NATIONAL LAW UNIVERSITY DELHI

CADR NEWSLETTER

WINTER 2025 | ISSUE 1

NATIONAL

Supreme Court rules Indian Courts lack jurisdiction to appoint Arbitrator in Foreign-Seated Arbitration (21 November 2025)

The Petitioner, Balaji Steel Trade, an Indian firm operated as a partnership, signed a Buyer and Seller Agreement (BSA) with a Benin-based company called Fludor Benin S.A ("Respondent"). The contract that was used to regulate the trade of steel and agricultural goods had a certain arbitration clause (Article 11) whereby any emerging disagreements would be adjudicated upon by arbitration that was based in Benin where the alaw would apply.After disputes on the amount of supplies and payments, the Respondent resorted to the arbitration clause in Benin in 2023. There was an appointment of a sole arbitrator which led to the issue of a final arbitral award on 21 May 2024.In spite of the fact that the foreign proceedings were being undertaken, the Petitioner applied under Section 11(6) of the Arbitration and Conciliation Act, 1996, before the Supreme Court of India. The Petitioner wanted the designation of an arbitrator in India on the basis that the dispute also pertained to other Indian and Dubai based organizations and tried to apply the doctrine of Group of Companies to unify them into one composite arbitration. The goal of the Petitioner was basically to have adjudication by an Indian tribunal despite the express selection of a foreign seat in the contract. Section 11 is not applicable when parties have already selected a foreign seat of arbitration (in this case, Benin). The Court made it clear that the designation of a foreign seat and the use of foreign governing law in general is enough to drain the jurisdiction of supervision of the Indian courts. The Court also noted that the request made by the Petitioner was not legally justifiable since a valid arbitral tribunal in Benin had already assumed jurisdiction and made a final award. The Bench underlined the fact that in India, permitting parallel arbitration would be in violation of the territoriality and party autonomy principles. The Court, therefore, dismissed the application under Section 11 by confirming that, in the case of foreign-seated arbitrations, it is the courts of the seat, rather than the Indian courts that provide the remedy of appointing arbitrators.

Supreme Court of India clarifies remedy for termination of arbitration due to non-payment of fees (08 December 2025)

In 2013, Harshbir Singh Pannu and Anr. ("Appellants") signed a partnership agreement in connection with a healthcare and hospitality business with Dr. Jaswinder Singh ("Respondent"). There were disagreements among the parties, which led to the election of a Sole Arbitrator in 2020. The amount of arbitral fees was determined during the arbitral proceedings, the Appellants appealed over the arbitral fees but were finally ordered to pay. The Sole Arbitrator used his powers under Section 38 of the Arbitration and Conciliation Act, 1996 and put an end to the arbitral proceedings on 28 March 2022, when none of the parties paid the required fees.

The Appellants initially challenged the termination by filing a Writ Petition which was dismissed. The parties then approached the High Court of Punjab and Haryana under Section 11(6) of the Act and requested that a new arbitrator be appointed. The High Court rejected the application on the basis that the filing of a new petition to appoint is not sustainable under the Act in case proceedings are terminated. The Court believed that the Appellants ought to have requested a recall of the termination order or seek recourse under Section 14(2) instead of looking at the arbitration clause afresh. The Supreme Court then appealed against the judgment of the High Court.

An appeal by Justices J.B. Pardiwala and R.Mahadevan permitted the appeal and resolved the legal question. The Supreme Court ruled that the power to end proceedings because of the non-payment of fees that can be attributed to the Section is ultimately found in the Section 32(2) of the Act. The Court decided that the appropriate solution to a party that suffers as a result of such termination is, firstly, to go before the Arbitral Tribunal with an application seeking to rescind the termination order. Unless disregard is forthcoming, the following proper course of action is to make a petition under Section 14(2) of the Act, and not a new Section 11 application.

The Court justified the expression of precautionary relief by the reality that the procedural rule under consideration had been in a state of flux before. The Supreme Court therefore reversed the ruling of the High Court and sent the case back to the High Court to appoint another arbitrator to hear the disputes at the point they had been stalled.

