JUNE - JULY 2026

SAMVAAD 2026

NEW!
LIST OF UPCOMING ADR EVENTS

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 Bob Oberstein, MJ-LEL, Arbitrator, Mediator, Investigator and Educator, with over 52 years of labor relations experience.

Mr. Oberstein examines emerging trends in workplace mediation, labor-management grievance handling, and recent judicial and administrative developments. He explores the growing role of mediation, evolving grievance mechanisms, arbitration practices, and heightened EEOC enforcement, highlighting the need for flexible and proactive approaches to workplace dispute resolution.

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GUEST POST

EMERGING TRENDS IN WORKPLACE MEDIATION, LABOR-MANAGEMENT GRIEVANCE HANDLING, AND RECENT JUDICIAL DEVELOPMENTS

By: Bob Oberstein

Bob has over 52 years of experience in labor relations across the private and public sectors. A recipient of the FMCS Director's Award for Lifetime Achievement (1991), he has served as an arbitrator, mediator, fact-finder, facilitator, trainer, and educator. He holds a Master of Jurisprudence in Labor and Employment Law from Tulane University's School of Law, and several of his arbitration awards and professional works have been published.

His experience spans industries including construction, communications, education, healthcare, government, manufacturing, retail, transportation, and utilities. His work covers discipline, discrimination, grievance mediation, management rights, wages and benefits, safety, seniority, subcontracting, and working conditions, reflecting his extensive experience in resolving complex labor-management disputes. He brings a practical, informed approach to labor relations and dispute resolution, with a longstanding commitment to constructive workplace outcomes.

Introduction

Workplace dispute resolution in the U.S. is changing. Hybrid work, rising employee expectations, increased and decreased regulatory enforcement, and evolving labor-management dynamics have pushed employers and unions to rethink traditional grievance and arbitration systems. Simultaneously, mediation, long used in labor relations has expanded into nonunion workplaces as a core conflict-management tool. In this article we will examine three major evolving developments shaping the field today: (1) the expansion of workplace mediation, (2) shifting paradigms in both nonunion and labor-management grievance handling, and (3) recent judicial and administrative trends, particularly within the Equal Employment Opportunity Commission (EEOC), which are reshaping employer and union risk.

I. The Expansion of Workplace Mediation

A. Mediation as a Mainstream Management Tool

Workplace mediation has grown into a widely adopted management strategy. The National Association for Court Management reports mediation is "rapidly becoming an accepted management tool" as organizations confront rising conflict, legal exposure, and employee burnout.[1] This shift reflects both organizational need and structural changes in today's workplace because settlements are infinitely better than resource draining legal combat.

B. Market Growth and Demand Drivers

Industry projections report workplace mediation and conflict-resolution markets will grow by more than seven percent annually through 2030, driven by hybrid work, generational turnover, and increased employee willingness to raise concerns.[2] Employers increasingly recognize mediation is faster, less expensive, and less disruptive than formal HR investigations or litigation. Anecdotally, when, in my mediation opening statement I ask parties if they previously participated in a mediation, increasingly parties acknowledge this is not their first mediation experience.

C. Mental-Health Integration in Mediation Practice

Recent scholarship highlights the integration of mental-health considerations into mediation.

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[1] Nat'l Ass'n for Ct. Mgmt., *Workplace Mediation: An Emerging Trend (2024)*, https://nacmnet.org.

[2] Id.

Mediators increasingly acknowledge that psychological and emotional factors can impede resolution and, in some cases, incorporate mental-health professionals into the process.[3] This development aligns with broader employer emphasis on trauma-informed conflict resolution and employee well-being. Additionally, a mediator, even if a qualified behavioral health professional, should never attempt to wear two hats as to do so compromises their neutrality since they are now trying to professionally administer behavioral health care to at least one party. There also exists a similar boundary for attorney-mediators who must respect the ethics of not cross pollinating their skill sets by providing legal advice of any sort in a mediation. Additionally, liability insurance carriers often state in their policies that such activities as giving legal or behavioral health advice can be considered malpractice and may not be covered.

D. Technology and Virtual Mediation

Virtual mediation, initially a pandemic-era necessity, has become a permanent fixture in our daily lives. Remote participation increases accessibility, reduces scheduling barriers, and allows disputes to be addressed before they escalate.[4] But it is not without challenges re: confidentiality, substance use/abuse, interruptions, and as an example of extreme and literal transparency even taking the iPad or cell phone into the bathroom during the mediation!

II. Shifting Paradigms in Nonunion and Labor-Management Grievance Handling

A. Rising Complaint Volume and Employee Willingness to File

The U.S. EEOC (Equal Employment Opportunity Commission) received **88,531 new discrimination charges in FY 2024,** a **9.2% increase** from the prior year.[5] This surge reflects heightened employee awareness of rights and a greater willingness to file complaints. Employers now face increased pressure to resolve disputes early and effectively. Additionally, but only anecdotally, colleagues increasingly speak of AI assisted complaints and other filings which may contain hallucinations, etc.

B. Early Resolution as a Strategic Imperative

The EEOC's FY 2024 Performance Report shows that **8,543 private-sector mediations** were successfully resolved—a **14% increase**—resulting in **$243 million** in benefits to workers.[6] These outcomes demonstrate that early resolution is not only cost-effective but also reduces reputational and litigation risk.

C. The Limits of Traditional HR Investigations

Traditional HR investigations often fail to address the interpersonal, cultural, or communication-based conflicts that dominate modern workplaces. As the National Association for Court Management notes, many disputes "do not fit neatly into traditional HR investigations or disciplinary systems."[7] Hybrid work, cultural differences, and team-based conflict frequently require facilitated dialogue rather than formal fact-finding. But here the employee issue has not changed insofar as one cannot serve two masters meaning ultimately HR works for the employer and therefore is not perceived as being and sometimes correctly so, as not entirely capable of neutrality, especially for investigations.

