



Key Updates

Recent Judgements

M/s Icomm Tele Ltd. v. Punjab State Water Supply & Sewerage Board &Anr.

In the instant case, the Respondents issued a notice inviting tender for extension and augmentation of water supply, sewerage scheme, pumping station and sewerage treatment plant for various towns. The appellant company, involved in civil/electrical works in India, was awarded the tender. A formal contract was entered between both the parties. The notice inviting tender, comprised of an Arbitration clause, i.e., 25(viii), forming part of the contract. The said clause read as follows:

"In order to avoid frivolous claims the party invoking arbitration will specify the dispute based on facts and calculations stating that the amount claimed under each claim and will have to furnish a 'deposit-at-call' for 10% of the claim amount, on a schedule bank in the name of the Arbitrator by his official designation who will keep the amount in deposit till the announcement of the award. If the award is in favour of the claimant, the deposit shall be refunded to him in proportion to the amount awarded w.r.t the amount claimed and the balance shall be forfeited and paid to the other party."

The issue to be decided was:

Whether the aforesaid clause 25(viii) could be said to be arbitrary or discriminatory and violative of Article 14 of the Constitution of India?

The Hon'ble Supreme Court held:

That unless it is first found that the litigation that has been embarked upon is frivolous, exemplary costs or punitive damages do not follow. Clearly, therefore, a "deposit-at-call" of 10% of the amount claimed, which can amount to large sums of money, is obviously without any direct nexus to the filing of frivolous claims, as it applies to all claims (frivolous or otherwise) made at the very threshold. A 10% deposit has to be made before any determination that a claim made by the party invoking arbitration is frivolous. This is also one important aspect of the matter to be kept in mind in deciding that such a clause would be arbitrary in the sense of being something which would be unfair and unjust and which no reasonable man would agree to. Indeed, a claim may be dismissed but need not be frivolous, as is obvious from the fact that where three arbitrators are appointed, there have been known to be majority and minority awards, making it clear that there may be two possible or even plausible views which would indicate that the claim is dismissed or allowed on merits and not because it is frivolous. Further, even where a claim is found to be justified and correct, the amount that is deposited need not be refunded to the successful claimant. Take for example a claim based on a termination of a contract being illegal and consequent damage thereto. If the claim succeeds and the termination is set aside as being illegal and a damages claim of one crore is finally granted by the learned arbitrator at only ten lakhs, only one tenth of the deposit made will be liable to be returned to the successful party. The party who has lost in the arbitration proceedings will be entitled to forfeit nine tenths of the deposit made despite the fact that the aforesaid party has an award against it. This would render the entire clause wholly arbitrary, being not only excessive or disproportionate but leading to the wholly unjust result of a party who has lost an arbitration being entitled to forfeit such part of the deposit as falls proportionately short of the amount awarded as compared to what is claimed.



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Arbitration is an important alternative dispute resolution process which is to be encouraged because of high pendency of cases in courts and cost of litigation. Any requirement as to deposit would certainly amount to a clog on this process.

In view of the above the Apex Court struck down clause 25(viii) of the Notice inviting tender of the Respondent Company stating that the impugned clause being severable from the rest of clause 25 would not affect the remaining parts of clause 25.

The judgment of the High Court was set aside and the appeal was allowed.

International Centre for Alternative Dispute Resolution v. Union of India

The petition has been filed by International Centre for Alternative Dispute Resolution (ICADR), challenging the New Delhi International Arbitration Ordinance, 2019 dated March 02, 2019 on the grounds of the Ordinance being violative of Article 14, 19(1)(g) and 300A of the Constitution of India. The Ordinance has been promulgated for the establishment and incorporation of New Delhi International Arbitration Centre (NDIAC) for the purpose of creating an independent and autonomous regime for institutionalized arbitration and for acquisition and transfer of the undertakings of the ICADR and to vest such undertakings in the New Delhi International Arbitration Centre. ICADR challenged the constitutionality of the Ordinance that eliminated its very existence.

International Centre for Alternative Dispute Resolution was set-up in the year 1995, as a society registered under the Societies Registration Act. Over the years, the society has constructed well equipped and decent infrastructure with modern facilities of international standards. The Petitioner society has also built liaison with several reputed institutions across the world and has created a reputation for itself in the field of alternate dispute resolution. The petitioner also states that there was no urgency that required the ordinance to be passed by Article 123.