Supreme Court of India flags legislative gap in new Arbitration Bill regarding termination orders (09 December 2025)

Harshbir Singh Pannu and Anr. In 2013, (Appellants) signed a partnership agreement with Jaswinder Singh ("Respondent") to conduct a business of providing healthcare and hospitality services in Amritsar. This was followed by conflict between the parties that was arbitrated. As the proceedings were underway, the Arbitral Tribunal issued an order to put an end to the proceedings. It is also relevant to state that the instances of such termination by Tribunals are usually due to some circumstances, such as the failure of the arbitral payments or the inability of the claimant to continue the case, which places the parties in a procedural vacuum.

The aggrieved Appellants who wanted the appointment of an arbitrator over the termination approached the High Court of Punjab and Haryana. The petition of Article 11 of the Arbitration and Conciliation Act, 1996 was however rejected by the High Court. This decision therefore bound the Appellants to appeal before the Supreme Court, as it brought up the significant question of law into the proper remedy that a party should take in case proceedings are terminated by an Arbitral Tribunal.

The civil appeal was heard by a bench of Justice J.B. Pardiwala and Justice R. Mahadevan and the legal stance was made clear. The Supreme Court was of the view that the authority of an Arbitral Tribunal to give up proceedings is solely obtained under Section 32(2) of the Act. The Court explained that other clauses such as Sections 25, 30, and 38 are the description of the context in which this power can be used. The Bench established that the proper recourse to a party who is being subjected to such a termination is to first go to the Tribunal itself with a request that the order should be recalled. In the event that the Tribunal refuses to revoke the order, then the aggrieved party should invoke Section 14(2) of the Act before the court to determine the suspension of the mandate, instead of going directly to the court, as proposed under Section 11.

Importantly, the Court made a judicial notice of an important gap in the suggested amendments to the arbitration regime. The Bench took note of the fact that the new Arbitration Bill did not offer a statutory appeal specific on termination orders made by Arbitral Tribunals. The Court noted that the intention of the legislature to simplify the arbitration process is legitimate but there is a gap in this case that does not provide a direct appeal mechanism against such termination orders and hence parties had to take the lengthy path of Section 14(2). This ruling therefore resolved the procedural ambiguity as it existed immediately but it also emphasized the importance of legislative action in this regard.

Supreme Court holds non-signatory subcontractor cannot invoke arbitration against principal employer (09 December 2025)

The Appellant, Hindustan Petroleum Corporation Ltd. a public sector undertaking, went ahead to award a tender of a Tank Truck Locking System to M/s AGC Networks Ltd, which later changed its name to Black Box Limited ("Respondent"). The agreement between the Appellant and AGC had a clause that specifically stated that it was forbidden to assign or sublet work without the prior written permission of the appellant. AGC then concluded a back-to-back contract with BCL Secure Premises Pvt. Ltd., herein referred to as the respondent to execute the work. Payment disputes caused the respondent and AGC to sign a Settlement-cum-Assignment Agreement in October 2023, under which the latter transferred its future receivables against the respondent. Based on this assignment, the respondent used the arbitration clause in the principal contract against the appellant.

The Respondent made an application under Section 11 of Arbitration and Conciliation Act, 1996, in the High Court of Bombay. Upon receiving the application, the High Court appointed an Arbitrator and ordered that the initial issue on the pre-existence of an arbitration agreement should be determined by the Arbitral Tribunal itself. The Appellant appealed the order of the High Court in the Supreme Court arguing that there was no contract of arbitration between the appellant and the respondent as the respondent was a non-signatory subcontractor with whom the Appellant had no privity of contract.

A bench consisting of Justice J.B. Pardiwala and Justice K.V. Viswanathan dismissed the appeal and quashed the order of the High Court.

The Supreme Court in its ruling found that the High Court was at fault by not carrying out a prima facie test to determine whether or not the non-signatory could be regarded as a veritable party to the arbitration contract. The Court made it clear that an intermediate court under Section11 cannot automatically entrust an Arbitrator but must eliminate claims that do not exist or are deceased. Since the main contract specifically barred assignment without consent, the so-called assignment of rights between AGC and the respondent was not a valid basis of an arbitration contract between the Appellant and the Respondent.

The Court also concluded that the concept of a party as used in the Arbitration Act generally applies to a party that has signed the agreement. Even though some principles, like the Group of Companies principle or the term claiming through or under, are in some instances enforced on non-signatories, these were not the case in this instance. The Respondent was a subcontractor acting at arm length, and failed the test of acting as a veritable party with implied consent to arbitrate. The appointment of the arbitrator was therefore overturned.

