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NATIONAL

The Supreme Court holds that the Section 37 Court cannot recalculate the damages awarded by the Section 34 Court without finding arbitrariness or perversity.

In a dispute relating to delay in a solar power project, the Supreme Court routed the award of reusable damages of INR 27.06 crores by the Delhi High Court Single Judge to NTPC Vidyut Vyapar Nigam Limited (NVVNL). The court bench, comprising Justice Pamidighantam Sri Narasimha and Justice Atul S Chandurkar held that a court exercising appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996, is barred from recalculating or substituting its own assessment of compensation once a Section 34 court has fixed a reasonable award in accordance with the terms of the contract.

The conflict was borne out of a Power Purchase Agreement (PPA) signed on 24th January 2012 under Jawaharlal Nehru National Solar Mission. Saisudhir Energy Limited (SEL) was contracted to commission and supply 20 MW of solar power to NVVNL by 26th of February 2013 at a tariff of Rs 8.22 per unit. SEL had missed the deadline to commission 10 MW after two-month delay and the remaining 10 MW after around five months delay.

NVVNL then called on Clause 4.6 of the PPA which provided for liquidated damages in case of delay. An arbitral tribunal which consisted of three members had earlier awarded a sum of 120 million rupees to NVVNL, amounting to 20 per cent of the performance guarantee in the month of July 2015. Dissatisfied with this award, both parties had challenged the award under Section 34 of the Act.

On 8th September, 2016, Single Judge of Delhi High Court upheld delay and granted 50 percent of the damages payable under Clause 4.6 and thus arrived at a total entitlement amount of Rs.27.06 crore. However, in subsequent appeals under Section 37, a Division Bench of the High Court recalculated the compensation amount and lowered the compensation to the sum of Rs 20.70 crores by interpreting the damage rates of PPA to be different.

The Supreme Court had set aside the Division Bench's judgment to hold that the appellate court had strayed beyond its jurisdiction by "re-working and re-calculating" the amount. The Court underlined that Section 34 should only be considered by the appellate court to determine whether the court had exercised the jurisdiction granted to it under Section 34 and not even beyond the scope. Furthermore, the Court observed that the Division Bench had not made any finding that the Single Judge's determination was arbitrary, perverse, or not in accordance with terms of the PPA.

Finally, the Court held that since the project involved public interest considerations as well as environmental considerations under a national mission, there was no need to prove actual loss in order to invoke reasonable compensation under Section 74 under the Indian Contract Act, 1872. The burden of proof was on the party in breach of a warrant to show that no loss has been caused, which it failed to do. Consequently, the Court permitted NVVNL to appeal before it and restored the order of the Single Judge for a sum of Rs. 27.06 crore.

The Supreme Court holds that where the alleged arbitral agreement is forged, the dispute is non-arbitrable.

The Supreme Court noted that parties cannot be forced to arbitrate if the contract containing the clause for arbitration is alleged to be forged. Justices P. S. Narasimha and Alok Aradhe's bench has laid down that the allegations of fraud to the very foundation of existence of contract must be first determined by the civil court, because the arbitral jurisdiction is based on consent as a fundamental foundation. The Court stated that when there is an allegation of fraud with respect to the arbitration agreement itself, the dispute is within the non-arbitrability area and the court must consider it as a question of jurisdiction.

The dispute stemmed from a family run jewellery business, M/s RDDHI Gold, which had originally three partners. The appellant alleged that she was inducted as a partner by a Deed of Admission and Retirement made in 2007 which included an arbitration clause, while the other partners retired. The respondent denied the existence of this deed, alleging that it was a forgery. The conflict, however, increased in 2016 when the appellant relied on this deed for the first time after the acquisition of this business by a private company in 2011.

The fundamental legal issue was the question of whether arbitration could be forced when the document containing the clause was in dispute itself. Answering in the negative, the Court stated that such a controversy goes to the root of the arbitral jurisdiction and within the class of non-arbitrable disputes. The Court pointed out that the original Admission Deed or a certified copy thereof was not produced by the appellant as per Section 8(2) according to the Arbitration and Conciliation Act and because of this, the arbitration clause becomes illusory and meaningless.

In coming to its conclusion, the Court relied on a number of settled precedents such as A. Ayyasamy v. A. Paramasivam (2016) and Avitel Post Studioz Ltd. v. HSBC PI Holdings (2021) and its recent restatement in Managing Director Bihar State Food and Civil Supply Corporation Limited v. Sanjay Kumar (2025). These cases highlight the fact that while a mere allegation of "fraud simpliciter" may not void an agreement, serious and complex allegations of fraud, particularly allegations that challenge the existence of an agreement, take on a different colour and should be the subject of a civil court of law rather than an arbitral tribunal.