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[3] Id.

[4] Id.

[5]U.S. Equal Emp. Opportunity Comm'n, *FY 2024 Performance Report* (2024), https://www.eeoc.gov/performance (eeoc.gov in Bing).

[6] Id.

[7] Nat'l Ass'n for Ct. Mgmt., supra note 1.

D. Hybrid Grievance Models in Nonunion Workplaces

Organizations increasingly adopt hybrid grievance systems that combine:

- **Mediation** for interpersonal disputes,
- **Investigation** for allegations involving misconduct or legal violations, and
- **Coaching or facilitated conversations** for team-based conflict.

This pluralistic approach reflects a broader shift toward flexible, context-sensitive dispute-resolution systems.

III. Labor-Management Grievance and Arbitration: New Pressures and Evolving Practices

A. Increased Use of Mediation in Unionized Settings

The Federal Mediation and Conciliation Service (FMCS) reports sustained demand for mediation in labor-management disputes, including grievance mediation, contract interpretation issues, and midterm bargaining conflicts. FMCS's 2024 Annual Report highlights that grievance mediation continued to be one of the most effective tools for reducing arbitration backlogs and improving labor-management relationships.[8] However, FMCS due to DOGE has now been on "life support" since 2024 with many staff accepting retirement packages and so its effect on former mediators who have gone private, etc. and on labor-management relationships and grievances/arbitrations has had an as of yet unknown impact.

B. Arbitration Backlogs and the Push for Early Resolution

Labor arbitrators and institutions such as the American Arbitration Association (AAA) and the FMCS have noted significant increases in grievance arbitration filings in the post-pandemic period. AAA's Labor Arbitration Rules emphasize expedited procedures and encourage mediation at multiple stages to reduce delays and costs.[9]

Anecdotally, the use of a Special Master approach wherein a backlog of grievances are submitted to a Special Master who along with the parties, but absent attorneys, first mediate their grievances and those remaining then proceed to arbitration but again, without attorneys! In 1994 I functioned as Special Master over a more than 80 grievance backlog, most of which were already on the attorney's desks. In less than 4 months all were successfully mediated with only 7 having to be arbitrated by the Special Master. More importantly, this process provided "on the job training" for both labor and management such that they were able to keep their grievance load manageable going forward based on what they had learned from the process.

C. Judicial Developments Affecting Labor Arbitration

Courts continue to reinforce the strong federal policy favoring labor arbitration under the *Steelworkers Trilogy*. Recent federal decisions reaffirm that:

- Arbitrators, not courts, interpret collective bargaining agreements (CBAs);
- Judicial review of labor arbitration awards remains "among the narrowest known to the law"; and
- Awards will be upheld if they "draw their essence" from the CBA.[10]

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[8] Fed. Mediation & Conciliation Serv., *Annual Report FY 2024* (2024), https://www.fmcs.gov.

[9] Am. Arbitration Ass'n, *Labor Arbitration Rules* (2024), https://www.adr.org/labor.

[10]*United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

These principles preserve arbitration's central role in labor relations while encouraging parties to resolve disputes early through mediation.

D. Systemic Issues and Union-Management Collaboration

The EEOC's increased focus on systemic discrimination—filing **13 new systemic lawsuits** and resolving **16** in FY 2024[11]—has implications for unionized workplaces. Unions and employers are increasingly collaborating to:

- Address workplace equity issues proactively,
- Use mediation to resolve systemic concerns before they escalate, and
- Integrate joint labor-management committees into grievance-handling structures.

However, here we need to acknowledge vocal Union members may see collaboration as in collaborating with an enemy and be dissatisfied with settlement as it equates to compromise which in turn equates to giving in or giving up too much and the adage is that happy members do not show up to union meetings as much or as often as the unhappy.

V. Administrative and Judicial Trends Reshaping Employer and Union Risk

A. EEOC Enforcement and Litigation Success

The EEOC recovered **$698 million** for nearly 21,000 workers in FY 2024, with **$469.6 million** obtained through administrative processes such as mediation and settlement.[12] The agency achieved a **97% success rate** in the 132 lawsuits it resolved.[13]

B. Implications for Labor-Management Relations

Unions and employers face heightened risk when disputes escalate beyond the grievance process. Early mediation—whether through FMCS, internal grievance mediation, or private neutrals—reduces exposure to:

- Systemic discrimination claims,
- Retaliation allegations, and
- Class-based or pattern-or-practice litigation.

C. Mediation as a Compliance Strategy

Given the EEOC's enforcement posture, mediation is increasingly viewed as a compliance tool. Early resolution demonstrates good-faith efforts and reduces the likelihood of formal charges or systemic investigations.

V. The Future of Workplace and Labor-Management Dispute Resolution

A. Professionalization and Training

Institutions such as the International Law Institute offer comprehensive mediation training programs, reflecting the growing professionalization of workplace and labor-management mediation.[14]

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[11] EEOC, FY 2024 *Performance Report,* supra note 5.
[12] Id.
[13] Id.
14] Int'l Law Inst., *Mediation Training Programs* (2024), https://ili.org.

Additionally, both state and local DRC's (Dispute Resolution Centers) often affiliated with or operating through the courts along with an ever increasing number of academic institutions have made training as well as career opportunities available to many an aspiring mediator.

B. Technology-Driven Accessibility

Virtual mediation and digital grievance platforms will continue to expand access, particularly for remote and hybrid workers and geographically dispersed bargaining units. Also, increased opportunity to observe and be mentored regardless of geographic location.

C. Restorative Approaches in Union and Nonunion Settings

The emerging paradigm emphasizes:

- Dialogue over discipline,
- Repair over punishment, and
- Collaboration over adversarialism.

This shift reflects broader cultural changes in how organizations understand conflict and accountability.