INTERNATIONAL

Malaysia's Court of Appeal partially sets aside a US$330 million award against a Malaysian state-backed shipping company (5 December 2025)

Malaysia's Court of Appeal has partly annulled a US$330 million arbitral award granted to a Shell subsidiary, reducing the payable sum by US$130 million. MISC, majority-owned by Petronas, disclosed that its challenge to the award in favour of Sabah Shell Petroleum was partly successful, bringing the award down to US$200 million before costs and interest.

The parties have one month to seek leave to appeal to the Federal Court, and detailed reasons for the ruling will be released next week.

The underlying dispute concerned a semi-floating production system used in the deepwater Gumusut-Kakap oilfield. GKL launched the AIAC claim against Sabah Shell in 2016, seeking almost US$400 million for additional lease rates and associated costs under a 2012 lease agreement.

It also launched parallel adjudication proceedings against the Shell subsidiary, winning US$266 million in two separate decisions in 2017. Sabah Shell counterclaimed for defects and overpayments, ultimately leading the AIAC tribunal in 2020 to issue a complex award granting both sides substantial sums.

GKL later challenged the award on grounds including excess jurisdiction, breach of natural justice, and conflict with Malaysian public policy.

Sojitz–L&T Consortium Challenges ICC Award in Indian Rail Project Dispute (27 November 2025)

A Japanese-Indian construction consortium formed by Japan's Sojitz and India's Larsen & Toubro has moved the Delhi High Court to set aside an ICC award that dismissed its US$286 million claim against the Dedicated Freight Corridor Corporation of India Limited (DFCCIL), a government-owned rail infrastructure entity. The Delhi-seated tribunal, chaired by Richard Harding KC alongside former Supreme Court judge Indu Malhotra and academic Vinod Kumar Tyagi, issued the award earlier this year, rejecting the consortium's claims and awarding costs in DFCCIL's favour.

The dispute arises from the Western Dedicated Freight Corridor, a 1,500-kilometre freight railway linking Uttar Pradesh to the Jawaharlal Nehru port in Maharashtra. The Sojitz–L&T consortium was responsible for one section of the project, which was originally scheduled for completion in July 2018 but later extended until 2020. The consortium sought compensation for costs incurred due to the extended timeline, while DFCCIL counterclaimed for delay damages, an argument the tribunal ultimately rejected.

London Court Declines to Stop UniCredit's Moscow Foreclosure Case (26 November 2025)

The Commercial Court in London denied an anti-suit injunction sought by FH Holding Moscow, a Cyprus-registered company, against Italy's UniCredit and its Russian subsidiary regarding ongoing foreclosure proceedings in Moscow. FH claimed that an underlying loan agreement mandated arbitration at the Vienna International Arbitration Centre (VIAC), but Mr. Justice Henshaw ruled that the Russian mortgage allowed foreclosure actions in the Moscow Commercial Court, reflecting the parties' intentions for such proceedings after a default. The judge rejected claims that the Moscow proceedings were vexatious, noting the minimal connection of the English courts to the case, and highlighted that issuing an injunction would affect a Russian entity dealing with Russian assets. Moreover, Henshaw granted UniCredit Italy's request for summary dismissal, determining that UniCredit Russia, with an independent board and designated role as security agent, was solely entitled to pursue the foreclosure. The English courts were deemed to lack jurisdiction over UniCredit Russia since FH's application pertained to the arbitration agreement, not the English law-governed loan contract. FH was represented by Rupert D'Cruz KC and Emile Simpson, while UniCredit was supported by Louise Hutton KC of Essex Court Chambers.

Paris Court Rejects Albania's Bid to Overturn ICSID Award (5 December 2025)

The Paris Court of Appeal has dismissed Albania's efforts to overturn a €110 million ICSID award in favor of Italian businessman Francesco Becchetti and his co-investors, as revealed in a September order. The court ruled that Albania's applications were inadmissible, stating that French courts lack jurisdiction to intervene in ICSID awards or annulments due to Albania's agreement to the ICSID Convention's self-contained system. An ICSID tribunal concluded in 2019 that Albania unlawfully expropriated their television station investment and granted €110 million in damages. An annulment committee reaffirmed this award in 2021. Albania subsequently sought revision based on domestic criminal convictions against Becchetti, but this was denied by a new ICSID tribunal.

