NATIONAL LAW UNIVERSITY DELHI

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NATIONAL

Supreme Court rules High Courts cannot re-appreciate evidence to set aside Arbitral Awards under Section 37 (18 December 2025)

Ramesh Kumar Jain, the Appellant, signed a mining and transportation contract of bauxite with Bharat Aluminium Company Limited Respondent. At the end of the pre-agreed work the Respondent wrote to the Appellant requesting her to keep working indicating that the relevant rates would be decided in due course. Despite the fact that no rate was ever determined, the Appellant went ahead to deliver a further 195,000 metric tons of material.

The dispute over compensation resulted in the selection of a single Arbitrator who in 2012 gave the Appellant an extra Rs.10 per metric ton as compensation on the additional work. To seal the contractual gap on the rate, the Arbitrator used the principle of quantum meruit (reasonable value of the work done) to determine the rate. This award was upheld by the Commercial Court in Raipur but later on it was quashed by the Chhattisgarh High Court, in an appeal under section 37 of the Arbitration and Conciliation Act, 1996. The High Court described the determination made by the Arbitrator to be a guesswork and a patent illegality and that the acts of the Arbitrator amounted to rewriting of the contract.

In appeal in the Supreme Court, a bench that included Justices Aravind Kumar and N.V. Anjaria reversed the decision of the High Court and reinstated the arbitral award. The Supreme Court contended that the High Court had overstepped its narrow jurisdiction in Section 37 as it did by stepping in as an appellate court. The Bench stated that the re-appreciation of evidence or the reinstatement of the interpretation of the court with that of the Arbitrator is not allowed under judicial review under Sections 34 and 37.

The Court made it clear that patent illegality is a very limited ground, which only means glaring errors, e.g., an award made on the basis of zero evidence or one made in contravention to a specific contractual prohibition, and not an erroneous application of law or other factual interpretation. The Bench also observed that in Section 70 of the Indian Contract Act, 1872, the Arbitrator was not far out of his rights to make reasonable compensation to avert unjust enrichment in a case where the contract was silent on the rate which would be paid on additional work requested. The Court has determined that the judiciary should not interfere with the decision of the Arbitrator so long as his opinion is a possibility and a plausible one, which is why the principle of party autonomy and finality of arbitral decision-making should be maintained.

Supreme Court reaffirms that the question of capacity and maintainability is under the jurisdiction of Arbitral Tribunal (17 December 2025).

The case involved the Andhra Pradesh Power Generation Corporation Limited (APGENCO) that had contracted a consortium consisting of Tecpro Systems Ltd. (the first one), VA Tech Wabag Ltd., and Gammon India Ltd. to carry out the EPC contract of the Rayalaseema Thermal Power Plant. The tender involved General Conditions of Contract (GCC) with an arbitration clause. After delays in execution and financial hardship, Tecpro Systems used the arbitration clause in its personal capacity. APGENCO protested that the consortium could only invoke arbitration as a group and especially as Tecpro was no longer the lead member and was in insolvency.

When APGENCO failed to constitute an arbitral tribunal, Tecpro requested the Telangana High Court to intervene under Section 11(6) of Arbitration and Conciliation Act, 1996. The dispute was sent to arbitration by the High Court, which was later challenged before the Supreme Court.

The appeal was dismissed by a Bench of P.S. Narasimha and Atul S. Chandurkar who affirmed the referral. The Bench restated the fact that the intervention of the judicial system at the Section 11 stage is reduced to a prima facie analysis of the presence of an arbitration agreement.

According to the decision of the Bench, issues that are complex in nature as to whether a party has the capacity to invoke the clause, whether a consortium is continuing to exist or whether claims can be maintained in a liquidation are contentious issues which must be decided by the Arbitral Tribunal under Section 16. The Court warned that such issues could not be resolved at the referral level and that it would constitute an impermissible mini-trial, which would be a breach of the concept of minimal judicial intervention.

Mandates Replacement of Arbitrator in case of mandate extended beyond expiry of statutory period (10 December 2025) by Supreme Court.

The case involved a dispute between Mohan Lal Fatehpuria ("Appellant") and M/S Bharat Textiles & Ors. ("Respondent"). According to the statutory deadline of the Section 29A of the Arbitration and Conciliation Act, the award was to be passed by the sole Arbitrator by 28 February 2023. The Arbitrator did not however do so and the parties did not request any extension before the mandate expired. Delhi High Court has further allowed the extension of four months and refused the demand of the Appellant to replace the Arbitrator under Section 29A(6).