Conclusion

Workplace and labor-management dispute resolution are undergoing significant transformation. Rising conflict levels, increased EEOC enforcement, and evolving workplace structures have pushed employers and unions to adopt more flexible, proactive, and human-centered approaches to dispute resolution. Mediation—supported by mental-health integration, technological accessibility, and expanding educational programs—has emerged as a central tool in this new landscape.

Judicial and administrative developments underscore the risks of failing to address disputes early. With the EEOC's heightened enforcement activity and near-perfect litigation success rate, employers and unions have strong incentives to strengthen internal grievance systems and embrace mediation as both a conflict-resolution and compliance strategy.

As organizations continue to adapt to hybrid work, demographic change, and rising employee expectations, mediation and arbitration will play increasingly vital roles in shaping fair, efficient, and sustainable systems of workplace justice.

Simultaneously, however, the U.S. Federal governments recently eliminating or refusing to recognize current Federal collective bargaining agreements have undermined the ability of federal workers to have their grievances heard.

To do away with the grievance and arbitration process thereby increases the possibility for job actions such as protests and strikes. Some Unions may see this as a silver lining to incentivize member complacency to spur on more organizing support. While others may recall that during the industrial revolution it became commonplace for workers to throw their wooden shoes into the machinery to at least temporarily halt production. These shoes, at least in France were called “sabot” from which comes the word “sabotage.” So, in closing we must that those who forget history are doomed to repeat it.”

EDITOR BLOG

THE HIDDEN COSTS OF EFFICIENCY: HOW THE ICC'S CASE MANAGEMENT POWERS COULD BACKFIRE

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In its quest to empower arbitrators to manage cases more effectively, the International Chamber of Commerce (**"ICC"**) may have inadvertently created a tool capable of undermining the very rights it exists to protect. *The 2026 ICC Rules of Arbitration*, which entered into force on 1 June 2026, embed a pronounced case management ethos throughout the arbitral process. The tribunal must now convene an initial Case Management Conference within thirty days of receiving the file, and no new claims may be introduced after that conference without the tribunal's authorisation.

Most consequentially, under the new opt-in Highly Expedited Arbitration Provisions, the tribunal may decide not to allow document production at all, may limit the number, length and scope of written submissions, may restrict written witness and expert evidence, and may decide the dispute solely on the documents submitted, without a hearing. These are formidable powers. The ICC's justification, that a record 2025 caseload demanded greater efficiency, is not unreasonable in itself. Yet this piece argues that granting tribunals such expansive discretion, with only thin procedural checks attached, creates a genuine risk of arbitral overreach, procedural unpredictability and a chilling effect on parties' ability to present their case in full, outcomes that would corrode rather than strengthen the legitimacy the ICC is trying to protect.

Consider first what this new arsenal actually consists of. Historically, ICC arbitration proceeded through the 'Terms of Reference' (**"TOR"**), a document that fixed the scope of the dispute only once both parties and the tribunal had jointly agreed to it. That instrument has now been made discretionary instead of mandatory, in favour of tribunal-driven case management, anchored to a compressed initial conference and reinforced by the tribunal's unilateral power to close the door on new claims. This is consistent with *ICC Expedited Procedures* where arbitrations are already successfully held without mandatory TOR. Specifically under the expedited track, the tribunal's control over the evidentiary record is nearly total.

However, these powers may eliminate unnecessary procedural steps in straightforward contractual or accounting disputes, but the same compression may create serious strategic and due process concerns in disputes involving credibility contests, fraud allegations, multiple witnesses or asymmetric access to documents between the parties. That candour is itself instructive, because efficiency and fairness begin to pull against each other once a tribunal is handed unilateral control over what evidence a party may put before it.

This overreach risk is not merely theoretical. Many international arbitrations still proceed with almost no case management stage at all, leaving arbitrators passive even where active direction would serve the parties better. The 2026 Rules attempt to correct precisely this passivity, yet they do so by swinging discretion sharply in the opposite direction, from too little tribunal control to nearly unchecked tribunal control, without pausing at a calibrated middle point.

A tribunal empowered to deny document production or cap submissions effectively decides the evidentiary universe within which a party's case must be proven. Where a tribunal is inclined, consciously or not, to prioritise the timetable over a thorough airing of the dispute, its case management orders become the very mechanism through which that inclination is realised, and an aggrieved party has limited means of contesting the order before the award is rendered.

The risk cuts in more than one direction. In a related phenomenon scholarly termed "Due Process Paranoia", repeated procedural applications, filed under the banner of fairness, are strategically used to overwhelm a tribunal or to manufacture the appearance of unequal treatment for use later at the enforcement stage. The 2026 Rules create fertile ground for this dynamic on both sides of the table. A respondent facing an unfavourable timetable might contest every case management order as a due process violation, while a claimant anticipating a document-heavy dispute might file an expansive production request precisely because the tribunal is statistically likely to curtail it, thereby building an enforcement stage argument in advance. Neither behaviour serves the efficiency the Rules were designed to deliver, and both are made more likely by the absence of any structured mechanism for testing a case management order's fairness before the final award is rendered.

A further, underexamined cost is unpredictability. Because the exercise of these powers is left largely to guidance notes and to the individual tribunal's judgment, the practical experience of an ICC arbitration will vary considerably depending on which arbitrators happen to be appointed. This matters more than it might first appear. Empirical research from the 2025 International Arbitration Survey - "The Path Forward: Realities and Opportunities in Arbitration" has repeatedly found that cost and lack of speed rank among the worst perceived features of international arbitration, and later editions of the same survey series record that respondents consider a lack of proactive case management by arbitrators to be a significant contributor to inefficiency.

The 2026 Rules respond to these findings, but in doing so they convert case strategy partly into a wager on tribunal composition. A party facing a document dependent claim now has a strong incentive to seek arbitrators known for permissive case management, while a party seeking speed will do the opposite, and the outcome of that contest may end up shaping the arbitration as much as the merits themselves.