London Court Overturns LMAA Award on Maltese Falcon: Risk Allocation, Implied Terms, and Seaworthiness (28 November 2025)

In a landmark ruling, the London Commercial Court upheld an appeal under section 69, overturning an LMAA award regarding The Maltese Falcon, a prominent superyacht, in a judgment centering on contractual risk allocation and implied terms. It set aside the tribunal's majority decision that suggested modifications to the contractual obligations between the parties involved. The case originated from a 2022 transaction where the 88-meter yacht was sold from Pleon Limited to Leonis Yachting. Despite Leonis taking delivery of the yacht in Malta, Pleon retained the right to access the vessel temporarily for charter operations. Justice Knowles disagreed with the ruling of the tribunal on the grounds that the risk allocation articulated in the sale agreement was explicit. He asserted that Leonis had sufficient opportunities to inspect the yacht before purchase and chose not to raise any defect claims.

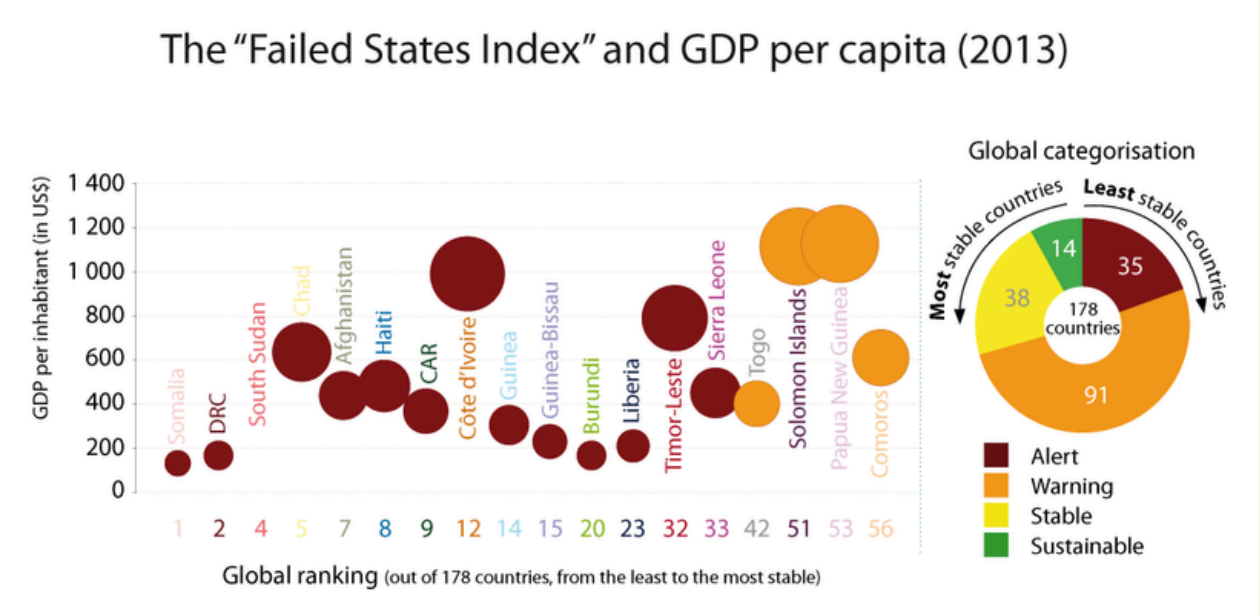
This ruling underscores a fundamental tenet of English commercial law: express terms within contracts decisively dictate risk distribution, even in situations where such outcomes may seem illogical or inequitable. The court's position reflects a steadfast reluctance to intervene with implied terms merely to ameliorate perceived risks associated with a transactional agreement that carries inherent commercial volatility.

g7+ Launches Rapid Response Advisory Centre to Support Fragile States in International Disputes (21 November 2025)

The g7+, an intergovernmental bloc of twenty conflict-affected and fragile states, has created a rapid response advisory centre to offer immediate, no-cost assistance to member governments facing urgent national challenges, including international arbitration claims. Announced in September during the UN General Assembly High-Level Week in New York, this initiative represents a pioneering sovereign effort to empower states that have historically struggled with instability, weak institutions, and unequal bargaining power in global negotiations.

