NATIONAL LAW UNIVERSITY DELHI

CADR NEWSLETTER

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NATIONAL

Supreme Court holds that Bombay HC's 'Central Warehousing' judgment does not have a barring effect on arbitration clauses in leave & license agreements (11 January 2026).

In a dispute between a leave and licence agreement over office premises of Motilal Oswal Financial Services Limited at Malad, Mumbai, the Supreme Court affirmed a Bombay High Court order appointment of an arbitrator on a dispute that had occurred between the parties on the basis that there was an agreement of arbitration between the two parties. Justice BP Pardiwala and Justice KV Viswanathan in their bench established that the High Court was in the correct position since the jurisdiction of the court in that stage was to determine the existence of an arbitration agreement under the Section 11(6A) of the Arbitration and Conciliation Act, 1996.

The conflict was based on a leave and licence agreement of 6 October 2017 under which Motilal Oswal Financial Services Limited had assumed licence office premises at the Palm Spring Centre, Malad (West), Mumbai, which had the area of 2,925 square feet on a 60-month term beginning on 1 October 2017 up to 30 October 2022. Even though the agreement was terminated on 31 December 2019, a reversal of the termination was made and the addendum dated on 13 March 2020 terminated the licence to run 96 months with a lock-in period of 72 months. Motilal Oswal alleged it invoked the force majeure clause because of the COVID-19 pandemic and delivered keys and empty possession of the premises on 9 September 2020, told the licensor by email on 10 October 2020 and demanded the security deposit back.

The licensor alleged that the balance lock-in period had arrears of licence fees, due on 1 September 2020 to 14 June 2023, and sought on 28 June 2023 no less than Rs.94,40,152 with interest at 24 percent. On 17 July 2023, the company rejected liability and wanted the refund of the Rs.10 lakh security deposit. Motilal Oswal was also on the same day given a notice under Section 21 of the Arbitration and Conciliation Act invoking Clause 33 of the agreement which required disputes to be referred to a sole arbitrator. On 13 August 2023, an application under Section 11 was subsequently given before the Bombay High Court requesting the appointment of an arbitrator.

Motilal Oswal appealed against the application basing on the small cause court, which only had jurisdiction over such disputes between licensors and licensees in recovering possession or licence fee in Greater Bombay under Section 41 of the Presidency Small Cause Courts Act, and contended that disputes were not arbitratable. The High Court approved the application on 2 May 2024 and appointed an arbitrator.

The Court denied the objections of the licensor on the ground of Section 41 of the Presidency Small Cause Courts Act, 1882 in the appointment stage of arbitrator. It said that Section 41 is a clause giving jurisdiction to the Small Causes Court in some kind of disputes and cannot be construed to imply that ex proprio vigore (by its own force), it cancels arbitration clauses in contracts.

In refusing the appeal, the Supreme Court observed that the section 11(6A), still in force, bars the inquiry that the court should make at the appointment phase to the existence of an arbitration agreement. The Court indicated that the questions as to whether the claim was of licence fees, damage or a debt, and whether Section 41 of the 1882 Act prohibited arbitration, were issues to be determined by the arbitral tribunal under Section 16 and not the court under Section 11.

According to the Court, the decision of the Full Bench of the Bombay High Court in Central Warehousing Corporation v. Fortpoint Automotive Pvt. Ltd. does not make such arbitration clauses non-existent. On the basis of the reasons stated, the Court ruled that paragraph 40 of Central Warehousing, when applied to the facts of the present case, cannot mean that Clause 33 of the Leave and License Agreement is no longer in existence. It also mentioned subsequent Supreme Court rulings such as in the case of Vidya Drolia v. The seven-judge bench finding of In re Interplay to restate that the granting of jurisdiction over a given court is not necessarily determinative of non-arbitrability.

The Court ruled that Clause 33 of the leave and licence agreement was not terminated and there was an arbitration agreement between the parties. The request was denied and the Supreme Court ordered the arbitrator to continue with the adjudication and to complete the proceedings in six months as of 5 January 2026.