None of this warrants reversing the ICC's case management reforms. The caseload pressures behind them are real, and parties who genuinely want a fast, document-based process should be able to opt into one. What the Rules currently lack is a set of accountability mechanisms proportionate to the discretion they confer. Any case management direction that materially limits document production, submission length or witness evidence should be preceded by a reasoned order addressing the parties' specific objections, rather than a generic invocation of efficiency.

The ICC Court, which already exercises scrutiny over final awards, could usefully extend a light-touch review to significant interim case management orders made under the expedited track, given that the documents-only route offers no hearing at which such orders might otherwise be tested. The Secretariat's existing guidance notes on case management technique could also be elevated from optional reference material into a structured checklist that tribunals must consult and may depart from only with stated reasons, borrowing the comply or explain logic that has proved workable in other regulatory contexts.

Efficiency purchased at the price of predictability or fairness is not efficiency at all. It is simply cost deferred from the arbitration's front end to its enforcement stage, where a poorly justified case management order can unravel an otherwise sound award. The ICC would do well to remember that empowering arbitrators is not the same as leaving them unaccountable. A genuinely progressive framework pairs a new case management arsenal with clear guidelines and meaningful checks, ensuring those powers serve the parties' search for justice rather than merely outrunning it.

DOMESTIC CASES

The High Court cannot exercise review jurisdiction to invalidate an order appointing an arbitrator under Section 11 of the Act once the tribunal is constituted and the parties have actively participated in the proceedings *[M/s. Maavadi Soft Tech Ventures (India) Pvt. Ltd. & Ors. v. M/s. Anir Tech Park Private Limited, REV.APLO Nos. 14 to 16 of 2026]*

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In the present case, the applicants were the respondents in the Section 11 petitions filed by M/s.Anir Tech Park Private Limited, represented by its Director P.Kannadasan, where the Madras High Court, passed an order dated 22.04.2025 based on a joint endorsement, and appointed a sole arbitrator to adjudicate disputes arising from a Share Purchase Agreement (the **"SPA"**) and Memorandums of Undertaking (the **"MoU"**). Subsequent to the appointment, the applicants participated in the arbitration proceedings and also filed an application under Section 16 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), questioning the Arbitral tribunal's jurisdiction and claiming that the original Section 11 petitions were barred by limitation. By the orders dated 17.12.2025, the sole arbitrator appointed by the court dismissed the Section 16 application. The applicants approached the Supreme Court, which by the order dated 16.02.2026 permitted the applicants to withdraw their Special Leave Petition (the **"SLP"**) and file review applications before the High Court.

The Madras High Court (the **"Court"**) dismissed the review applications as non-maintainable, holding that the Act is a self-contained code and a special enactment that does not grant High Court the power to review an order passed under Section 11 of the Act appointing an Arbitrator. The Court observed that the appointment of the Arbitrator also becomes *"Functus officio"* which cannot be invalidated by the same Court which passed the order and the review jurisdiction under Order 47 Rule 1 of the Code of Civil Procedure (the **"CPC"**) is inapplicable to such orders. Basing on the Supreme Court's decision in *Hindustan Construction Company Ltd. vs. Bihar Rajya Pul Nirman Nigam Limited, 2025 INSC 1365*, the Court emphasised that once parties have actively participated in arbitral proceedings, conducted hearings and jointly sought extensions under Section 29(A), they are barred from retrospectively challenging the appointment of the arbitrator or the validity of the arbitration agreement. The Court further emphasized that entertaining such review applications would defeat the legislative object of "minimal judicial intervention" as there will be no finality of any decision and would allow parties to scuttle the arbitral process after participating in it without initial protest. The Court concluded that the applicants, having participated in several procedural hearings and having already received a different ruling from the arbitrator on their jurisdictional challenge, could not now seek to invalidate the original appointment order through a review.

The scope of judicial intervention under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, does not permit courts to reappreciate evidence or substitute the arbitral tribunal's interpretation of contractual terms merely because another view is possible. *[Madhya Pradesh Road Development Corporation Ltd. v. M/s Jabalpur Corridor Pvt. Ltd., 2026 INSC 590]*

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The dispute arose from a 2003 concession agreement for a Build-Operate-Transfer basis Road Project, which Madhya Pradesh Road Development Corporation (**"MPRDC"**) terminated in 2007.

Jabalpur Corridor Pvt. Ltd. (**“JCPL”**) challenged the termination as unlawful, leading to arbitration where the tribunal declared the termination illegal and awarded termination payments. MPRDC's challenges under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 (the **“Act”**) were dismissed, prompting the present appeal. The Supreme Court (the **“Court”**) extensively examined the scope of judicial intervention under the 1996 Act, reiterating that Section 5 embodies the principle of minimal judicial interference. Courts cannot assume appellate roles to correct factual errors or reconsider merits, as the narrowing pyramid principle dictates that each appellate layer requires a higher threshold for upsetting an award.

Regarding the jurisdictional challenge under the Madhya Pradesh Madhyastham Adhiniyam, 1983, the Court relied on *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 and Gayatri Project Ltd. vs. M.P. Road Development Corpn. Ltd (2025) 10 SCC 750*, to hold that where the award pre-dates the settled position of law and objections under Section 16 were raised belatedly, the award cannot be annulled solely on jurisdictional grounds. The Court rejected MPRDC's contention that the tribunal travelled beyond its scope by awarding termination payment when only the value of work was claimed, holding that once termination was declared unlawful, the agreement became operative. On the interest challenge, the Court upheld the contractual rate of 14.75% and post-award interest of 18%, stating that party autonomy being the backbone of alternative dispute resolution, courts must uphold bargains unless interest rates are perverse enough to shock the conscience. The Court dismissed the appeal and directed the release of the deposited amount.