Operating from the g7+ secretariat in Dili, Timor-Leste, the centre will provide swift, practical guidance on state-to-state, investor-state, and commercial disputes, as well as on high-stakes negotiations involving natural resources and infrastructure. The centre will help states negotiate better deals in extractive industries and be better prepared for potential arbitration, relying on a roster of specialists offering pro bono early-stage assistance and helping countries transition to longer-term advisory arrangements. A recent g7+ report notes that its member states possess the world's largest cobalt reserves and substantial copper and gold deposits. Several members have already expressed interest in using the centre for ongoing or threatened disputes.

The centre is expected to begin operations in the first quarter of next year. Unlike the forthcoming UNCITRAL advisory centre, which has a broader and more bureaucratic structure, the g7+ centre is designed to act quickly and flexibly to meet the precise needs of its members. By enhancing dispute-readiness and negotiation capacity, it aims to strengthen national governance, safeguard resources, and promote fair development for populations that have long been vulnerable to exploitation.



UPDATES

NUALS Announces Call for Papers for International ADR Seminar on Technology, Maritime Law & Global Governance

The NUALS ADR Society has received applications to the 2nd International ADR Seminar on ADR in Frontier Domains: Digital Economies, Global Governance, and Technological Futures. The present online seminar, which will be conducted on 25 January 2026, discusses how the global regulatory changes, emerging technologies, digital markets, and maritime activities are changing dispute resolution. It spans a vast range of state-of-the-art subjects, such as maritime arbitration, cross-border online e-commerce disputes, the governance of AI, e-governance of crypto-assets, space and air transport disputes, and the problem of data localisation, e-Governance-driven and humanitarian and migration-related disputes. Abstracts can be offered by 25 December 2025 and some of the most prominent ones will be invited to talk to a panel of the most outstanding judges. There is a prize of up to 10,000 cash and possible publication. The event can be attended by students, professionals, and researchers of the legal community.

Jus Mundi and JAMS Announce Collaboration to Advance AI-Driven Arbitration Education

Jus Mundi, the most popular AI-based arbitration research platform, collaborated with JAMS and introduced a series of joint programs related to the field of arbitration education, training, and knowledge exchange. The organisations will also collaborate in hosting workshops, training sessions and research projects, such as jointly written reports and white papers on international arbitration and the place of AI. JAMS President and CEO Kimberly Taylor pointed out that the match-up between Jus Mundi and its advanced legal intelligence tools and JAMS delivery of ADR services that are industry benchmarks is a close match. She pointed out that the alliance will increase access to high quality arbitration learning and prepare practitioners with a fast changing international environment. According to Jean-Rémi de Maistre, the CEO of Jus Mundi, the partnership was a common cause to democratise the highest world-level arbitration practices and empower the future generation of dispute resolution professionals. This announcement continues on the heels of a new strategic partnership with the LCIA that Jus Mundi recently joined, continuing to establish its presence in the global market as an AI-driven innovation in dispute resolution.

Hong Kong Legal Week 2025: Connecting Global ADR Practitioners

Hong Kong Legal Week 2025 was concluded successfully on December 5 and has established the image of the region as a leading international dispute resolution center. The week-long event bringing about 6,000 participants in close to 50 jurisdictions led to the First Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Lawyers Forum and the LawTech Conference. The last day was the GBA Connectivity: Setting Sail for Global Horizons forum that involved legal people discussing cross-boundary cooperation based on the principle of one country, two systems. The LawTech Conference in the afternoon with the title of The AI Era: Shaping the Legal Landscape in the 21st Century focused on the issue of the human-technological balance in efficiency. Secretary for Justice Mr. Paul Lam, SC, in his closing statement, said that a new interdepartmental working group would be established to examine legislation in support of the incorporation of AI to maintain Hong Kong leading in the lawtech revolution.