Section 21 Notice not fatal in case claim otherwise valid and arbitable, holds the Supreme Court (11 January 2026)

The Supreme Court quashed a Kerala High Court order that the arbitral tribunal could not make determinations on other claims beyond the issue with which it had been referred and that one party could not bring other claims without making a separate notice under Section 21 of Arbitration and Conciliation Act, 1996. In deciding that the commencement of the dispute is all that is required to reckon limitation, a bench of Justices JB Pardiwala and KV Viswanathan held that Section 21 was interested in only one aspect; that of determining the commencement of the dispute. Section 21 notice does not have a compulsory condition before starting Arbitration. Section 21 notice issue could be of assistance to parties and the arbitrator as to effective limitation of the claim. A failure to deliver a Section 21 notification would not put a party in Arbitration to death provided that the claim is otherwise sound and the disputes can be arbitrated.

The conflict was as a result of four Road Maintenance Contracts that had been given to appellant Bhagheeratha Engineering to develop roads in Kerala with the assistance of World Bank. The contracts were provided with a dispute resolution mechanism according to which the disputes were initially to be submitted to the Engineer, followed by an Adjudicator, and then by arbitration. The contractor filed four claims before the Adjudicator in April 2004 concerning determination of price adjustment of bitumen and POL, release of escalation in long periods, price of bitumen to make escalation, and interest on the late payments. The Adjudicator ruled on two cases in favour of the contractor and against it.

The State of Kerala indicated that Dispute No. 1 was alone to be referred to arbitration and nominated its arbitrator. The arrest tribunal was established in January 2005. The State made an application to have the whole decision of the Adjudicator annulled. It also protested against giving the appellant the right to petition a claim against all the issues that resulted in the enlargement of the jurisdiction as stipulated by the state. The tribunal held that the claims made by the appellant were not resolved and that the clause of the arbitration was broad that could contain the disputes out of or related to the contract. It has gone to decide all the four disputes, by award dated 29 June 2006 has allowed all claims, and granted 1,99,90,777 with post award interest of 18 per cent per annum.

The District Judge, Thiruvananthapuram reversed the award and reinstated the decision of the Adjudicator. The Kerala High Court affirmed the allocation of the award on the ground that the arbitral tribunal was set up with a view to decide on Dispute No. 1 and the contractor had not done a notice pursuant to Section 21 regarding the other disputes.

The Supreme Court ruled that High Court had completely gone off path in its procedure. As observed by the Court, the actions of the State demonstrated that they never accepted the decision of the Adjudicator as final and binding and had instead sought to reopen all disputes, requesting the whole decision to be declared void. The Court also believed that a party could not use its own actions to kill arbitration. In Section 21, the Court believed that the giving of a notice pursuant to the same provision is procedural and was intended to ascertain the date in which arbitral proceedings were to commence as a limitation measure. It was laid down that failure by one party to give a Section 21 notice does not kill claims being brought to the arbitral tribunal provided that the controversies otherwise fall within a wide worded arbitration clause.

Following the conviction that the contract allowed arbitration services of any dispute that arose out of the agreement or involving the agreement, the Court held that the arbitral tribunal did not overstep its mandate. The Supreme Court thus allowed the judgment of the Kerala High Court to be set aside and the arbitral award upheld in all its substance.

Delhi High Court Imposes a Discontinuation of Arbitral Award in favour of Patel Gammon (8 January 2026)

The Delhi High Court quashed a petition made by SJVN Limited, which challenged an arbitral award which ordered payment of money to Patel Gammon Joint Venture on the transportation of excavated material in a hydroelectric project at Himachal Pradesh. The substance of the arbitral award was upheld by a one-judge bench of Justice Jasmeet Singh who decided that the court had no territorial jurisdiction to hear the challenge pursuant to Section 34 of the Arbitration and Conciliation Act, 1996.

The controversy can be traced to a contract of March 2007 in which Patel Gammon Joint Venture was given the civil construction work of the Head Race Tunnel of the 412 MW Rampur Hydroelectric Project of the Satluj River. As the excavation went on, the amounts of material that were to be transported more than a kilometer away had to be large. The contractor made this haulage an additional payment. SJVN first gave the contractor such transportation with some running account bills. The payments were also terminated and all amounts paid up were refunded. The stance that was adopted by SJVN was that in the contract, there was no payment against overbreak material and therefore the arbitral tribunal exceeded the contract in permitting the claim.

The contractor has referred to the technical specifications Clause 6.19.1 that extra payment will be made due to the transportation of excavated material more than one kilometer of the Portal. It further pointed to the fact that SJVN itself has previously affirmed this interpretation and had paid a number of bills.

