Section 14* of the IBC imposes a blanket prohibition on the institution or continuation of suits or proceedings against the corporate debtor. The precise ambit of this moratorium in the context of pending or ongoing arbitration proceedings is not yet settled. The Supreme Court's decision in *Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd., 2026 INSC 137*, delivered by a Division Bench of Justices J.B. Pardiwala and K.V. Viswanathan, enters this contested arena not to resolve the ultimate question but to establish an important antecedent rule of procedure: that the High Court, when exercising its power under *Section 15(2)* of the Act to appoint a substitute arbitrator, cannot simultaneously arrogate to itself a supervisory jurisdiction to nullify the work of the predecessor tribunal. The decision is narrow in its holding but broad in its implications, reinforcing foundational principles of statutory interpretation, jurisdictional competence, and judicial restraint.

**FACTS OF THE CASE**

The appellants were joint venture partners with the respondent in a real estate venture styled *M/s Anmol Alliance*. The project involved the development of a Slum Rehabilitation Authority project in Andheri (West), Mumbai. Disputes arising from the joint venture were referred to arbitration pursuant to an order of the Bombay High Court, which appointed former Chief Justice J.N. Patel as the sole arbitrator.

Meanwhile, The NCLT admitted the respondent (corporate debtor) into the Corporate Insolvency Resolution Process (The **'CIRP'**), and an Interim Resolution Professional (**'IRP'**) was appointed. The consequence under *Section 14(1)(a)* of the IBC was the immediate imposition of a moratorium prohibiting the institution or continuation of any suit or proceedings against the corporate debtor.

At this juncture, a critical error of fact cascaded into a series of consequential procedural irregularities. The Bombay High Court proceeded on the incorrect assumption that the IRP had become *functus officio*. The appellants filed an application for interim relief under *Section 17* of the Act before the sole arbitrator. The tribunal rejected the insolvency professional's objection going to jurisdiction under *Section 16*, and permitted the appellants to execute agreements for sale in respect of five specific residential flats: Flats 907, 908, 1001, 1302, and 704. The entirety of this activity occurred between March and August 2022, during the subsistence of the Section 14 moratorium.

The CIRP did not culminate in a resolution plan. The corporate debtor was ordered into liquidation. With the principal dispute unresolved and the sole arbitrator's mandate having effectively lapsed upon termination of the proceedings, the appellants approached the Bombay High Court under *Section 15(2)* of the Act for the appointment of a substitute arbitrator to continue the proceedings.

The High Court granted the prayer for substitution, appointing Justice R.M. Savant (Retd.) as the new arbitrator. Further, The High Court proceeded to declare all proceedings conducted by the previous tribunal between March and August 2022 a complete nullity, on the ground that they had been conducted in contravention of the extant Section 14 moratorium. The appellants challenged this before the Supreme Court.

**THE JURISDICTION OF SUBSTITUTION IS NOT THE JURISDICTION OF REVIEW**

Firstly, The Court examines *Section 15* of the Act in its entirety, treating it as a composite legislative scheme. *Section 15(1)* enumerates the grounds on which an arbitrator's mandate terminates. *Section 15(2)* empowers the court to appoint a substitute arbitrator according to the rules that were applicable to the appointment of the arbitrator being replaced. The critical provision, however, is *Section 15(4)*, which establishes a statutory default: orders and rulings made prior to the change in the tribunal's composition shall not, unless the parties otherwise agree, be invalidated solely by reason of that change.

The Court held it to be dispositive. *Section 15(4)* operates as a clear expression of legislative policy in favour of *continuity*. When the legislature specifies that prior rulings shall survive a change in composition, a court exercising jurisdiction under *Section 15(2)* to effectuate precisely such a change cannot simultaneously issue an order that defeats the very protection that *Section 15(4)* was designed to guarantee. To do so is not merely to exceed one's jurisdiction; it is to act in direct subversion of an express statutory command.

The Court invoked the principle articulated by the Supreme Court in Official Trustee v. Sachindra Nath Chatterjee, AIR 1969 SC 823, which established that *jurisdiction* must be understood not merely as a general nexus to the subject matter but as the specific statutory competence to pass the particular order sought. The power to appoint is a specific, limited power. It does not carry within it, by implication, the power to review, nullify, or modify the orders of the predecessor tribunal. These are distinct jurisdictional acts, each requiring its own statutory foundation.

This principle prevents the conflation of what are conceptually and procedurally separate

functions: the *ministerial* act of ensuring continuity of the arbitral process through substitution, and the *adjudicative* act of sitting in judgment over the correctness, validity, or legality of prior orders. A court seized of a *Section 15(2)* petition exercises the former. It has no statutory warrant for the latter.

The Court referred to *Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd., (2006) 6 SCC 204*, the Supreme Court had established that the purpose of the substitution mechanism under Section 15(2) is to enable the substitute arbitrator to take up the arbitration *from the point at which it was interrupted*, without relitigating concluded matters. In *Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd., SCC OnLine SC 2578*, the Court holds that any attempt to use a Section 15(2) petition as a disguised supervisory proceeding to suspend or nullify prior orders is *entirely contrary to settled law.*

The Court also referred to *Re Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act 1996 And The Indian Stamp Act 1899, (2024) 6 SCC 1*. The Constitution Bench held that the Arbitration Act is a comprehensive, self-sufficient legislation that consciously excludes general principles of procedural law in favour of the specific mechanisms it prescribes.