Ultimately, the Court quashed the order of the High Court which had referred the civil suit to arbitration under Section 8. Simultaneously, it rejected the connected appeal regarding the appointment of an arbitrator under Section 11(6), settling the issue of arbitrability, which is a jurisdictional issue that needs to be decided by the court in the event of a dispute regarding the existence of the agreement.

The Supreme Court has held that an arbitral award passed after the lapsing of the arbitrator's mandate is still valid if the court gives an extension later under Section 29A.

The Supreme Court made it clear that an arbitral award which is made beyond the statutory period permissible by Section 29A of the Arbitration and Conciliation Act, 1996 may, however, be enforced. Justices P S Narasimha and Atul S. Chandurkar stated that under Section 29A(5) there is no threshold which will preclude the extension of mandate of an arbitrator after the award has been delivered. The Court emphasized that although such an award is technically "ineffective and unenforceable" at the time of its issuance, it does not constitute a nullity which automatically dismisses the judicial jurisdiction to rescind or confirm the arbitral proceeding.

The contention was a result of sale agreements which the Madras High Court directed in April 2022 to appoint a sole arbitrator. Subsequent mutual consent extensions pushed a final deadline for the award to 20 February 2024. Nevertheless, the arbitrator issued the award on 11th of May 2024, after the official expiration of the mandate. The circumstance gave rise to concurrent proceedings in which the respondent prayed for the annulment of the award under Section 34, while the appellant made a retrospective extension under Section 29A(5). The High Court initially went in favour of the respondent refusing to extend the time limit and declared the award to be null and void.

On setting aside the High Court's judgment, the Supreme Court held that termination of arbitrator's mandate is not absolute and is clearly subject to the court's authority to extend the period either "prior to or after the expiry" of the stipulated term.

The judgement was anchored in the previous judgement of the Court in case of Rohan Builders (India) Pvt. Ltd. v Berger Paints India Ltd. (2024) as well as of foreign authorities to lay emphasis on the fact that retroactive extensions are indispensable to safeguard justice and prevent technical non-compliance from undermining the arbitration process.

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INTERNATIONAL

French Courts Enforce €14 Million Treaty Award Against Libya While Reopening Jurisdiction Fight(15 January 2026)

French courts have enforced a final investment treaty award ordering Libya to pay over US$14 million to Turkish construction company Üstay, even as they reopened Libya's challenge to the tribunal's jurisdiction in the same arbitration. In the decision, a pre-trial magistrate at the Paris Court of Appeal recognised the final award but stayed Libya's set-aside application pending a fresh ruling on an earlier jurisdictional award, following intervention by the French Court of Cassation. The dispute arises from three public infrastructure projects disrupted by Libya's civil conflicts, including one resolved by a 2013 settlement agreement that later formed the basis of Üstay's treaty claim. While an ICC tribunal had found Libya liable for breaching that settlement and for unlawful expropriation of certain equipment, the Court of Cassation has questioned whether disputes under the settlement fall within the material scope of the Turkey–Libya BIT. The case has now been remitted to a different bench of the Paris Court of Appeal, making it a closely watched test of how French courts draw the line between treaty-protected investments and subsequent contractual disputes, even as enforcement of the final award moves ahead.

French Court of Cassation Upholds Annulment of ICC Award in Telecom Italia-Opportunity Dispute (21 January 2026)

The French Court of Cassation has upheld the annulment of a 2016 ICC award that dismissed a US$15 billion claim brought by Brazilian private equity firm Opportunity against Telecom Italia (now TIM), confirming that there were reasonable doubts over the independence and impartiality of tribunal chair Carole Malinvaud. The court dismissed TIM's appeal and upheld the Paris Court of Appeal's 2024 decision, which concluded that even though Malinvaud had not represented Vivendi in the arbitration, the work done for Vivendi, a major shareholder in TIM, by Malinvaud's law firm, Gide Loyrette Nouel, was enough to raise reasonable questions about independence of the arbitrator. The court emphasised Malinvaud's financial interest as a firm partner, Gide's consistent work for the group, and Vivendi's significant stake in the dispute. Opportunity and its executives can now refile their long-running ICC claim, which was first started in 2012 and stems from a 2005 settlement over control of Brasil Telecom, thanks to the ruling.