In agreement with the tribunal, the court stated that its opinion was reasonable and plausible and it did not require any interference. Justice Singh once again made it clear that courts do not exercise an appeal over arbitral award and the limit of interference under Section 34 is very limited. The court likewise agreed with the tribunal argument that it would be wrong to confine haulage payment to the pay line, especially in the event of tunneling whereby overbreak may be inevitable based on the geological situation. It did not see the call of the challenge to quantification, since, as there were jointly certified excavation records, no practical inconvenience arose in computing the claim.

The court on jurisdiction determined that the contract gave exclusive jurisdiction to courts in Himachal Pradesh and it could not be displaced on the basis that the arbitration hearings were to be held in Delhi. Because the clause of arbitration offered to use several venues, such as Delhi, the judge believed that Delhi could not be considered the juridical seat of arbitration.

The petition was dismissed with no reasons given to set aside the award and with the court having no territorial jurisdiction in any case.

Arbitral Proceedings Take Effect against Respondent who has been Given notice under arbitration clause, Not at the appointment of an arbiter: Supreme Court (7 January 2026)

The Supreme Court once again affirmed that the arbitral proceedings would start on the day when the notice making the invocation of the arbitration clause is received by the respondent. Justices Dipankar Datta and Augustine George Masih heard that the date when the respondent is served with a notice or request invoking arbitration is the date on which arbitral proceedings under the Section 21 of the Act take effect. The Court made it clear that to have a valid invocation one and the only thing that is needed is the notice stating the dispute that is to be referred to, but upon the receipt of such notice, the commencement is effective and complete in all legal respects, including limitation and the maintainability of the Section 11 Petition as well as the legal effectiveness of any pre-arbitral measure.The conflict was occasioned by a franchise agreement which was signed in March 2019 between the Appellant and a partnership company which sells a hotel in Srinagar. The Appellant sought interim protection after one of the partners in the firm allegedly interfered with the operations of the hotel after internal conflicts among the partners of the firm. On 16 February 2024, the Appellant petitioned successfully in an application under Section 9 of the Arbitration Act to the trial court and obtained an ad-interim injunction on the following day. Subsequently, on 11 April 2024, the appellant gave a notice under the agreement invoking arbitration. After one of the respondents declined to agree to an appointment of an arbitrator, a petition under Section 11 was filed on 28 June 2024.

The trial court as well as the Karnataka High Court however rescinded the interim injunction by pronouncing that arbitral proceedings were not initiated within 90 days of interim order date as stipulated in Section 9(2) of the Act. The courts below considered that arbitral proceedings have only been initiated after the Section 11 petition has been filed which exceeded the 90-day period, causing the Appellant to move to the Supreme Court.

Putting aside the impugned order, the decision made by Justice Masih noted that the initiating point of treating filing a Section 11 petition would impair the effectiveness of an interim relief under Section 9 and would leave the parties to stall out interim relief by procedural delays. The Court has said that in the event that the commencement is to be calculated by reference to the date of the filing of the petition under Section 11 of the Act, the statutory scheme requiring expedition in commencing arbitration following grant of interim protection under Section 9 will be rendered incoherent. The applicant would be allowed to give notice under Section 21, but would remain non-compliant until a Section 11 petition is submitted, an interpretation which would directly conflict with the object and purpose of the Act.

The Court further stated that it is a settled law that the initiation of arbitral proceedings is statutory and is defined solely by the provisions of Section 21 of the Act, according to which when a request is made to refer the dispute to arbitration and the respondent was received, this is the start of the arbitral proceedings and no application of the Court, be it under Section 9 or a Section 11 petition, constitutes commencement.

As such, the appeal was admitted and ad-interim injunction in favour of Regenta Hotels was reinstated.

INTERNATIONAL

Grupa Azoty Subsidiary Files €3 Billion VIAC Claim Against Hyundai Engineering Over Polish Polymer Plant (30 December 2025)

A subsidiary of Grupa Azoty, Poland's largest chemicals group, has initiated an arbitration claim of nearly €3 billion against Hyundai Engineering at the Vienna International Arbitral Centre (VIAC) over a polymer plant project in northwestern Poland, following Hyundai's own claim exceeding €457 million concerning the same project. This dispute revolves around the Polimery Police plant, a significant chemical investment in Central and Eastern Europe.