*Section 37* of the Act, which provides a curated and closed list of orders against which an appeal lies. This list includes, inter alia, orders granting or refusing to grant interim measures under *Section 9*, and orders setting aside or refusing to set aside an award under *Section 34*. It does not include orders passed by an arbitral tribunal exercising jurisdiction under *Section 17*, nor orders disposing of jurisdictional challenges under Section 16, at least at the interim stage.

By declaring the tribunal's *Section 17* orders and its Section 16 ruling to be *nullities* within the compass of a *Section 15(2)* petition, the Bombay High Court effectively created an appellate remedy not contemplated by *Section 37*.

The Court noted that counsel confirmed during the hearing that the final conveyances had not been completed. The transactions were therefore in a state of partial execution agreements for sale entered into but sale deeds not yet registered. Even in this state, the Court recognised that third-party rights had sufficiently crystallised to warrant protective intervention.

The exercise of *Article 142* in *Ankhim Holdings* fits within the established jurisprudence on the provision's use in the insolvency context. In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416*, the Supreme Court used *Article 142* to protect homebuyers' interests in the context of IBC proceedings. Similarly, the *Essar Steel* line of cases established that the Court may use Article 142 to give effect to the overall purpose of the IBC resolution framework, particularly where strict statutory interpretation would produce manifestly unjust outcomes.

The primary holding establishes that the High Court could not nullify the prior proceedings. The Article 142 intervention operates on the premise that those proceedings and the orders made there under have legal efficacy.

## CONCLUSION

*Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd.* is a judgment that repays careful reading on multiple levels. At its most immediate, it provides practitioners with an authoritative statement that Section 15(2) petitions are strictly limited to the substitution function and cannot be converted into instruments of supervisory review. This clarification was overdue and will prevent a category of jurisdictional overreach that has, on the evidence of the case itself, the potential to cause significant prejudice to third parties.

The decision is a compelling illustration of the relationship between procedural discipline and substantive justice. The Court's refusal to engage with the void *ab initio* question in a Section 15(2) petition is not a mere matter of jurisdictional fastidiousness. It reflects an understanding that the determination of complex questions at the IBC-arbitration interface requires full evidentiary and legal development before a tribunal constituted and equipped to undertake it.

*Ankhim Holdings* also stands as a measured but consequential contribution to the evolving framework for addressing the IBC-arbitration interface. The principal unresolved questions- the precise scope of Section 14's application to arbitral proceedings, the void versus voidable debate, the relevance of which party benefits from the moratorium remain open and will require authoritative resolution, ideally by a larger bench of the Supreme Court. Until that resolution is forthcoming, the judgment counsels both courts and practitioners to resist the temptation to resolve these questions through the expedient but improper use of jurisdictionally mismatched procedures.

# DOMESTIC CASES

**Substitution of an arbitrator is not mandatory upon termination of mandate under Section 29A (4) of the Arbitration and Conciliation Act, 1996** *[Viva Highways Ltd. v. Madhya Pradesh Road Development Corpn. Ltd., 2026 SCC OnLine SC 195]*

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The appellant was engaged in arbitration proceedings with the respondent when the High Court of Madhya Pradesh passed an interim order declaring the mandate of the existing arbitrator terminated under Section 29A (4) of the Arbitration and Conciliation Act, 1996 (the **'Act'**). The High Court further directed the parties to propose a new arbitrator for appointment, relying on the Supreme Court's decision in *Mohan Lal Fatehpuria v. Bharat Textiles, 2025 SCC OnLine SC 2754*, wherein the Court had used the expression that Section 29A (6) "empowers and obligates" the court to substitute an arbitrator. Aggrieved by this order, Viva Highways Ltd. appealed to the Supreme Court (the **'Court'**), contending that the High Court had misinterpreted the scope of Section 29A and that the application for extension of the arbitrator's mandate should be decided on its merits rather than leading to automatic substitution.

The Court allowed the appeal and set aside the High Court's order, holding that the High Court had fundamentally misconstrued the ratio of **Mohan Lal Fatehpuria.** The Court clarified that when this Court used the expression 'obligates', it only meant that a substitute Arbitrator would be appointed if the situation so warranted. It is not an inference that would necessarily follow the mandate of the Arbitrator standing terminated under Section 29A (4). Referring to a coordinate Bench's clarification in *C Velusamy v. K. Indhera, 2026 SCC OnLine SC 142,* the Court reiterated that Mohan Lal Fatehpuria does not mandate substitution as an inevitable consequence. Additionally, relying on *Jagdeep Chowgule v. Sheela Chowgule, 2026 INSC 92,* the Court held that Section 11 of the Act has no bearing on Section 29A, and the application for extension of time under Section 29A (4) did not lie before the High Court. Consequently, the Court quashed the impugned order and directed the Commercial Court to decide the extension application expeditiously on its own merits.