Swiss Court Orders CAS to Reopen Jordan Chiles Olympic Medal Case, Rejects Arbitrator Bias Claims (29 January 2026)

The Swiss Federal Supreme Court has ordered the Court of Arbitration for Sport (CAS) to reopen the controversial case that led to US gymnast Jordan Chiles losing her bronze medal in the women's floor exercise at the 2024 Paris Olympics, after finding that new video evidence could change the outcome. At the same time, the court firmly rejected Chiles' arguments that the presiding arbitrator, Hamid Gharavi, had a conflict of interest due to his work for Romania in unrelated investment arbitrations. The court held that this work was publicly accessible, properly disclosed, and did not amount to a clear conflict warranting recusal.

The case stems from a CAS ad hoc panel decision that ruled Chiles' on-floor inquiry was submitted four seconds too late, prompting the IOC to reallocate the bronze medal to Romanian gymnast Ana-Maria Bărbosu. However, the Swiss court found that newly surfaced documentary footage may show that the inquiry was verbally lodged within the deadline and that Chiles and USA Gymnastics could not reasonably have discovered this evidence earlier due to severe time pressure and serious procedural failures, including CAS's failure to properly notify the US parties of the appeal. The court also criticised World Gymnastics for serious negligence in managing the inquiry process. The matter has now been sent back to CAS for reconsideration, giving Chiles a renewed opportunity to reclaim her Olympic medal.

Mubadala Secures €700 Million ICC Award Against Signa Affiliates Amid Insolvency Fallout (29 January 2026)

An ICC arbitration has reportedly awarded Abu Dhabi sovereign wealth fund Mubadala €700 million against affiliates of Austria's bankrupt Signa property group, as stated by Creditreform. On January 29, the 600-page, confidential award was made public. Initially, Mubadala had requested approximately €900 million through financing agreements, claiming that foundations connected to Signa founder René Benko had sold assets without disclosing them. The tribunal reportedly determined that Benko was Signa's de facto managing director, an assessment of possible relevance to ongoing criminal investigations, even though it declined jurisdiction over claims against him personally. The exact distribution of liability is unclear because insolvency administrators have stated that important Signa subsidiaries were not mandated to provide compensation. The case takes place in the context of Benko's ongoing legal issues and Signa's collapse in 2023.

Another Mining Investor Brings ICSID Contract Claim Against Burundi Over Suspended Projects (6 February 2026)

A second investor has initiated contractual arbitration proceedings against Burundi at ICSID, intensifying disputes arising from the government’s decision to suspend and renegotiate mining partnerships. Burundi-registered Tanganyika Gold has had its claim registered under the ICSID Additional Facility Rules, following a similar claim filed earlier by local mining company Ntega Holding. The claims are understood to stem from Burundi’s 2021 order suspending the operations of several mining companies amid efforts to renegotiate public-private partnerships. Tanganyika Gold had entered into a 25-year partnership with the Burundian state in 2017 to mine gold and other minerals in Mabayi, but operations were disrupted after local protests over environmental damage and loss of artisanal mining livelihoods, followed by government intervention. Ntega’s project, also based on a long-term partnership near the Rwanda border, was similarly affected. Together, the claims reflect growing investor-state tensions over Burundi’s mining sector reforms and state intervention in existing contractual arrangements.

UPDATES

Publication of the 2026 CPR International Mediation Competition Problem

The problem that will be addressed during the 2026 International Mediation Competition (IMC) has officially been announced by the International Institute of Conflict Prevention and Resolution (CPR). This announcement marks the start of the intensive training period of the eighteen chosen global teams, including such renowned institutions as Yale Law School and West Bengal National University of Juridical Sciences (WBNUJS). The issue is an international business case that involves a complicated intercultural commercial conflict that is aimed at evaluating the mediation and advocacy skills of participants. Further, the release creates an opening through which teams can send clarification questions, an important preparation exercise before the live rounds that will take place in São Paulo later this year.

14th ITA-IEL-ICC Joint Conference on International Energy Arbitration

This major industry conference, held in Houston, Texas, on 22 -23 January 2026, covered the nexus of energy transition and dispute resolution. Over two hundred delegates were present in the event, which highlighted the rising application of conciliation and mediation to complement the traditional arbitration in the energy sector. The major panels discussed the issues of renewable-energy infrastructure projects, contested and investigated the changing role of expert witnesses in technical hydrogen and carbon-capture arbitrations. The conference was a top-level networking event that allowed energy companies, legal counsel and arbitrators to talk about risk-reduction measures in a turbulent international market.