Hyundai won the EPC contract in 2019, with the project originally valued at €1.2 billion and intended for completion by 2023. However, the costs escalated to around €1.8 billion, leading GAP to conditionally accept parts of the project as complete by 2024. In August 2025, both parties signaled their withdrawal from the contract; Hyundai cited a lack of payment guarantees from GAP, while GAP claimed Hyundai failed to meet crucial deadlines. Hyundai's arbitration seeks declarations for lawful contract termination and demands over €457 million in unpaid fees and damages. Conversely, Grupa Azoty has dismissed these claims and is pursuing counterclaims of up to €2.98 billion, citing penalties for delays, compensation for alleged losses due to Hyundai's inadequate performance, and orders for rectifications in the project, while asserting that the plant is unfinished and production halted due to installation failures and financial issues hindering further financing.

Palestinian Ministry Wins US$120 Million Arbitration Award Against Ooredoo Palestine Over Telecom Licence Delays (8 January 2026)

The Palestinian Ministry of Communications and Digital Economy has announced that it has secured a final arbitral award worth US$120 million in a dispute with Ooredoo Palestine, a local telecommunications operator majority-owned by Qatari multinational Ooredoo. The award relates to delays in the performance of a long-term telecoms licence.

The dispute arose from a 20-year licence granted in 2009 to Ooredoo Palestine to provide 2G and 3G telecommunications services in the West Bank and Gaza Strip. The arbitration focused on the financial consequences of prolonged delays in frequency allocation, which both parties acknowledged were beyond their respective control but nevertheless resulted in significant economic burdens over the years.

In its statement, the ministry emphasised that the tribunal took into account all relevant facts and contractual obligations, balancing the protection of state rights with investment sustainability and the continuity of telecom services for citizens. It described the award as reinforcing confidence in the regulatory framework governing the telecommunications sector and as demonstrating the effectiveness of resolving disputes through established legal and institutional mechanisms. Details of the arbitral institution, the tribunal members, and counsel involved in the proceedings have not yet been disclosed.

SICC Upholds £183 Million Energy Charter Treaty Award Against Poland, Rejecting Intra-EU Objection (9 January 2026)

The Singapore International Commercial Court (SICC) upheld a £183 million arbitration award against Poland under the Energy Charter Treaty (ECT), marking a significant ruling regarding "intra-EU" objections. This judgment, made by a three-judge panel, rejected all reasons Poland provided to annul the award, which was claimed by two UK subsidiaries of the Australian mining company GreenX Metals originating from the Jan Karski coal project dispute The arbitral award was issued by a tribunal in Singapore in October 2024, awarding the claimants £183 million. On the same day, a separate tribunal issued an award under the Australia–Poland Bilateral Investment Treaty (BIT) in London for £252 million concerning the investor's entire shareholding. The tribunal clarified that payment under the BIT award would negate liability under the ECT award.

Poland's key argument for challenging the award was that the ECT's investor-state arbitration clause (Article 26) was not applicable due to the dispute being intra-EU. Citing European Court of Justice (CJEU) judgments such as Achmea and Komstroy, Poland maintained that EU law continued to apply during the Brexit transition period, despite the UK having formally exited the EU. However, SICC determined that international law governed the arbitration agreement, rendering EU law irrelevant on the international stage and within the jurisdiction of Singapore courts. Moreover, the court ruled that Article 26 of the ECT does extend to disputes within the EU framework, dismissing Poland's interpretation of the ECT's arbitration obligations as primarily bilateral. It emphasized that Article 16 of the ECT favors investor-friendly provisions, thereby positioning ECT arbitration as advantageous over the existing EU law prohibitions.

The SICC also dismissed arguments based on the Vienna Convention on the Law of Treaties, as well as EU member state declarations aimed at excluding intra-EU arbitration and relevant treaty conflict rules.

Additionally, the SICC confirmed that the claimants qualified as having a protected “investment” under the ECT without needing to meet the Salini criteria, which were found to be satisfied regardless. The court negated Poland's "fork in the road" argument, which suggested identity of parties existed between the ECT and BIT proceedings. Furthermore, public policy objections raised by Poland regarding conflicts with EU law and breaches of natural justice during the tribunal's quantum analysis were also rejected. The SICC highlighted that any intra-EU objection would have lapsed following the end of the Brexit transition period in 2021, indicating that voiding the award would not prevent investors from submitting their claims anew. The ruling on costs remains reserved.