**Once a resolution plan is approved under the Insolvency and Bankruptcy Code, 2016 ('IBC'), claims cannot be pursued through parallel execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996.** *[Paharpur Cooling Towers Ltd. v. Sinnar Thermal Power Ltd., 2026 SCC OnLine Del 1875]*

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The Decree Holder (**'Holder'**) obtained an arbitral award solely against the Judgement Debtor 1, which the latter subsequently challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (the **'Act'**). During its pendency, the Judgement Debtor 1 was admitted into the corporate insolvency resolution process (**'CIRP'**), and the Holder's claim filed before the resolution professional was admitted. The challenge was subsequently withdrawn, making the award final. The resolution plan was approved shortly thereafter,

reducing the Holder's claim. Prior to such approval, the Holder had filed an execution petition under Section 36 of the Act, seeking enforcement not only against the Judgment Debtor 1 but also against other Judgment Debtors (the parent company, directors, and group entities) on the grounds of Group of Companies Doctrine, single economic unit, and lifting the corporate veil. The Judgment Debtor 1, however, argued that the execution proceedings were independent of the CIRP and that the corporate veil could be pierced at the execution stage.

The Delhi High Court (the **'Court'**) dismissed the execution petition with costs and held that once a resolution plan is approved under Section 31 of the IBC, it attains statutory finality and binds all stakeholders, including the Holder who had consciously participated in the CIRP. The Court observed that all claims which are not part of the resolution plan shall stand extinguished, and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. Quoting the Supreme Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531,* it noted that permitting such parallel pursuit would throw into uncertainty amounts payable by a successful resolution applicant. The Court further held that the decree holder, despite full knowledge of the corporate structure, never impleaded the other judgment debtors in the arbitration proceedings, and could not do so for the first time at the execution stage. It stated that an executing court cannot travel beyond the decree or award sought to be enforced. To undertake a roving or fact-finding inquiry into issues such as control, dominance, economic unity, or group liability at the stage of execution would be to convert execution proceedings into a full-fledged trial, which is wholly impermissible in law. The Court distinguished *Cheran Properties Limited v. Kasturi and Sons Limited (2018) 16 SCC 413* and *Cox & Kings Ltd. v. SAP India (P) Ltd. (2024) 4 SCC 1,* noting that the non-parties did not claim "under" the award debtor within the meaning of Section 35 of the Act, and that no fraud, sham, or dishonest diversion of assets was pleaded to justify lifting the corporate veil. Consequently, the petition was dismissed, and the decree holder was held bound by the approved resolution plan.

**Where the arbitration agreement itself is alleged to be forged or fabricated, the disputes ceases to be merely contractual and strikes at the very root of arbitral jurisdiction thereby rendering such disputes non-arbitrable: Supreme Court** *[Rajia Begum v. Barnali Mukherjee, 2026 SCC OnLine SC 135]*

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The Barnali Mukherjee (the **'Appellant'**), respondent no.2 & 3 constituted a partnership firm named as 'M/s RDDHI Gold' by virtue of partnership deed. Rajia Begum (the **'Respondent no.1'**) claims that respondent no.2 & 3 executed a power of attorney in her favor empowering her to manage the affairs of the firm on their behalf. In pursuance to this, respondent no.1 executed an **'Admission Deed'** by virtue of which respondent no. 2 & 3 retired from the firm. On the basis of this admission deed, respondent no.1 claims that she had acquired an interest of 50.33% in the partnership firm. The appellant denied such claims as the admission deed itself was a forged and fabricated document resulting in exclusion of respondent no.1 from the partnership interest.

The trial court allowed the application of Respondent no. 1 under section 9 of the Arbitration and Conciliation Act, 1996 (the **'Act'**) for the preservation of the subject matter and appointment of receiver for the firm. Then, the High Court allowed the appeal filed by the appellant, where it denied to accord interim protection to the respondent no.1 on the ground that the very existence of the admission is in dispute. The appellant filed a separate civil suit before the civil court seeking a declaration that the admission deed is a forged document. In the same suit the Respondent no.1 filed an application under section 8 of the Act to refer the matter to arbitration as per arbitration clause contained in the admission deed. The trial court rejected the application of the Respondent no.1, however, the High Court under Art. 227 of the Constitution referred the matter to arbitration.

Parallely, respondent no.1 filed an application under section 11 of the Act, seeking appointment of an arbitrator, which was dismissed by the high court on the ground of doubt related to the existence of the arbitration agreement between the parties. Later on, both the parties filed an SLP challenging the judgement of the High Court.

The Hon'ble court (the **'Court'**) found that on prima facie, there are some substantial materials which casts doubt on the genuineness of the admission deed. The arbitration clause is not existing independently; rather it is embedded in the deed whose existence is seriously disputed. Referring to *A. Ayyasamy v. A Paramasivam, [(2016) 10 SCC 386]*, the court observed that where arbitration agreement itself is alleged to be forged or fabricated, the disputes cease to be merely contractual as it challenges the jurisdiction of the arbitral jurisdiction to entertain such matters which will be decided by court itself. In this case, the court held that such a nature of dispute falls within the boundary of non-arbitrable disputes and therefore cannot be referred to arbitration at this stage. Moreover, the supervisory jurisdiction of the High Court under Article 227 of the Constitution is not an appellate jurisdiction in disguise, and it does not permit reappreciation of evidence. The court held that the concurrent findings of the courts below declining reference to arbitration on the ground of serious fraud and non-production of the original agreement cannot be interfered within the supervisory jurisdiction of the High Court under Art. 227.