23rd ICC Miami Conference: Latin America's Premier ADR Gathering Wraps Up

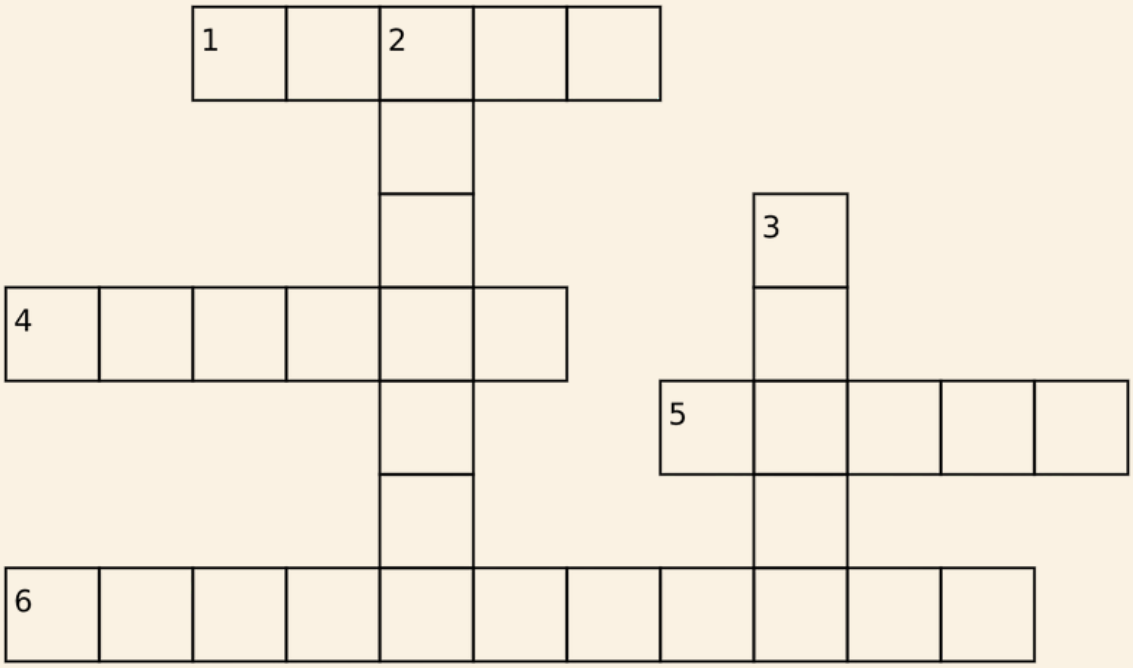
The 23rd edition of ICC Miami Conference on International Arbitration ended earlier this week with a sold out crowd of practitioners discussing the future of dispute resolution in Latin America. The three-day event, which began with an advanced training session on procedural issues in complex arbitrations, was a barometer of the regional trends, such as the growing role of emergency arbitrator provisions in a dispute and the influence of geopolitical changes on energy disputes. The conference was characterized by strong arguments about the subject of the so-called tropicalization of international arbitration rules, which is the adjustment of global norms to local Latin American practices. There was also high-level networking among delegates that highlighted reasons why Miami will continue to remain the gateway to hemispheric conflicts. As the event is now closed, the ICC has given a good indication of the year ahead under the category of arbitration in the Americas as a result of rejuvenated interest in infrastructure and protection of investment treaties.

4th India Litigation and ADR Symposium: New Delhi Sets the Agenda

India litigation and ADR symposium, organized by the IBA Pacific regional forum, closed its two day proceedings in New Delhi on Saturday. With India again on the drive to establish itself as an international arbitration center, the current year symposium was the right venue for Indianization of international best practices. The major events in the weekend centered on the relationship between the judiciary and the arbitral tribunal and the panelists discussed recent Supreme Court decisions that have simplified the enforcement processes. Much of the symposium was also devoted to the increasing role of mediation in business conflicts, after the recent legislative drive toward compulsory pre-litigation mediation. As the hundreds of domestic and international lawyers who were present would have gotten a fine roadmap of the regulatory and practical changes that are likely to define the Indian legal market in the year 2026.

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:

2. Court makes a point to limit powers for a foreign seat arbitration (7)
3. Kerala conference city knocks out rivals (5)

Across:

1. City where arbitration's heat rises (5)
4. Maltese bird found in "of altered contract" after London court upset award (6)
5. I see split ID: World Bank tribunal upholds award (5)
6. Real test of intent strips this title (look back) (11)

1. MIAMI 2. APPOINT 3. KOCHI 4. FALCON 5. ICSID 6. ARBITRATION

THE TEAM

WINTER 2025 | ISSUE 1

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