14th ICC MENA Conference on International Arbitration in Dubai

The 14th ICC, MENA Conference was held in Dubai, UAE, on 26-27 January 2026, and it invited about 250 practitioners in the Middle East and North Africa. The conference was a general overview of the ADR situation in the region, with a focus on current procedural novelties brought about by the ICC International Court of Arbitration. The topic of the enforcement of arbitral awards in the MENA jurisdictions and the evaluation of the effects of the recently introduced Dubai International Arbitration Centre (DIAC) rules were discussed. Special focus was placed on the Gulf region construction dispute and the increasing popularity of so-called med-arb protocols that were meant to facilitate multi-billion-dollar business disputes.

SA Swiss Day 2026: The Intersection of Vis Moot and Global Practice

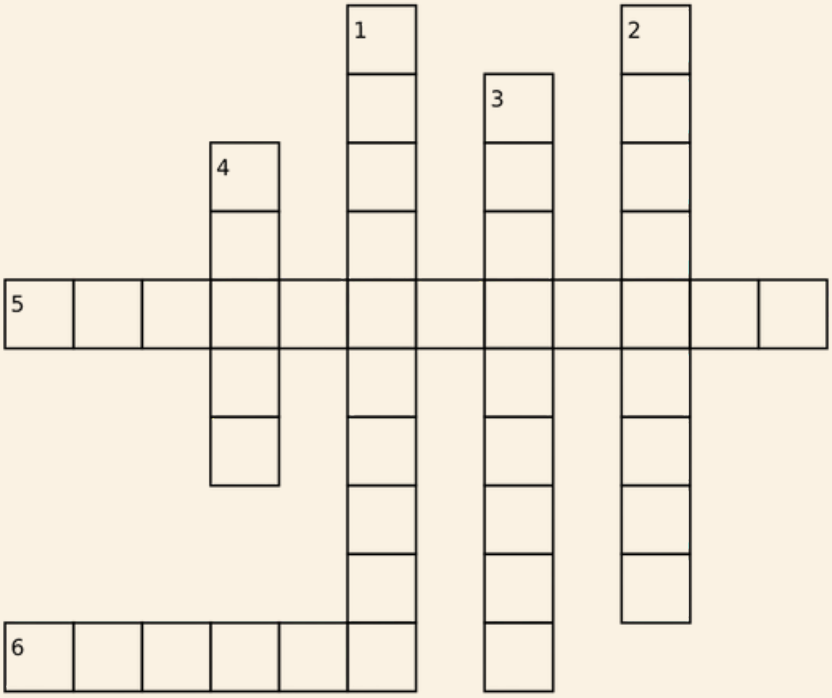
ASA Swiss Day was held in Oslo, Norway, on 7 February 2026 by the Swiss Arbitration Association (ASA). In line with the prelude to the Willem C. Vis International Commercial Arbitration Moot, the event achieved the transition between scholastic and practical excellence. The conference looked at the way the future generation of practitioners is defining the future of arbitration. Specialists were speaking about the development of the CISG (Convention on Contracts for the International Sale of Goods) and provided the junior lawyers with effective tips on how to convince the court and effectively handle a case in the most challenging international sale cases.

WIPO ADR x UK IPO: Resolving IP and Tech Disputes Through Mediation

On 21 January 2026, the World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre, together with the UK Intellectual Property Office (UK IPO), held a high-impact virtual meeting. The webinar, which was called Resolving IP and Tech Disputes Through Mediation: National and Cross-border Approaches, was devoted to the specialised ADR techniques of technology and licensing disputes. Case studies that were analysed by experts contained examples of mediation successfully saving long-term business relationships that would otherwise have been threatened by litigation. The workshop provided practitioners with a guide to the WIPO Mediation Rules and how to use institutional assistance in multi-jurisdictional, complex technology cases.

CROSS-EXAMINATION!

This concise word puzzle is constructed exclusively from the subject matter and recent developments detailed in this issue and one clue from the previous issue.
We hope you enjoy this exercise!



Down:

1. Industry involved in cross-border IP disputes discussed by UKIPO and WIPO (10)
2. Ground court declined? Tory retreated wildly (look back) (9)
3. Treaty-based, involving States (9)
4. Expiry when plea's confused after losing head (5)

Across:

5. Financial redress sought after asset sales dispute (12)
6. Industry debating hydrogen disputes and carbon capture risks in Texas (6)

1.TECHNOLOGY 2. TERRITORY 3.BILATERAL
4. LAPSE 5.COMPENSATION 6. ENERGY

THE TEAM

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