**An application under Section 29A (5) for extension of the mandate of the arbitrator is maintainable even after the expiry of the time under Sections 29A(1) and (3) and even after rendering of an award during that time: Supreme Court** *[C. Velusamy v. K. Indhera, 2026 INSC 112]*

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The appellant and the respondent entered into a contractual relationship. As disputes arose, the appellant filed an application under Section 11 of the Arbitration & Conciliation Act, 1996 (the **'Act'**) and a sole arbitrator was appointed by the High Court. Before the conclusion of twelve months for making the award, parties filed a joint memo under Section 29A (3) and extended the mandate for six months.During this period, the matter was adjourned various times, and the award was finally passed. However, by this time the mandate of the arbitrator had terminated already. The respondent filed an application under Section 34 of the Act challenging the award on the ground that the mandate of the arbitral tribunal expired before passing of the award. The appellant also filed an application under Section 29A of the Act seeking an extension of the mandate of the

tribunal. The High Court dismissed the application under section 29A as not maintainable on the ground that the award was passed subsequent to the expiry of the mandate of the arbitrator and allowed respondent's application under Section 34 of the Act.

The Supreme Court (the **'Court'**) by referring to *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd., [2024 SCC Online SC 2494], Lancor Holdings Ltd v. Prem Kumar Menon & Ors., [2025 SCC OnLine SC 2319]* and *[Jagdeep Chowgule v. Sheela Chowgule, [2026 INSC 92]* interpreted section 29A of the Act. The court held that if the award is not made within twelve months or the extended period of six months, the mandate of the arbitrator shall terminate and this termination is subject to the power of the Court to extend the period. The court's power under Section 29A (4) for extending the period is based on its own discretion. The court can exercise such power before or after the expiry of the period under Section 29(1) or (2). This power and jurisdiction of the court is independent and remains uninfluenced by the act of the arbitrator on passing an award without the mandate. The Court also observed that the expression "if an award is not made" under Section 29A (4) is used to enable the court to extend the mandate of the arbitrator before or after the expiry of the mandate. In conclusion, the application of the appellant is maintainable even after the expiry of the mandate of the arbitrator, such award is ineffective and unenforceable but the court still has the power to consider extension of the mandate.

**The Doctrine of Transnational Issue Estoppel bars relitigation of factual issues already settled by the seat court before the enforcement court: Supreme Court [Nagaraj V. Mylandla v. PI Opportunities Fund-I, 2026 INSC 298]**

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The dispute arose between the parties out of the Share Acquisition and Shareholders Agreement (the **'SASHA'**) between the promoters of Financial Software and Systems Pvt. Ltd. (**'FSSPL'**), the Mylandlas, and a group of private equity investors (PIOF, Millenna, and NYLIM entities). SASHA contained clause 19, detailing the exit mechanism for the investors through a Qualified Initial Public Offering, failing which through a secondary sale, buy-back, Initial Public Offering, or ultimately a strategic sale. When all exit efforts failed, the investors alleged material breach of the exit obligations and initiated arbitration before a three-member SIAC tribunal, which, by a unanimous award, held FSSPL and the Mylandlas jointly and severally liable to pay damages at the contractual exit price with interest and conditionally entitled the Investors to proceed with a strategic sale if damages were not paid within 90 days.

The Mylandlas challenged the award before the Singapore High Court (the **'Seat Court'**), which dismissed their challenge. Later on, the Investors sought enforcement of the award before the Madras High Court under Sections 48 of the Arbitration and Conciliation Act, 1996 (the **'Act'**). The Madras High Court upheld enforceability, rejected all objections raised by the Mylandlas, and deemed the award a decree of the Court, additionally imposing costs on Mylandlas. Then, aggrieved by the order of the High Court, Mylandlas filed special leave petitions before the Supreme Court (the **'Court'**). The Court referred to *Vijay Karia v. Prysmian Cavi E Sistemi SRL, [(2020) 11 SCC 1]* and held that Section 48 does not permit a merits-based review rather the enforcement court is confined to the narrow grounds enumerated therein. The parties cannot use section 48 to convert the enforcement stage

into a second appeal. The court rejected the public policy objections that the award amounted to an impermissible buy-back or violated the Specific Relief Act, 1963.

The Court, noting the absence of any prior Supreme Court decision on the doctrine, held that *transnational issue estoppel* extends the domestic principle of issue estoppel to the international arbitration context. Referring to *Republic of India v. Deutsche Telekom AG [2023] SGCA(I) 10, Good Challenger Navegante S.A. v. Metalexportimport S.A.[2003 EWCA Civ 1668], Hulley Enterprises Ltd. v. Russian Federation[2025 EWCA Civ 108],* the court observed that where factual issues have been fully contested and conclusively decided by the seat court on the merits, the enforcement court is barred from reopening those issues, even under the guise of a public policy challenge under Section 48 of the Act, which was done in present case. However, the court affirmed that where the objections are related to the public policy of the enforcement court, the enforcement court retains the jurisdiction to examine it individually, as domestic public policy varies from state to state.