Protection of arbitral confidentiality under Section 42A of the Arbitration and Conciliation Act, 1996 is a mandate that discretionary institutional rules for India-seated arbitrations cannot override and implicitly renders documents sourced from separate proceedings inadmissible. *[JPC Infrastructure and Constructions Pvt. Ltd. vs. Alstom Transport India Ltd., 2026:DHC:5370]*

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JPC Infrastructure (**“JPC”**) and Alstom Transport (**“Alstom”**) entered into a back-to-back subcontract for civil and electrical works on the Eastern Dedicated Freight Corridor project. When disputes arose over site access, delayed surveys, and the eventual termination of the contract, the matter was referred to a three-member ICC arbitral tribunal. The tribunal allowed some of JPC’s claims but dismissed its specific claims for loss of profit, overhead costs, and survey reimbursements because it refused to admit a critical June 2017 letter submitted by JPC, which allegedly contained admissions by Alstom to the main project employer (**“DFCCIL”**) that site access was delayed. The tribunal excluded the letter because it was leaked from a separate, confidential arbitration between Alstom and DFCCIL. Under Section 34 of the Arbitration and Conciliation Act, 1996 (the **“Act”**), JPC argued that while Section 42A imposes a duty of confidentiality, it does not prescribe inadmissibility as a penalty, and that the tribunal should have applied the more permissive, discretionary confidentiality guidelines found in Article 22(3) of the ICC Rules.

The Delhi High Court (the **“Court”**) dismissed JPC’s challenge and upheld the arbitral award, finding no patent illegality in the tribunal’s evidentiary decision. The Court reasoned that treating Section 42A’s confidentiality mandate as a merely optional or unenforceable obligation would completely hollow out the protection its non-obstante clause was enacted to secure. Because the arbitration was seated in India, the mandatory statutory protections of the Act strictly override the discretionary evidentiary regimes of institutional guidelines like the ICC Rules. Furthermore, the Court noted that the tribunal had thoroughly examined the document’s origins, reasonably concluding that JPC obtained it improperly through its counsel’s involvement in the separate arbitration.

The Court also clarified that the prior use of the leaked document in unrelated court proceedings did not automatically destroy its confidential status, making the tribunal's choice to exclude the evidence a legally sound exercise of its discretion.

Independent statutory entitlement to post-award interest under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 operates irrespective of contractual prohibitions, enabling a court exercising Section 34 jurisdiction to award such interest even when erroneously denied by the Arbitral Tribunal. *[TBEA Energy (India) Pvt. Ltd. vs. Bharat Heavy Electricals Ltd., 2026:DHC:5314]*

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Bharat Heavy Electricals Ltd. (**"BHEL"**) engaged TBEA Energy (**"TBEA"**) to supply transformers, but the delivery was delayed past the contractual timeline. Consequently, BHEL withheld payments to cover liquidated damages and an unsubmitted Additional Performance Bank Guarantee (**"APBG"**) from TBEA's parent company. The dispute was referred to a sole arbitrator, who found TBEA responsible for a 70-day delay, upheld a 50% deduction of the liquidated damages, and permitted TBEA to furnish the APBG itself upon receiving proper parental authorization. While the arbitrator awarded proportionate costs to TBEA as the partially successful party, he denied them post-award interest by relying on *Union of India vs Manraj Enterprises, (2022) 2 SCC 331*, which barred pendente lite interest based on the parties' contract. Both parties challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), with TBEA specifically arguing that post-award interest is a mandatory statutory right regardless of contractual terms.

The Delhi High Court (the **"Court"**) largely upheld the arbitrator's findings on the delay, damages, APBG, and costs, viewing them as commercially sensible interpretations immune from interference under the patent-illegality standard. However, the Court sided with TBEA regarding the denial of future interest. It clarified that the arbitrator mistakenly conflated pre-reference interest, which can be contractually restricted under Section 31(7)(a), with post-award interest governed by Section 31(7)(b). The Court ruled that post-award interest is an independent statutory mandate that cannot be contracted out of by the parties. The Court dismissed BHEL's petition entirely and modified the award to grant TBEA future interest at 2% above the prevailing rate from the date of the award until payment.

A foreign arbitral award may be refused enforcement under Section 48(2)(b) of the Arbitration and Conciliation Act, 1996 where the award proceeds on the erroneous assumption of a concluded contract despite the absence of consensus on essential contractual terms *[ASEAN LNG Trading Co. Ltd. (now Petronas LNG Ltd.) v. Nishu Tours and Travels Ltd.]*

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The dispute arose out of a Master LNG Sale and Purchase Agreement executed between ASEAN LNG Trading Co. Ltd. (now Petronas LNG Ltd.) and Nishu Tours and Travels Ltd. for the supply of liquefied natural gas (**"LNG"**). While the parties had executed a Master Agreement and an initial Confirmation Notice, subsequent supplies were to be governed by Delivery Notices incorporating essential commercial terms, including the receiving terminal, unloading schedule and sale price. Disputes arose when the parties failed to reach consensus on these essential terms for subsequent cargoes, following which the seller invoked the "Take or Pay" clause and obtained a foreign arbitral award in its favour.

The Gujarat High Court refused enforcement of the award under Section 48 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), holding that the arbitral tribunal had erroneously assumed the existence of a concluded contract. Aggrieved thereby, the appellant approached the Supreme Court (the **"Court"**).

Dismissing the appeal, the Court held that enforcement of the foreign arbitral award would be contrary to the fundamental policy of Indian law under Section 48(2)(b) of the Act, as the award was founded on a contract that had never come into existence owing to the absence of consensus on essential contractual terms. The Court observed that the receiving terminal, delivery schedule and final sale price constituted fundamental elements of the bargain, and without agreement thereon, no binding contract could be said to have been concluded so as to attract the "Take or Pay" obligation. Reiterating that judicial review of foreign awards is narrow but not illusory, the Court held that an award founded on a manifestly erroneous assumption of contractual consensus could not be enforced in India. Accordingly, the Court affirmed the judgment of the Gujarat High Court refusing enforcement of the foreign arbitral award.