US Court Vacates US$102 Million JAMS Award for Fraud in Eletson–Levona Gas Fleet Dispute (12 January 2026)

A US federal court has set aside a US$102 million JAMS arbitral award against BVI-based private equity vehicle Levona, holding that the award was procured through fraud. The impugned award was rendered in 2023 in Delaware-law JAMS proceedings seated in New York. Belen had found that Eletson Holdings and Eletson Corp validly exercised a purchase option to buy back Levona's interest in a joint venture operating a fleet of gas carriers, and awarded damages accordingly. The Learned court, however, held that newly uncovered documents demonstrated that Eletson itself acted on the understanding that the option had never been exercised.

The court found that three former Eletson officials had committed perjury by providing "knowingly untrue" testimony to the tribunal that notice of exercise had been given. It was also found that key documents had been fraudulently concealed and that Eletson falsely claimed to have transferred its interests to three Cypriot entities, Fentalon, Apargo and Desimusco, in what the court described as a "ruse" to shield assets from creditors. The court also sanctioned the Cypriot intervenors for discovery violations, precluding them from relying on certain witnesses and documents and awarding Levona costs. The ruling is a significant reminder of US courts' willingness to vacate arbitral awards where they are tainted by perjury, document concealment, and deliberate deception of the tribunal, even in the context of private, non-ICSID commercial arbitration.

Paris Court Annuls Jurisdiction Award in Akhmetov v Russia BIT Case Over Defective Appointment and Arbitrator Impartiality (15 January 2026)

The Paris Court of Appeal has annulled a partial arbitral award that upheld jurisdiction over an investment treaty claim brought by Ukrainian businessman Rinat Akhmetov and his company Investio against Russia, holding that the tribunal was improperly constituted and that doubts existed as to the impartiality of its chair. The ruling upholds Russia's challenge to a 2022 UNCITRAL partial award rendered in a Paris-seated arbitration administered by the Permanent Court of Arbitration.

The underlying dispute concerns the Parkovoye and Koreiz real estate assets on the southern coast of Crimea, which were held by Akhmetov through Investio prior to Russia's annexation of the peninsula in 2014. Akhmetov initiated arbitration in 2019 under the Ukraine-Russia BIT, alleging unlawful expropriation of his investments. The Paris court found that Elsing had not been appointed in accordance with the procedure agreed by the parties, rendering the tribunal improperly constituted. It accepted Russia's argument that the parties had agreed to a list-based appointment mechanism and that Elsing was appointed from the first list despite both parties requesting a second list due to conflicts. The court rejected the claimants' attempt to unilaterally withdraw from the agreed procedure, holding that one party could not revoke such an agreement on its own initiative.

In the case at hand, the court ruled that Elsing's independence and impartiality were legitimately questionable, citing his partnership at Orrick where a firm-wide statement condemning Russia's acts post-invasion of Ukraine was issued. Elsing's social media endorsements of anti-Russian content and a Ukrainian diplomat's speech contributed to concerns about his objectivity, ultimately leading to his disqualification by PCA appointing authority Indu Malhotra in 2023.

Conversely, Russia's challenge of arbitrator Andreas Bucher was rejected; the court found that Bucher's remarks regarding "harassment" by Russia were reflective of his mindset during the challenge proceedings rather than indicative of bias at the time of the partial award. Additionally, the court rejected Russia's challenge against Raúl Vinuesa, who remained on the tribunal despite accusations related to his support for an anti-aggression declaration.

UPDATES

Swiss Arbitration Summit 2026: Shaping the Future of Global Disputes

The third edition of the Swiss Arbitration Summit started on 14 January 2026 in Geneva, bringing together practitioners around the world to assess the development of arbitration. The five-day conference was hosted at the Intercontinental Hotel, and included the ASA below 40 Seminar and the Innovation Conference on 15 January, and the ASA Winter Conference on 16 January. The major events focused on the introduction of new technologies into arbitration and the development of a friendly atmosphere in which networking is possible. It was concluded with an informal event, the so-called Arbitration Weekend in Crans-Montana, and allowed its participants to make professional contacts in the Swiss Alps.

Egypt Joins the Singapore Convention on Mediation

A historic step in the alternative dispute resolution system in the MENA region, Egypt officially became a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) on 13 January 2026. The ceremony of signing took place at the United Nations Headquarters in New York. Through the Convention, Egypt provides a more predictable and efficient method of enforcing mediated settlement agreements to businesses through its accession to the Convention. This is expected to raise the confidence levels of investors significantly and to make Egypt a mediation-friendly nexus in commercial disputes between countries.