**Appointment of presiding arbitrator beyond the contractual timeline does not invalidate arbitral proceedings where parties acquiesced to the process** *[Municipal Corporation of Greater Mumbai v. R.V. Anderson Associates, 2026 INSC 228]*

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The dispute arose out of a consultancy agreement between the Municipal Corporation of Greater Mumbai (**'MCGM'**) and M/s R.V. Anderson Associates Ltd. concerning sewerage infrastructure projects funded by the World Bank. After disputes regarding outstanding payments arose, the respondent invoked arbitration under Clause 8.3(b) of the agreement and both parties appointed their nominee arbitrators. However, the presiding arbitrator was appointed beyond the contractual period of thirty days prescribed under the arbitration clause. MCGM subsequently challenged the jurisdiction of the arbitral tribunal under Section 16 of the Arbitration and Conciliation Act, 1996 (the **'Act'**), contending that after expiry of thirty days, only the Secretary General of the International Centre for Settlement of Investment Disputes (**'ICSID'**) could appoint the presiding arbitrator. The arbitral tribunal rejected the objection and ultimately passed an award in favour of the respondent, which was upheld by both the Single Judge and Division Bench of the Bombay High Court. Aggrieved thereby, MCGM approached the Supreme Court (the **'Court'**).

Dismissing the appeals, the Court held that Clause 8.3(b) was merely an enabling provision and did not extinguish the power of the co-arbitrators to appoint the presiding arbitrator after expiry of thirty days. The Court observed that the clause only permitted parties to approach the ICSID in case of delay and did not mandate that such appointment could exclusively be made through the ICSID mechanism. Emphasising minimal judicial interference in arbitral proceedings, the Court held that the arbitral tribunal's interpretation of the contract was not only plausible but commercially sensible. Relying upon *Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, [2025 INSC 574]* and *SEPCO Electric Power Construction Corporation v. GMR Kamalanga Energy Ltd., [2025 INSC 1171]*, the Court reiterated that courts exercising jurisdiction under Sections 34 and 37 cannot re-interpret contractual clauses merely because another interpretation is possible.

The Court further held that MCGM's conduct clearly demonstrated acquiescence to the arbitral process. Despite being aware of the alleged procedural defect, MCGM participated in the proceedings, consented to keeping arbitration in abeyance for conciliation efforts, and failed to object even when three different presiding arbitrators were successively appointed. Referring to *Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd., [2025 SCC OnLine SC 2578]* and other cases, the Court observed that a party cannot keep a "jurisdictional ace" in reserve and subsequently challenge the process after participating without protest. Consequently, the Court upheld the arbitral award and dismissed the appeals.

**State authorities cannot unilaterally determine breach and simultaneously exclude judicial and arbitral remedies under contractual clauses** *[ABS Marine Services v. Andaman & Nicobar Administration, 2026 INSC 274]*

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The dispute arose out of a 'Manning Agreement' executed between M/s ABS Marine Services and the Andaman & Nicobar Administration for manning seventeen vessels. Following damage caused to the vessel M.V. Long Island after it struck a submerged rock in 2009, the respondent administration unilaterally recovered approximately Rs. 2.87 crores from the appellant's pending bills alleging negligence under Clause 3.20 of the agreement. The dispute was subsequently referred to arbitration pursuant to a Section 11 application, and the sole arbitrator held that the recovery was unsustainable and directed refund of the deducted amount with interest and costs. While the District Judge upheld the award under Section 34 of the Arbitration and Conciliation Act, 1996 (the **'Act'**), the Calcutta High Court set aside the award under Section 37 holding that the dispute fell within an "excepted matter" excluded from arbitration under Clause 3.20. Aggrieved thereby, the appellant approached the Supreme Court (the **'Court'**).

Allowing the appeals, the Court held that Clause 3.22 contained a widely worded arbitration clause covering all disputes arising out of the agreement, whereas Clause 3.20 could not be interpreted to permit the administration to unilaterally adjudicate upon disputed allegations of wilful omission or negligence. Relying upon *State of Karnataka v. Shree Rameshwara Rice Mills, [(1987) 2 SCC 160]* and *J.G. Engineers (P) Ltd. v. Union of India, [(2011) 5 SCC 758],* the Court reiterated that one party to a contract cannot act as judge in its own cause when breach itself is disputed. The Court observed that Clause 3.20 could at best exclude from arbitration disputes concerning mere quantification where liability was admitted, but not disputes regarding the existence of negligence or breach itself.

The Court further strongly criticised contractual clauses that seek to oust both judicial and arbitral remedies, observing that such interpretation would violate the rule of law and the principle of *ubi jus ibi remedium*. Referring to *Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddi, [1966 SCC OnLine SC 243],* the Court held that no contractual interpretation can create a "vacuum" in legal remedies. Emphasising harmonious construction of contractual clauses, the Court restored the arbitral award and held that the High Court had erred in treating the dispute as an excepted matter beyond arbitral jurisdiction.

**Order passed appointing the arbitrator before the amendments of 2015 under section 11 serves as res judicata on the existence and validity of the arbitration agreement** *[Eminent Colonizers Private Limited vs. Rajasthan Housing Board & Others, 2026 SCC OnLine SC 148]*

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The Appellant is a construction firm that contracted with the Respondent to construct houses at a total value of Rs. 5,27,00,070/~on 08.07.2009, based on a lump sum contract. A disagreement ensued due to the non-payment of Rs. 18,95,123/~related to escalation costs as per Clause 45 of the contract. The Respondent did not establish the required Standing Committee as stipulated in Clause 23 of the contract agreement. The Appellant then applied under Section 11 of the Arbitration and Conciliation Act, 1996 (the **'Act'**), whereupon the learned Single Judge appointed a sole arbitrator who was a retired High Court Judge on 23.05.2014. The Respondent accepted this ruling without any objections raised. The arbitrator awarded the Appellant Rs. 17,10,624.70/-, which included interest payments. But the Respondent filed an application under Section 34 of the Act to overturn the award because they claimed that Clause 23 of the contract was not an arbitration clause. Both the Commercial Court and High Court ruled to set aside the award.