A Bench of Justices, Sanjay Kumar and Alok Aradhe quashed the order made by the High Court, in that in case the maximum 18 months statutory period (12 months plus a 6 months mutual extension) elapses without an award, the Arbitrator becomes functus officio. The Court made it clear that even after the lapse of the mandate, extending the Section 29A(4) is possible, but in this case, a mandatory replacement of the Arbitrator under Section 29A(6) is required to achieve the purpose of the Act of expeditious resolution.

The Supreme Court declared that a court could not just be able to extend the mandate of an Arbitrator whose jurisdiction was legally terminated without appointing a replacement. The Court, therefore, nominated Justice Najmi Waziri (Retd.) as the replacement sole Arbitrator and instructed him to resume the proceedings at the current stage and complete within six months.

High Court of Allahabad has presumption-based conclusions and alteration of agreement vitiate Arbitral Award (29 December 2025).

M/S Siyogi Enterprises (Respondent) was a distributor of the VIVO mobile phones and entered into an advertising contract with the Appellant, M/S Regenvo Mobile Private Limited. The introductory covenant of the agreement actually limited the scope of work to the City of Lucknow. After a dispute and breach of contract, the Respondent resorted to arbitration with his demands not only in Lucknow but also in other districts of Uttar Pradesh. These broadened claims were permitted by the Sole Arbitrator and the award was upheld by the Commercial Court.

A Bench of Chief Justice, Arun Bhansali and Justice Jaspreet Singh of the Allahabad High court, on appeal under Section 37, quashed the award. The Court was of the view that the Arbitrator had exceeded his mandate by altering the express terms of the contract. The Bench pointed out that other districts were conspicuously omitted by the parties in the agreement and no evidence or correspondence existed to indicate that the parties had intended to increase the scope of the arbitration agreement.

The High Court held that an Arbitrator cannot imply something into the clause which has not been incorporated by the parties. Moreover, the Court decided that the results derived on the basis of the mere presumption and not material evidence amount to patent illegality. The Arbitrator had gone outside his jurisdiction by extending the arbitration clause to areas outside Lucknow and this has made the award prone to be set aside.

INTERNATIONAL

California Federal Court Dismisses Challenge for Lack of Jurisdiction on grounds of AI-Tainted award (9 December 2025)

A federal court in California has rejected a consumer's attempt to challenge an arbitration award favoring Valve Corporation, with the court determining it had no jurisdiction over the matter. The case was initiated by John Lapaglia, a consumer from Connecticut, who had alleged antitrust violations and breach of warranty regarding a game purchased on Valve's Steam platform. His claims were merged with those of 22 other consumers facing similar antitrust issues, ultimately leading to a final award issued by sole arbitrator, dismissing all claims in January.

Lapaglia sought to vacate this award, contending that the arbitrator exceeded authority in consolidating the claims and purportedly utilized artificial intelligence (AI) to draft the award. He argued that the decision relied on facts not substantiated by the evidence. Valve Corporation refuted these claims, asserting that there was no evidence to support the allegation of AI use, pointing out that Lapaglia's only basis for this claim was a law clerk’s inquiry to ChatGPT regarding whether a particular paragraph from the award seemed AI-generated.

The court, presided over by Judge Montenegro, ultimately ruled it lacked subject-matter jurisdiction to address the challenge. The judge determined that Lapaglia had failed to properly invoke the Federal Arbitration Act and did not reference the necessary statutory provisions. Furthermore, Lapaglia was precluded from compelling arbitration since it had already been completed. Judge Montenegro also dismissed Lapaglia’s reliance on the federal Sherman Antitrust Act, emphasizing that jurisdiction over a petition to vacate an arbitration award does not allow for an examination of the underlying arbitration claims.

Paris Court Annuls US$15 Billion Sulu Award Against Malaysia for Lack of Valid Arbitration Consent

The Paris Court of Appeal annulled a US$15 billion arbitral award that required Malaysia to compensate individuals claiming to be heirs of the Sultan of Sulu. The court ruled that the arbitration clause used by the claimants was inapplicable, affirming Malaysia's argument that the Spanish arbitrator, Stampa, lacked jurisdiction in the case. This dispute traces back to an 1878 agreement in which the Sultan granted rights over parts of northeast Borneo in exchange for annual payments, including a dispute resolution clause that referenced the British consul-general of Borneo—a position that no longer exists.

The court reasoned that consent to arbitration depended on the specific role of the British consul-general, and therefore, as this office is defunct, the arbitration clause cannot be effectively applied or adapted. This decision followed the court's earlier 2023 ruling, which overturned recognition of a previous jurisdictional award, subsequently upheld by the French Court of Cassation in 2024.