For computing limitation under Section 34(3) of the Arbitration and Conciliation Act, 1996, the relevant date is the disposal of proceedings under Section 33, irrespective of the maintainability of the application under Section 33. *[National Highway Authority of India v. T. Younis, 2026 SCC OnLine SC 1060]*

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The National Highways Authority of India (**"NHAI"**) challenged an arbitral award passed following acquisition of land under the National Highways Act, 1956. After the matter was remanded by the Karnataka High Court, the Arbitrator passed a fresh award granting statutory benefits under the Land Acquisition Act, 1894. Thereafter, both NHAI and the landowner invoked Section 33 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), seeking correction of the award and an additional award, respectively. The Arbitrator dismissed both applications by a common order. NHAI subsequently filed applications under Section 34 of the Act along with applications for condonation of delay. Although the Principal District and Sessions Judge condoned the delay, the Karnataka High Court set aside that order, holding that NHAI's application under Section 33 was not maintainable and, therefore, could not postpone the commencement of limitation under Section 34(3). Aggrieved thereby, the appellant approached the Supreme Court (the **"Court"**).

Allowing the appeal, the Court held that the commencement of limitation under Section 34(3) of the Act depends upon the disposal of proceedings initiated under Section 33 and not upon the eventual maintainability or success of such proceedings. The Court observed that Section 34(3) does not distinguish between maintainable and non-maintainable applications under Section 33 and that once the jurisdiction of the Arbitral Tribunal is formally invoked under Section 33, limitation begins only upon disposal of those proceedings. Distinguishing *State of Arunachal Pradesh v. Damani Construction Co., (2007) 10 SCC 742, and relying on Geojit Financial Services Ltd. v. Sandeep Gurav, 2025 INSC 1021,* the Court further clarified that courts may impose exemplary costs where applications under Section 33 are found to be sham, frivolous or mala fide and intended only to defeat limitation. Accordingly, the Court set aside the High Court's judgment, restored the order condoning the delay, and directed that NHAI's applications under Section 34 of the Act be decided on their own merits.

Objective material indicating a strong possibility of diminution of assets, and not proof of dishonest dissipation, is sufficient for grant of interim protection under Section 9 of the Arbitration and Conciliation Act, 1996. *[Norvic Shipping Asia PTE Ltd. v. Zigma International, Comm Arbitration Petition (L) No. 15734 of 2026, decided on 2-7-2026 (Bom)]*

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Norvic Shipping Asia PTE Limited (**"Norvic"**) filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), seeking interim protection in aid of arbitration proceedings pending before the London Maritime Arbitrators Association (**"LMAA"**). The dispute arose out of a Repayment Schedule Agreement under which Zigma International (**"Zigma"**) acknowledged liability towards demurrage and agreed to repay the outstanding amount in instalments. Following Zigma's default, Norvic invoked arbitration and sought interim measures before the Bombay High Court to secure its claim against Zigma's assets situated in India. Zigma opposed the petition, contending that there was no material to establish dissipation of assets, that the Arbitral Tribunal had already been constituted, and that the petitioner ought to seek interim relief under Section 17 of the Act.

Partly allowing the petition, the Bombay High Court (the **"Court"**) held that the powers under Section 9 of the Act are wider than those governing attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, and that objective material indicating a strong possibility of diminution of assets is sufficient to justify interim protection. Relying on *Essar House (P) Ltd. v. Arcelor Mittal Nippon Steel (India) Ltd., (2022) 20 SCC 178,* and *Shanghai Electric Group Co. Ltd.,* the Court held that proof of dishonest dissipation is not a prerequisite and that financial distress, competing creditor claims, persistent default, and inconsistent defences may collectively establish a real likelihood of assets becoming unavailable for enforcement. The Court further held that the bar under Section 9(3) does not apply where interim relief granted by a foreign-seated arbitral tribunal is incapable of effective enforcement against assets located in India. Accordingly, the Court directed Zigma to secure Norvic's claim by depositing the claimed amount or furnishing a bank guarantee, restrained it from dealing with its assets to the extent of the claim pending compliance, directed disclosure of its assets, and rejected the prayer for appointment of a Receiver at that stage.

Where an arbitration clause is contained in an unsigned agreement, the parties' consistent conduct in acting upon its terms may establish the existence of a valid arbitration agreement. Further, mere delay in pronouncing an arbitral award is not by itself a ground for setting aside the award in the absence of demonstrable prejudice. *[Shriram Pistons & Rings Ltd. v. Usha International Ltd., O.M.P. (COMM.) 118/2016, Delhi High Court]*

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Shriram Pistons & Rings Ltd. (**"Shriram"**) challenged an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), directing it to pay ₹68.57 lakhs, along with interest and costs, to Usha International Ltd. (**"Usha"**) towards unpaid export commission. Shriram contended that the arbitral tribunal lacked jurisdiction as the arbitration clause formed part of an unsigned agreement executed in 1999, while the subsequently executed agreement of 2000 governed the parties' relationship independently. It further alleged that its objections under Sections 12 and 16 of the Act were not properly adjudicated, that the arbitral tribunal had wrongly appreciated the evidence, and that the award was vitiated by an unexplained delay of nearly eighteen months in its pronouncement.

Dismissing the petition, the Delhi High Court reiterated the limited scope of judicial interference under Section 34 of the Act. Relying on *OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417,* and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131,* the Court held that the parties' consistent conduct in performing and recognising the terms of the 1999 Agreement established a valid arbitration agreement despite the absence of the Respondent's signature. The Court further held that the 2000 Agreement merely modified the earlier arrangement and did not extinguish the arbitration clause. Rejecting the challenge based on delay, the Court observed that mere delay in pronouncing an award, absent proof of actual prejudice, does not justify interference under Section 34. Finding no patent illegality or perversity in the award, the Court dismissed the petition and upheld the arbitral award.