The Supreme Court (the **'Court'**) ruled that the Commercial Court had erred in considering the issue of whether Clause 23 was an arbitration clause. It blurred the distinction between 'precedent' (*in rem*) and *'res judicata'* (in personam) which the Court clarified subsequently. The Commercial Court said that Section 11 court's ruling was merely legal advice and could be revisited in Section 34. The Court set this straight and said that the finding of the Section 11 court is final under Section 11(7) of the Act and binding between these two parties. That's res judicata. It can't be opened again. The court held that the appeals should be allowed and matter remitted for consideration of other objections only.

**A non-est filing under Section 34(3) of the Arbitration and Conciliation Act, 1996 does not arrest limitation, the prescribed period being a mandatory jurisdictional bar: High Court of Delhi[***Union of India v. M/s Varindera Constructions Limited, O.M.P. (COMM) 452/2024 & O.M.P.(ENF.) (COMM.) 208/2025]*

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The case originated out of a construction agreement concerning the Married Accommodation Project executed between the Union of India (the **'Petitioner'**) and the respondent contractor. The Sole Arbitrator ruled in favour of payment of ₹32.76 crores, but after the application for rectification under Section 33(1) the Arbitration and Conciliation Act, 1996 (the **'Act'**), the rectified award was passed on 12.06.2024, after which the period of limitation under Section 34(3) of the Act commenced. Despite its shortcomings, the petitioner filed a petition against the award on September 24, 2024, well inside the allotted thirty days. Only 19 of the 256 pages of the award were included in this 263-page document, which also lacked a Vakalatnama, a sufficient court fee, and properly signed affidavits. As a result, it was turned down that same day. On October 18, 2024, four days after the outer limit of October 14, 2024, the first fully meaningful file was made following the correction of the fundamental defects. Contradictory applications were submitted by both parties; the former requested an absolute dismissal owing to limitation, while the latter requested a condonation of delay.

In relying on the decision of the Full Bench in *Pragati Construction Consultants v. Union of India [2025 SCC Online Del 636]* the Court stated that in order for the application of Section 34 of the Act to even prima facie constitute one, the application itself must contain the award, relevant information about the parties and proceedings involved, reasons for challenging the arbitral award under Section 34(2) of the Act, and duly authenticated petitions. The Court made it clear that failure to include the award in the application results in a non-est filing, which means that there was no valid filing to toll the statute of limitation. Moreover, the Court held that an application which falls short of this minimum requirement simply could not be considered as the commencement of legal proceedings under any circumstances. The Court rejected the arguments of the petitioners regarding the confusion in internal processes, as well as problems with calculating stamp duties, stating that the government agency has all the resources to comply with the law. Reaffirming *Chintels India Ltd. v. Bhayana Builders Pvt. Ltd. [2021 SCC Online SC 80],* the Court reiterated that Section 34(3) of the Act is strict and absolute, permitting no extension beyond three months and thirty days, and that Section 5 of the Limitation Act does not apply.

This ruling has substantial doctrinal weight as a non-est filing, or one that does not satisfy the minimal legal requirements, cannot be regarded as a legitimate institution of proceedings for the purpose of stopping limitation, and no later corrective re-filing can validate it retroactively. The Court made a clear and unambiguous contrast between a fundamentally flawed first filing, where there is no judicial discretion at all, and a delayed re-filing of an otherwise correctly submitted petition, where some discretion may still exist. By doing this, the ruling essentially puts an end to the practice of submitting partial petitions in order to postpone true compliance and freeze the statute of limitations.

# INTERNATIONAL CASES

**Unilateral request for discontinuance of ICSID arbitration proceedings by AXA, when unopposed by Mexico, terminates the arbitration without any adjudication on the merits of the matter.** *[AXA S.A. v. United Mexican States, ICSID Case No. ARB/24/49]*

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AXA S.A., a French insurance company, initiated ICSID arbitration against Mexico under the 1998 France-Mexico Bilateral Investment Treaty, challenging a 2019 ruling by the Mexican Tax Administration Service (**'SAT'**) that prohibited insurers from crediting Value Added Tax (**'VAT'**) on claims-related expenses and retroactively demanded reimbursement of VAT credits from 2015 onward. The claim, registered on 5 December 2024, alleged that the measure violated AXA's investment rights, imposed a VAT burden on amounts never collected, and threatened the viability of the insurance sector. The tribunal was fully constituted on 1 December 2025.

On 27 January 2026, AXA filed a request for discontinuance of the proceeding pursuant to ICSID Arbitration Rule 56(1). Mexico informed the tribunal the same day that it did not object. On 2 February 2026, the tribunal issued an order taking note of the discontinuance under ICSID Arbitration Rule 56, thereby terminating the arbitration. No award on the merits was rendered, and the case was removed from the ICSID docket. The discontinuance followed a legislative change in Mexico's 2026 Federal Revenue Law that prospectively prohibited VAT crediting for insurers, and came after the Mexican government reached an accord with the insurance sector not to enforce retroactive claims estimated at approximately 175 billion Mexican pesos (about US$8.7 billion).