Paris Tribunal Rejects Cellectis' Claims Against Servier Over Cancer Therapy Licence

A Paris-seated arbitral tribunal has dismissed claims by French biotechnology company Cellectis against Servier Laboratories, ruling that there was no breach of their licence agreement related to innovative gene-edited cancer therapies. Cellectis announced the receipt of the tribunal's decision concurrently with Allogene Therapeutics, a US sublicensee, which confirmed that Servier had achieved a favorable ruling. The tribunal rejected Cellectis' allegations of Servier's non-compliance with development obligations and denied claims for compensation.

The dispute originated from a 2014 licence agreement that allowed Servier to develop UCART19, a therapy built on gene-editing technology aimed at enhancing immune response against cancer. Amendments to this agreement in 2019 and 2020 expanded Servier's licensing rights to include next-generation gene-edited therapies like cemacabtagene ansegedleucel (cema-cel), which Servier subsequently sublicensed to Allogene for US, EU, and UK markets.

Cellectis initiated arbitration last year seeking to terminate the licence and pursue damages related to alleged developmental failures and unpaid milestone payments. However, the tribunal found that milestone payments associated with crucial clinical trials were contingent upon obtaining regulatory approval from the US Food and Drug Administration.

Totaling a decisive win for Allogene, the award reinforces its control over development and commercialization of cema-cel in key markets and positions it to seek full global rights from Servier.

ICSID Tribunal Dismisses German Investor's Denial of Justice Claim Against China (10 December 2025)

An ICSID tribunal has dismissed the claim by German food and spice manufacturer Hela Schwarz against China, determining that the investor was not denied justice by the Chinese courts. This decision was formalized in the final award issued under the Germany–China bilateral investment treaty (BIT) established in 2003.

The tribunal rejected most of China's jurisdictional challenges, including claims that the dispute did not directly arise from an investment and that Hela Schwarz failed to meet the amicable settlement requirement stipulated by the BIT. Additionally, the tribunal dismissed China's objections related to a protocol within the BIT that mandates German investors to pursue an administrative review under Chinese law, except concerning the cancellation of the food production license held by Hela Schwarz's subsidiary. Furthermore, China's abuse of process and admissibility contentions were also overruled.

On the merit of the case, however, the tribunal did not support Hela Schwarz's assertion of a denial of justice, nor did it find any breach of procedural obligations by China during the arbitration process. The remaining claims were also dismissed, and the allocation of costs was addressed in a confidential addendum to the award.

The origins of this dispute are linked to the expropriation of state-owned industrial land in Jinan, which had been granted to Hela Schwarz's Chinese subsidiary for a 50-year term in 2001. Following the construction of facilities on the property, the Jinan municipal government ordered expropriation in 2014 as part of an urban renewal initiative. Domestic legal challenges were unsuccessful, with the government proposing approximately US$5 million in compensation in 2016- a sum the investor deemed insufficient. Following the demolition of the site in 2017, Hela Schwarz initiated ICSID proceedings, failing to secure interim measures.

Libyan Court Grants Stay of Enforcement of US$1 Billion Al-Kharafi Award (15 December 2025)

A court in Benghazi has provided Libya with a stay of enforcement concerning a contentious arbitral award approximating US$1 billion, favoring the Kuwaiti construction firm Mohamed Abdulmohsen Al-Kharafi & Sons Company. This provisional order, issued by the North Benghazi Court, was disclosed on Monday by the Government of National Stability (GNS) of Libya, which is aligned with the Tobruk region and operating in opposition to the UN-recognized Government of National Unity based in Tripoli. The GNS has requested that the Benghazi court determine that local courts do not have the jurisdiction to address enforcement actions related to the arbitral award and has also sought the annulment of the original investment contract alongside damages from Al-Kharafi for expenses purportedly incurred due to the enforcement efforts of the investor. The claims from the GNS hinge on newly emerged evidence that suggests breaches of contract, procedural infractions during arbitration, and potential fraudulent activities aimed at safeguarding public finances.

The dispute dates back to a contract established in 2006, where Al-Kharafi agreed to create and manage a major tourist resort near Tripoli, which included a 90-year lease to operate a five-star hotel, residential accommodations, a commercial hub, restaurants, and recreational facilities. Disagreements over land ownership and project location led to Libya terminating the contract after four years, and Al-Kharafi's refusal to relocate the project following the request to vacate the original site has added to the contention. In 2013, an ad hoc tribunal based in Cairo ordered Libya to compensate Al-Kharafi with US$936 million plus 4% interest, an award far exceeding the initial claim of US$57 million by the investor.