Debarment Orders Issued in Exercise of Independent Administrative Powers, and Not Traceable to the Underlying Contract, Fall Outside the Scope of a Contractual Arbitration Clause *[NCC Limited v. Airport Authority of India, 2026:DHC:5248]*

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NCC Limited (**"NCC"**) was awarded a contract by the Airports Authority of India (**"AAI"**) for the construction of the New Domestic Terminal Building and allied structures at Patna Airport. Following disputes concerning delays, alleged defective workmanship, and failure to rectify defects, AAI issued a Show Cause Notice proposing debarment and subsequently passed a Debarment Letter debarring NCC from participating in its future tenders for two years. Aggrieved thereby, NCC filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), seeking an interim stay on the operation of the Debarment Letter pending the commencement of arbitral proceedings. The Delhi High Court (the **"Court"**) was called upon to determine whether the challenge to the debarment order constituted an arbitrable dispute amenable to relief under Section 9 of the Act.

Dismissing the petition, the Court held that arbitrability depends not on the factual genesis of a dispute but on the legal source of the power exercised. Relying on *Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1, Emaar India Ltd. v. Tarun Aggarwal Projects LLP, 2022 SCC OnLine SC 1328, Patel Engineering Ltd. v. Union of India, (2012) 11 SCC 257, Verigamto Naveen v. Government of Andhra Pradesh, (2001) 8 SCC 344,* and *A.K.G. Construction and Developers Pvt. Ltd. v. State of Jharkhand, 2026 SCC OnLine SC 520,* the Court observed that although the debarment proceedings arose from allegations relating to NCC's contractual performance, the power to debar emanated from the Airports Authority of India Works Manual, read with the Airports Authority of India Act, 1994, and not from the contract between the parties. The Court distinguished disputes concerning contractual rights and obligations from those arising out of the exercise of independent administrative powers regulating future contractual relationships. Holding that the jurisdiction under Section 9 is ancillary to arbitration and can be invoked only in respect of arbitrable disputes, the Court concluded that the challenge to the Debarment Letter fell outside the scope of the arbitration agreement. Accordingly, the Court dismissed the petition as not maintainable under Section 9 of the Act, while clarifying that it had expressed no opinion on the legality or merits of the debarment order.

INTERNATIONAL CASES

Ratification of the New York Convention does not, by itself, amount to an unequivocal waiver of sovereign immunity or submission to the adjudicative jurisdiction of domestic courts for enforcement of foreign arbitral awards *[CC/Devas (Mauritius) Ltd. v. Republic of India, [2026] EWCA Civ 797]*

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The dispute arose from two arbitral awards rendered by a Permanent Court of Arbitration tribunal under the UNCITRAL Rules in favour of CC/Devas (Mauritius) Ltd. and others against the Republic of India pursuant to the India-Mauritius Bilateral Investment Treaty. The claimants sought recognition and enforcement of the awards before the English courts under Sections 101(2) and (3) of the Arbitration Act, 1996 (the **"Act"**). India resisted enforcement by invoking sovereign immunity under the State Immunity Act, 1978 (the **"SIA"**). The appellants contended that, by ratifying the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the **"New York Convention"**), particularly Article III thereof, India had submitted to the adjudicative jurisdiction of the English courts within the meaning of Section 2(2) of the SIA. The Commercial Court rejected the contention and held that mere ratification of the New York Convention did not amount to a waiver of sovereign immunity. Aggrieved thereby, the appellants approached the Court of Appeal (the **"Court"**).

Dismissing the appeal, the Court held that Article III of the New York Convention, which requires Contracting States to recognise and enforce arbitral awards in accordance with the rules of procedure of the enforcing State, preserves rather than excludes the operation of domestic rules relating to sovereign immunity. Interpreting the New York Convention in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the Court held that the phrase "rules of procedure" encompasses state immunity, which is recognised under both English and international law as a procedural rule. Distinguishing *Infrastructure Services Luxembourg SARL v. Kingdom of Spain, [2026] UKSC 9,* the Court observed that, unlike Article 54 of the ICSID Convention, Article III of the New York Convention neither expressly nor by necessary implication evidences an unequivocal submission by Contracting States to the adjudicative jurisdiction of foreign courts. Accordingly, the Court affirmed the Commercial Court's decision and held that mere ratification of the New York Convention does not constitute a waiver of sovereign immunity for the purposes of enforcement proceedings under the Act.

A voluntary waiver of the right to a reasoned arbitral award is permissible under Article 6 of the European Convention on Human Rights (ECHR) provided it is established in a free, lawful, and unequivocal manner and is accompanied by minimum procedural guarantees. *[Jiitee Työt Oy v. Finland, Application no. 2895/25]*

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The applicant, a Finnish limited liability company, was involved in a voluntary commercial arbitration with another company for rail tunnel repair contracts. The parties mutually agreed to apply the Arbitration Institute of the Finland Chamber of Commerce (the **"FAI"**) Rules for Expedited Arbitration, in accordance with which the award shall not contain reasons unless a party specifically requests them within a set time-limit. During a case management conference, the applicant expressly agreed that the arbitral award did not need to contain reasons.

The arbitrator provided a subsequent opportunity via email to request a reasoned award; however, neither party did so. The arbitrator eventually issued an award without any statement of facts or legal reasoning, ordering the applicant to pay over EUR 300,000. The applicant unsuccessfully sought to annul the award in Finnish courts, stating that an unreasoned award violated public policy and the right to a fair trial.