**Intra-EU Bilateral Investment Treaties continue to constitute a valid basis for ICSID jurisdiction notwithstanding objections based on EU law and the Achmea judgment; multi-party investment claims are maintainable where the claims arise from a common factual matrix and treaty framework** *[Theodoros Adamakopoulos & Ors. v. Republic of Cyprus, ICSID Case No. ARB/15/49, Decision on Jurisdiction, decided on 7 February 2020]*

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In the present case, more than 950 Greek and Luxembourg investors initiated arbitration proceedings against the Republic of Cyprus before the International Centre for Settlement of Investment Disputes (**'ICSID'**) under the Cyprus-Greece BIT and the Cyprus-BLEU BIT. The dispute arose out of the 2012-2013 Cypriot financial crisis and the restructuring measures adopted by Cyprus under the bailout programme negotiated with the European Commission, the European Central Bank, and the IMF (**'Troika'**). The claimants, who held bank deposits, bonds, and other financial instruments in Laiki Bank and Bank of Cyprus, alleged that the "bail-in" measures and restructuring plan violated the protections guaranteed under the BITs. Cyprus raised several jurisdictional objections, including that the intra-EU BITs had become inoperative following Cyprus' accession to the European

Union, that the arbitration clauses were incompatible with Articles 267 and 344 of the Treaty on the Functioning of the European Union in light of the CJEU's decision in *Achmea*, that the proceedings constituted an impermissible "mass claim," and that several claimants lacked qualifying investments or investor status under the ICSID Convention and the BITs.

The ICSID Tribunal rejected the principal jurisdictional objections raised by Cyprus and upheld its jurisdiction over the majority of the claims. The Tribunal held that EU law did not supersede or invalidate the arbitration clauses contained in the intra-EU BITs and that the BITs continued to remain binding instruments under public international law despite the *Achmea* ruling. It observed that the jurisdiction of an ICSID tribunal is governed by the ICSID Convention and the applicable BITs, rather than by EU law, and that no clear conflict existed requiring termination of the treaties under the Vienna Convention on the Law of Treaties. The Tribunal further held that multi-party or mass claims are not inherently incompatible with the ICSID framework where the claims arise from a common factual background and legal basis. It rejected, to a substantial extent, objections concerning consolidation, indirect investments, and procedural inadmissibility, while reserving certain claimant-specific issues for further determination. The decision reaffirmed the autonomy of investment treaty arbitration from EU judicial structures and confirmed that large-scale investor claims arising out of sovereign financial measures may fall within the jurisdiction of ICSID tribunals.

**An athlete may be held liable for refusing or failing to submit to sample collection under Article 2.3 of the Anti-Doping Rules even in the presence of certain procedural irregularities, where the evidence establishes that the athlete did not provide clear and unconditional compliance with doping control requirements** *[World Athletics v. Ethiopian National Anti-Doping Office and Diribe Welteji Kejelcha, CAS 2025/A/11755, decided by the Court of Arbitration for Sport]*

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In the present case, World Athletics appealed against the decision of the Ethiopian National Anti-Doping Office (**'ETH-NADO'**) Hearing Panel, which had acquitted Ethiopian middle-distance athlete Diribe Welteji Kejelcha of an alleged anti-doping rule violation under Article 2.3 of the Ethiopian Anti-Doping Rules for refusing or failing to submit to sample collection. The dispute arose from an out-of-competition testing mission conducted on 25 February 2025, during which three Sample Collection Personnel (**'SCP'**) visited the athlete's residence to collect a blood sample. According to the SCP, the athlete objected to the testing on the ground that it was conducted outside her designated testing window and ultimately refused to provide a sample despite repeated explanations and warnings. The athlete, however, contended that she never refused testing, that the interaction was rushed and affected by communication difficulties, and that the SCP departed prematurely without collecting the sample despite her willingness to comply. ETH-NADO's Hearing Panel accepted the athlete's defence and found that the anti-doping rule violation had not been established, prompting World Athletics to appeal before the Court of Arbitration for Sport (**'CAS'**) .

The Sole Arbitrator of the CAS allowed the appeal and set aside the decision of the ETH-NADO Hearing Panel. The Tribunal held that although certain procedural departures from the International Standard for Testing and Investigations (**'ISTI'**) had occurred, including deficiencies in documentation and notification procedures, such irregularities were insufficient to invalidate the anti-doping proceedings. After evaluating the credibility of the witnesses and the conflicting accounts of the incident, the Tribunal concluded that the SCP were generally credible and that the athlete failed to provide clear and unconditional cooperation with the testing process. The Tribunal further observed that experienced athletes are aware that out-of-competition testing may occur at any time and that objections based on designated testing windows cannot justify a refusal or failure to submit to testing. While acknowledging communication difficulties and certain shortcomings in the SCP's conduct, the Sole Arbitrator ultimately held that the evidence established, to the comfortable satisfaction standard, that the athlete had committed an anti-doping rule violation under Article 2.3. Consequently, the CAS imposed a four-year period of ineligibility on the athlete, along with disqualification of competitive results obtained from 25 February 2025 onward, thereby reaffirming the strict obligation of athletes to cooperate fully with anti-doping authorities and the importance of preserving the integrity of sport.