All the assets and properties of the Petitioner Society have been created out of the subscription of its Members, rental income and other source of income from organizing training programmes, seminars, conferences, etc. and there is no contribution from the Government except grant in aid and a corpus of `3 Crores and grant of `27.72 Crores given in the year 1995. The petitioner society states that it is not the case of mismanagement or irregularity as the society is working and growing through its activities.

The Petitioner society challenges the Ordinance as it is in violation of Articles 14, 19(1)(g) and 300A of the Constitution of India. The immediate takeover of ICADR will leave its employees and officers at lurch, states the petition. During the admission hearing, the bench of Chief Justice Rajendra Menon and V K Rao made oral observations wondering about the urgency to take over ICADR. The bench also orally observed that ICADR should be permitted to function.

The Court in a detailed order dated March, 7 2019 stayed the operation of the New Delhi International Arbitration Ordinance, 2019.

Policy Updates

The New Delhi International Arbitration Centre Ordinance, 2019

On 2nd March, 2019, The New Delhi International Arbitration Centre Ordinance, 2019 was promulgated. The ordinance proposes to establish New Delhi International Arbitration Centre (NDIAC) to conduct arbitration, mediation and conciliation proceedings and declares it as an institution of national importance.

The main points of the Ordinance are as follows:

1. **International Centre for Alternate Dispute Resolution** - ICADR is a registered society under Societies Registration Act, 1860, which promotes the resolution of dispute through alternative dispute resolution. The Ordinance seeks to transfer the existing ICADR to the central government. Upon notification by the central government, all the rights, title, and interest in the ICADR will be transferred to the NDIAC.

2. The **composition** of the NDIAC would be as follows :

- a Chairperson who has been a Judge of the Supreme Court or a High Court, or an eminent person with special knowledge and experience in the conduct or administration of arbitration,
- two eminent persons having substantial knowledge and experience in institutional arbitration,

- three ex-officio members, including a nominee from the Ministry of Finance and a Chief Executive Officer (responsible for the day-to-day administration of the NDIAC), and

- a representative from a recognised body of commerce and industry, appointed as a part-time member, on a rotational basis.

3. **Term** - The term of office for the members of NDIAC will be for three years and are eligible for re-appointment. The retirement age for the Chairperson is 70 years while the retirement age of the other members will be 67 years. The term of the office of a member appointed to fulfil a casual vacancy shall be remainder of the term of the Member in whose office he has been appointed. The terms, conditions, salaries and allowances of the chairperson and members shall be as prescribed. The part time member will be entitled to travelling and other allowances.

4. **Objectives** of the NDIAC are as follows –

- promoting research, providing training and organising conferences and seminars in alternative dispute resolution matters,

- providing facilities and administrative assistance for the conduct of arbitration, mediation and conciliation proceedings, and

- Maintaining a panel of accredited arbitrators, mediators and conciliators.

5. **Functions** of the NDIAC are as follows –

- facilitating conduct of arbitration and conciliation in a professional, timely and cost-effective manner, and

- Promoting studies in the field of alternative dispute resolution.

6. **Fund** - Maintenance of fund will be required which will be credited by with grants received from the central government, fees collected for its activities, and other sources. The accounts of the NDIAC will be audited and certified by the Comptroller and Auditor-General of India.

7. **Chamber of Arbitration** - The Ordinance specifies the NDAIC to establish a Chamber of Arbitration which will have a permanent panel of Arbitrators. The Centre by regulation shall put the criteria for the selection of the arbitrators.

8. **Arbitration Academy** – The Centre may establish a three member committee which will suggest and provide rules for the Arbitration Academy -

- To train arbitrators to be in par with other international arbitral institutions

- To conduct various research on alternative dispute resolution

- To give suggestions to achieve the objectives of the Ordinance.

NOTE: Importantly, the Hon'ble High Court of Delhi vide order dated 07.03.2019 passed in International Centre for Alternative Dispute Resolution Vs Union Of India, has stayed the operation of the Ordinance until further consideration.



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