The European Court of Human Rights (the **"Court"**) held that there was no violation of Article 6 Section 1 of the European Convention on Human Rights (**"ECHR"**). The Court stated that while Article 6 applies to disputes submitted to voluntary arbitration, parties are free to waive certain procedural rights provided the waiver is established in a free, lawful, and unequivocal manner. The Court, in this case, found the waiver to be valid as it was made voluntarily without duress, and was consistent with the Finnish Arbitration Act. Moreover, the act was repeatedly confirmed by the applicant while being represented by counsel. The Court observed that the right to a reasoned decision is not a kind of fundamental procedural principle wherein its waiver is inherently impermissible in voluntary arbitration, especially when other minimum guarantees such as the right to be heard and the availability of narrow judicial review for public policy violations are preserved. The Court concluded that, since the applicant had expressly and unequivocally waived the right to reasoning on several occasions to benefit from a swifter and less costly procedure, the lack of reasons in the final award did not undermine the practical and effective protection of its fair trial rights.

An exchange of Notes Verbales may constitute a binding international agreement where the parties unequivocally agree to modify their obligations, and such an agreement cannot be unilaterally withdrawn thereafter. *[The Republic of Rwanda v. The United Kingdom of Great Britain and Northern Ireland, PCA Case No. 2025-45]*

~Apoorva
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The Republic of Rwanda initiated arbitration against the United Kingdom, alleging breaches of the Asylum Partnership Agreement and the 2024 Finance Agreement. Following the United Kingdom's decision to discontinue the asylum partnership, Rwanda claimed that the UK remained liable to make scheduled payments of £100 million under the Economic Transformation and Integration Fund (**"ETIF"**). Rwanda contended that the exchange of Notes Verbales in November 2024 did not constitute a legally binding amendment waiving these payments. It further alleged that the United Kingdom had breached Article 19 of the Agreement by failing to negotiate the resettlement of Rwanda's most vulnerable refugees to a safe third country and sought compensation of £6 million.

The Arbitral Tribunal dismissed all the claims. By majority, it held that the November 2024 exchange of Notes Verbales constituted a binding international agreement modifying the 2024 Finance Agreement, as Rwanda had unequivocally accepted the United Kingdom's proposal to waive the remaining ETIF payments without imposing any conditions. Consequently, Rwanda could not subsequently withdraw its acceptance or revive its claim to the payments. On the resettlement claim, the Tribunal unanimously held that Article 19 imposed a mutual obligation to negotiate rather than an obligation to secure any particular outcome. Since neither party had actively pursued negotiations before the dispute arose, the Tribunal found no breach of Article 19 and directed each party to bear its own legal costs while equally sharing the costs of the arbitration.

A foreign statute cannot invalidate an arbitration agreement expressly governed by English law. *[Chubb Bermuda Insurance Ltd vs. Fertitta Entertainment, Inc & Ors, [2026] EWHC 1392 (Comm)]*

~Priya Dutt
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The dispute arose from a property insurance policy issued in Bermuda by Chubb Bermuda Insurance Ltd. (the **"Applicant"**) to Fertitta Entertainment, Inc & Ors. (the **"Respondents"**), whose arbitration clause mandated arbitration in London and provided that all matters relating to the existence of the agreement to arbitrate shall be determined under English law. After claiming business interruption losses arising from COVID-19, the Respondents repeatedly instituted proceedings against the Applicant in Louisiana, contending that the arbitration clause was void under *Louisiana Revised Statutes 22:868*. The Applicant obtained an interim anti-suit injunction and sought final relief along with damages.

Applying *Enka Insaat ve Sanayi AS vs. OOO Insurance Company Chubb, [2020] UKSC 38* and *UniCredit Bank GmbH vs. RusChemAlliance LLC, [2024] UKSC 30, t*he English High Court (the **"Court"**) held that the parties had expressly chosen English law to govern the arbitration agreement. It observed that the jurisdictional challenge was based on a false premise, since Louisiana law, including the impugned statute, was irrelevant to the agreement's validity. Relying on *QBE Europe SA/NV vs. Generali España de Seguros y Reaseguros, [2022] EWHC 2062 (Comm*), it further held that a mandatory foreign law overriding the chosen forum was not a strong reason to refuse relief. he Court dismissed the jurisdictional challenge, granted a final anti-suit injunction directing the Respondents to procure dismissal of the Louisiana proceedings, and awarded damages for breach of the arbitration agreement, along with an indemnity for future costs.

UPCOMING ADR EVENTS

Event Name	Details	Date
Singapore Convention Week (SC Week) 2026	Premier Singapore dispute resolution event covering arbitration, mediation, and litigation; organised by Singapore's Ministry of Law with multiple partner organisations. Includes keynotes, panels, workshops, and site visits.	24–28 August 2026, Singapore
SIAC Symposium 2026	Held as part of SC Week; leading arbitration experts discuss key trends and developments shaping international arbitration.	24 August 2026, Singapore
IBA Asia Pacific Arbitration Group Symposium	Held during SC Week; explores key developments in international arbitration and dispute resolution in the Asia-Pacific region.	26 August 2026, Singapore
India ADR Week 2026	Spans Bengaluru, Mumbai, and Delhi; 30+ partner events, 160+ speakers, 700+ participants; no parallel sessions, so attendees can join every event. Covers latest trends in international arbitration, mediation, and dispute resolution.	7–11 September 2026, India (Bengaluru, Mumbai, Delhi)
ICC Institute Advanced Training (Interest in International Arbitration)	Pre-conference training ahead of the ICC New York Conference, covering economic, legal, and procedural considerations on interest in arbitration.	24 September 2026, New York
21st ICC New York Conference on International Arbitration	Flagship North America ICC event; arbitrators, mediators, corporate counsel gather for two days of insights. Sessions expected to cover the new 2026 ICC Rules of Arbitration.	25 September 2026, New York
ICC India Arbitration Conference – Mumbai 2026	Annual flagship India-focused ICC event; explores pressing issues and jurisprudence in arbitrations with an India nexus. Brings together arbitrators, legal practitioners, in-house counsel, and industry stakeholders.	31 October 2026, Mumbai

SAMVAAD

JUNE - JULY 2026

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