**Settlement award under ICSID Arbitration Rule 43(2) reinforces consensual resolution in investment disputes** *[ADP International S.A. & Vinci Airports S.A.S. vs. Republic of Chile, ICSID Case No. ARB/21/40]*

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The dispute arose under the Chile–France Bilateral Investment Treaty 1992, concerning the Applicants' majority shareholding in Sociedad Concesionaria Nuevo Pudahuel S.A. (the **'concessionaire'**), which held the concession contract for the execution, repair, and operation of the Arturo Merino Benítez International Airport in Santiago, Chile. The Applicants alleged that the Respondent refused to renegotiate the concession agreement and failed to compensate the concessionaire for economic losses suffered due to the COVID-19 pandemic and related governmental restrictions. According to the Applicants, the drastic reduction in air traffic and commercial airport activities substantially affected the value and operation of their investment in the airport infrastructure project.

The arbitration proceedings were administered under the ICSID Arbitration Rules before a Tribunal. Following written pleadings and hearings on jurisdiction and merits conducted in June 2024, the parties arrived at a consensual settlement during the pendency of the proceedings. On 30 March 2026, the Tribunal rendered its award embodying the settlement agreement pursuant to ICSID Arbitration Rule 43(2).

**Post-termination commission clauses in talent representation agreements are enforceable on all commercial opportunities accepted during the contractual follow-on period, irrespective of managerial involvement in securing such deals** *(Brigade Talent LLC vs. Erin Dana Lichy, JAMS Arbitration No. 5425003089)*

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The dispute arose from a Representation Agreement executed between Brigade Talent LLC (the **'Applicant'**), a talent management company, and Erin Dana Lichy (the **'Respondent'**), a reality television personality. The Agreement provided that the Applicant would receive commissions on endorsement opportunities negotiated or entered into during the contractual term and within two post-termination follow-on periods of 90 days each. Following the Respondent's termination notice dated 15 February 2024, effective from 15 May 2024, disputes emerged regarding the Applicant's entitlement to commissions on endorsement agreements concluded during the 180-day post-termination period. The Respondent contended that commissions were payable only for transactions negotiated or facilitated by the Applicant prior to contract termination, whereas the Applicant asserted entitlement to commissions on all commercial opportunities accepted during the stipulated follow-on periods. The Respondent additionally raised defences alleging contractual amendment through email correspondence, waiver, estoppel, and breach of contractual obligations.

The Arbitral Tribunal rejected the Respondent's interpretation and upheld the enforceability of the sunset clause contained in the Representation Agreement. It held that paragraphs 2(b) and 3 of the Agreement unambiguously entitled the Applicant to commissions on all assignments accepted during the post-termination periods, irrespective of whether the Applicant contributed to securing such opportunities. The Tribunal observed that contractual provisions must be interpreted harmoniously and that express clauses cannot be rendered redundant by treating them as surplusage. It further rejected the contention that the parties had validly amended the Agreement through email exchanges, holding that no conclusive meeting of minds existed regarding the proposed modification of commissionable transactions. Consequently, the Tribunal awarded the Applicant USD 43,710 in commissions along with pre-judgment interest and arbitral costs, reaffirming the binding nature of expressly negotiated post-termination commission structures in talent management agreements.

**Enforcement of foreign arbitral award may be stayed pending supervisory court proceedings where fresh evidence raises a real prospect of fraud, but conditional security may be ordered to protect the award creditor against prejudice caused by delay**
*[SIC v WI and Another, [2026] HKCFI 1795]*

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The dispute arose from distribution agreements between SIC (the **'Applicant'**), an Egyptian home appliances retailer, and WI (the **'Respondent'**), a Hong Kong company, for the supply of "H" branded goods in Egypt. Following WI's termination of the agreements in December 2015 for the Applicant's alleged failure to meet minimum purchase targets, the Applicant initiated ICC arbitration in Paris. The Final Award dated 19 October 2021 declared the termination wrongful and directed the Respondent to pay both damages and costs. After the Applicant obtained an Enforcement Order in Hong Kong on 18 July 2025, the Respondent applied to set it aside on public policy grounds, alleging that SIC had misrepresented to the Tribunal the thoroughness of its document production and dishonestly suppressed a SIC 2015 Budget. Alternatively, WI sought a stay of execution pending its appeal before the French Supreme Court.

Applying *Soleh Boneh v Government of Uganda [1993] 2 Lloyd's Rep 208*, the Court held that the suppressed documents could constitute evidence of concealment practised upon both WI and the Tribunal. Citing *Karaha Bodas Co LLP v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (2009) 12 HKCFAR 84* and *Mayer Corporation Development Ltd v Alliance Financial Intelligence Ltd [2019] HKCA 777*, the Court reiterated that resisting enforcement on fraud grounds required proof of conscious and deliberate dishonesty that was an operative cause of the award being obtained in the terms it was; and materiality assessed by the fresh evidence's impact on the original decision. Finding materiality apparent but deliberate dishonesty still contested, the Court held the Award to be neither manifestly invalid nor valid, warranting neither immediate enforcement nor substantial security.

Critically, on the question of security, the Court declined to order substantial security, noting that SIC had delayed enforcement by over 3.5 years, there was no evidence of asset dissipation by WI, and supervisory proceedings remained pending with further anticipated delays. Instead, the Court ordered proportionate security of US $600,000 to cover reasonable legal costs pending the supervisory court's determination, holding that security must be determined "in its own context and on its own facts”.

# SAMVAAD

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