The recent decision from the Benghazi court to pause enforcement reflects yet another development in a dispute that spans almost two decades, highlighting ongoing challenges related to investment arbitration, the proportionality of damages, and the fragmentation of state authority in Libya, a country grappling with the aftermath of conflict.

World Wide Minerals Launches Third Arbitration Against Kazakhstan After UK Courts Set Aside Two Awards (19 December 2025)

Canadian mining company World Wide Minerals (WWM) has initiated a third arbitration against Kazakhstan, stemming from the annulment of two earlier damages awards by the English Commercial Court. This latest move comes nearly thirty years after the alleged breaches of the Canada–USSR bilateral investment treaty (BIT) occurred. The recent arbitration follows a ruling in February by the English Commercial Court that supported Kazakhstan's challenge to a US$55 million award given in 2024 and identified serious irregularities in the tribunal's approach, particularly in not addressing Kazakhstan’s arguments related to causation and loss.

WWM’s claims trace back to its operation of a significant uranium processing facility in Kazakhstan during the 1990s, where it alleges that Kazakhstan breached the BIT by failing to honor agreements, denying export licenses, and ultimately pushing the facility into bankruptcy. WWM first filed for UNCITRAL arbitration in 2013, seeking damages exceeding US$1.65 billion. While the tribunal in its 2019 final award rejected a majority of WWM's claims, it did find some breaches relating to the denial of an export license and failure to provide timely bankruptcy notifications, awarding WWM US$13.7 million plus interest. However, this award faced challenges, as portions were set aside in 2020, and after a subsequent tribunal hearing, another award in 2024 was annulled in February 2025 due to procedural shortcomings in engaging with Kazakhstan's defenses.

Despite the complications, WWM insists that the findings confirming Kazakhstan's BIT breaches are still valid and not subject to reevaluation in this new arbitration process. It faces the challenge of constituting a new tribunal since none of the original arbitrators are available. WWM is represented by legal firms Jones Day and Twenty Essex, while Kazakhstan is represented by Reed Smith along with prominent arbitration counsel.

UPDATES

ICC YAAF Winter Series: From Kuwait to Paris

The ICC Young Arbitration and ADR Forum (YAAF) concluded its 2025 calendar with a set of high profile events around the world. The Kuwait chapter also organized In inside the World of Arbitration and ADR on December 9, an event that saw the regional leaders come together to debate over the emerging popularity of the Middle Eastern seat in international disputes.

The increasing trend in the localization of arbitration was pointed to by panelists who reported that more parties increasingly prefer regional centers at the expense of the traditional arbitration hubs such as London or Paris. The celebration came to end in Paris on December 18 with the annual Winter Holiday Arbitration Quiz, which was held at Freshfields Bruckhaus Deringer. The event, instead of being another social mixer, put young practitioners to test on obscure procedural rules and landmark case law of 2025. It was also an energetic networking event at the end of the year which strengthened the bond of the community that is necessary to the upcoming generation of arbitrators.

ICSID & DIAC Investment Arbitration Training Course

The Dubai International Arbitration Centre (DIAC) and the International Centre of Settlement of Investment Disputes (ICSID) have managed to put an end to their joint training on international investment arbitration this week. The seminar took place in Dubai and took more than two days, targeted at government officials, and the legal practitioners of the MENA region and provided a hands-on in-depth understanding of the procedural structure of ICSID arbitration.

They involved participants in modules discussing the institution of proceedings, arbitrator selection and the special jurisdictional issues that are involved in investment treaties. One of the main areas of training was the interaction of ICSID regulations and local implementation tools that can be characterized by the increasing number of investment conflicts that the countries of the Middle East engaged in. The partnership between ICSID and DIAC highlights the desire of the latter to establish local capacity in specialized dispute resolution, meaning that regional professionals are prepared to work on complex investor-state litigation in addition to a commercial one.

Conference: Transforming ADR – Shaping the Future 2025

Justice Remedem - Centre of Dispute Resolution, held the conference titled Transforming ADR: Shaping the Future of Dispute Resolution 2025, on December 20, and it was at the India International Centre. The one-day conference held a diverse set of corporate counsel, faculties, and professionals in the field of dispute resolution to discuss how the ADR in India is changing.

There were talks about the practical application of the most recent arbitration reforms and case management through technology, which were the main aspects of the sessions. It was noted by speakers that hybrid dispute resolution mechanisms could be transformative, with the combination of mediation and arbitration being applied sequentially to save money. As the Indian legal market is undergoing pressure to clear backlog and do commercial justice faster, the conference was an important brainstorming-session of what can be done. The event was concluded with a call of increased efforts between the law schools and ADR institutions to prepare the next generation of neutrals.