SIAC-IADRC: Unveiling the Practitioner's Guide to the 2025 Rules

The Singapore International Arbitration Centre (SIAC) in partnership with the IADRC organized a specialised virtual session on 16 January 2026, called A Practitioner Guide to the SIAC Rules 2025. The event aimed at international practitioners who are interested in negotiating the recent structural changes of the SIAC procedure. The session entailed a comprehensive presentation of novel provisions that aim at increasing efficiency and transparency. The speakers provided useful information on the implications of the 2025 rules on case management, expedited procedures, and appointment of emergency arbitrators, so that the community is ready to handle the upcoming caseload of the new year.

8th Basel Arbitration & Crime Conference Explores Fraud Allegations

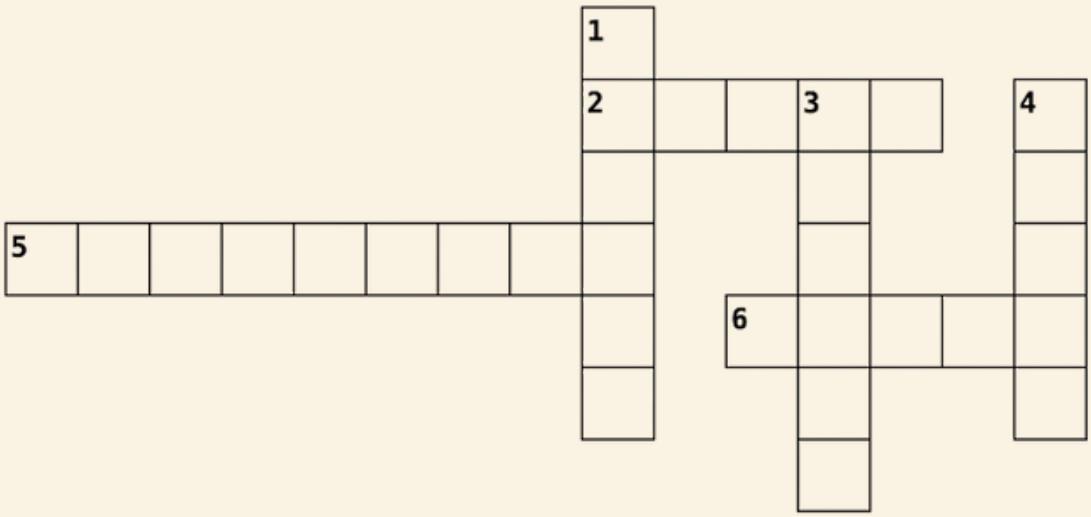
In January 2026, the 8th Basel Arbitration & Crime Conference, dealt with the essential nexus between criminal law and international arbitration. The conference focused on the issue of arbitrators faced with charges of corruption, money laundering or fraud in a commercial dispute. Global specialists gathered to talk about the quality of evidences needed to establish red flags and the scope in which an arbitral tribunal has an obligation to report suspicious activity to state officials. The incident presented a crucial platform in the consideration of balancing the confidentiality of arbitration and the worldwide effort to fight financial crime.

Lex Infinitum 2026: Global Conference on ADR Innovation

The V.M. Salgaocar College of Law was able to conduct the International Conference on ADR: Lex Infinitum 2026 on 10 January 2026 using a global virtual platform. The conference was an academic precursor to the Lex Infinitum competition, the most prestigious competition in law and practice, bringing together legal scholars and practitioners to address the topic of Transformative ADR. The major sessions focused on the introduction of artificial intelligence into the mediation process and the development of new ethical principles in international negotiation. More than 15 countries attended workshops on the New India Mediation Act and its consequences in the context of enforcing global settlements, highlighting the trend of mediation-first in commercial law.

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!



Across:

2. Ancient land taking a modern step towards mediated settlements. (5)
5. State whose courts misread arbitral “commencement” (9)
6. Seat of a court that wiped out a $15-billion arbitration award. (look back) (5)

Down:

1. Where a Section 21 notice debate took a judicial detour. (6)
3. Home of a €3-billion polymer-plant arbitration battle. (6)
4. Neutral host of alpine arbitration, fond of conferences and chocolate.(5)

1.KERALA 2.EGYPT 3.POLAND 4. SWISS
5.KARNATAKA 6.PARIS

THE TEAM

WINTER 2026 | ISSUE 3

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