ICC Joint Arbitration Day: Unifying European Perspectives

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.

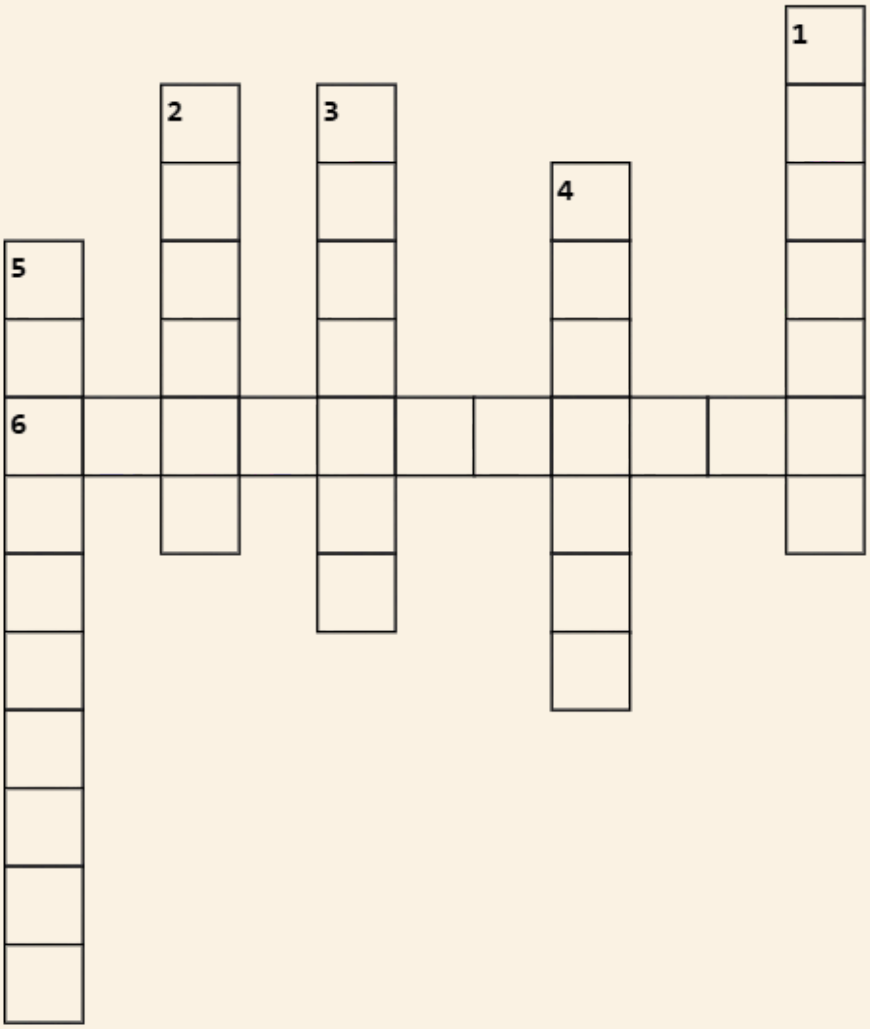
ICC Dispute Resolution Universities Programme 2025

The Dispute Resolution Universities Programme of the ICC concluded its three-day workshop on December 11. It is aimed at closing the gap between theory and practice so that this year students in universities around the world could meet at the ICC Headquarters in Paris (with a parallel track online) and to learn the practice offered by the Deputy Counsels of the Secretariat.

The show was a unique behind-the-curtain glimpse into how cases are handled. The examination of awards, a unique aspect of ICC arbitration, and the issue of complicated logistics of appointing arbitrators to the multi-party dispute were discussed in the form of modules. To the students present, the practical simulation on the work of an Emergency Arbitrator Proceedings was the best part because they had to write procedural orders within strict deadlines. This program remains one of the main pipelines in the discovery of future generation of international arbitration quality talent.

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:

6. Stopping point reached, though new statute stays silent on appeal (look back) (11)

Down:

1. Essential jurisdictional element arbitration cannot dispose (7)
2. What ADR is shaping, after transformation (6)
3. Fair treatment ultimately seen where denial claim fails (7)
4. Arbitrators decide jurisdiction under this, not judges (7)
5. Change made by arbitrator that ultimately undoes award (10)

THE TEAM

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RESEARCH & CONTENT

CHAITANYA CHATURVEDI
GARV SIDANA
AVANE GS

DESIGN

PRATISHTHA SINGH

CROSSWORD

GAURI SIDANA