



DELHI ARBITRATION CENTRE

Institutional Arbitration Centre · Since 2011

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IN THIS ISSUE

Pay to play? The Supreme Court sends pre-deposit clauses to a larger Bench

Cover story · Santosh Associate v. HSIIDC, 17 August 2026

The MSMED (Amendment) Act, 2026: 90-day mediation, 30-day reference, 90-day award, and a Mediation Council at last

Parliament and Government · August 2026

Post-award Section 9 for the losing party: the first “rare and compelling” case

NPCC v. Ishvakoo, 11 August 2026

“The Indus Waters Treaty remains fully in force”: the PCA Court of Arbitration’s award of 31 August

International round-up

- 01** **From the Registrar's desk**
On the month's reforms
-
- 02** **Pre-deposit clauses and access to arbitration**
Cover story
-
- 03** **From the Supreme Court**
Judgments and orders of the month
-
- 04** **From the High Courts**
Delhi and other High Courts
-
- 05** **India: policy & institutions**
Legislation, Government, arbitral institutions
-
- 06** **International round-up**
Institutions, courts and treaties abroad
-
- 07** **Pre-deposits: the contractual kind and the statutory kind**
Young practitioner's explainer
-
- 08** **Opportunities & diary**
Vacancies, internships, moots, conferences
-
- 09** **Quotable & sources**
Lines of the month; where to read more
-



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ARBITRATION
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August 2026 brought the two statutory changes the ADR community had waited for: an amended MSMED Act with clocks on every stage, and the Mediation Council of India, three years after the Mediation Act received assent.



Access, cost and the clock

On the month's reforms

The Delhi Arbitration Centre administers arbitration, conciliation and mediation under its own Rules and on references by courts, Micro and Small Enterprises Facilitation Councils and other authorities. This monthly is part of the Centre's commitment to a better-informed arbitration community.

Two questions sit behind most of this month's news. What may a stronger party lawfully demand of a weaker one before a dispute can be arbitrated? And how long should the process take? On 17 August the Supreme Court doubted its own 2009 decision in *S.K. Jain*, which upheld a clause requiring a contractor to deposit ten per cent of its claim before invoking arbitration, and referred six questions to a larger Bench. An arbitration clause, it said, cannot impose conditions "so onerous as to render the right to sue illusory or nugatory". Until the larger Bench rules, *S.K. Jain* binds; but every state agency and public sector undertaking that uses such a clause has been put on notice, and our cover story explains the questions referred.

Parliament answered the second question for the smallest businesses. The MSMED (Amendment) Act, 2026, passed in the first week of August and assented to on 13 August, requires mediation before a Facilitation Council to conclude within ninety days, the reference to arbitration within thirty days thereafter, and the award within ninety days of the pleadings closing. It retains the seventy-five per cent pre-deposit for challenging an award but requires courts to release at least half the award to the supplier if the challenge is pending beyond six months. It provides for online dispute resolution. The Centre receives a large part of its work on references under Section 18(3), and we have already begun adapting our procedures to these clocks. On 27 August the Government also established the Mediation Council of India, the body that will register mediators and recognise mediation institutions under the 2023 Act.

The Supreme Court did more besides: it held a consultant-shareholder who signed only a separate share purchase agreement to be a veritable party to the main arbitration; it upheld, for the first time, a post-award Section 9 order in favour of an award-debtor; and a Bench led by the Chief Justice replaced a court-appointed arbitrator by consent in a coal-mining dispute. Abroad, the Court of Arbitration in the Indus Waters proceedings held that the Treaty remains in force, ICSID reported its busiest year and opened in Singapore, and two more states joined the Singapore Convention on Mediation, which India has signed but not ratified. As always, the sources are on the last page.

Kangia
(Registrar)

K.K. NANGIA
(EX-REGISTRAR, DELHI HIGH COURT)
REGISTRAR, DELHI ARBITRATION CENTRE

Registrar

Delhi Arbitration Centre
1 September 2026

Pay to play? Pre-deposit clauses go to a larger Bench

In *Santosh Associate v. Haryana State Industrial and Infrastructure Development Corporation*, decided on 17 August 2026, a two-judge Bench doubted the correctness of *S.K. Jain v. State of Haryana* (2009), which upheld a clause requiring a contractor to deposit ten per cent of its claim before invoking arbitration, and referred six questions to the Chief Justice for a larger Bench.

By the Editorial Desk · August 2026



The contract was for storm-water drainage works. It required a contractor to deposit ten per cent of any claim exceeding Rs. 1 lakh as security before invoking arbitration. The contractor invoked arbitration without the deposit; the sole arbitrator upheld the Corporation's objection under Section 16 and dismissed the claim, and the Commercial Court affirmed, both following the three-judge decision in *S.K. Jain*, which had upheld an identical clause. Before the Supreme Court the contractor relied on *ICOMM Tele v. Punjab State Water Supply and Sewerage Board* (2019), where a two-judge Bench struck down a clause requiring a ten per cent deposit as arbitrary, on the ground that it made arbitration expensive and deterred claims.

Justices Manoj Misra and Manmohan found themselves bound by the larger Bench in *S.K. Jain* but unpersuaded by it. They endorsed the reasoning in *ICOMM Tele* and observed that an arbitration clause cannot impose pre-deposit conditions "so onerous as to render the right to sue illusory or nugatory". Six questions were framed: whether

"An arbitration clause cannot impose pre-deposit conditions so onerous as to render the right to sue illusory or nugatory."

SUPREME COURT, *SANTOSH ASSOCIATE V. HSIIDC*, 17 AUGUST 2026 (2026 INSC 872)

pre-deposit clauses violate the equal-treatment requirement in Section 18; whether they undermine the objectives of alternative dispute resolution; whether they offend Article 14 of the Constitution and Section 28 of the Contract Act; whether they bear any rational connection to deterring frivolous claims, given that Section 31(8) already allows a tribunal to award costs; whether it matters that the deposit is refundable; and whether S.K. Jain remains good law. The matter was referred to the Chief Justice for constitution of a larger Bench.

Pre-deposit clauses are common in the contracts of public works departments, irrigation departments, development authorities and state industrial corporations. They are defended as a filter against speculative claims and attacked as a barrier that the stronger party imposes on the weaker at a moment when the weaker party is, by definition, out of pocket. The reference will settle the question for the first time since 2009. Until it does, counsel for contractors should raise the objection at the Section 16 stage and record it, plead ICOMM Tele and Article 14, and consider whether the deposit can be made under protest to keep the arbitration alive; counsel for the employer should expect the clause to be tested rather than assumed.

The reference sits beside a statutory pre-deposit of a different kind. Section 19 of the MSMED Act requires a buyer that wishes to challenge a Facilitation Council's award to deposit seventy-five per cent of it. The MSMED (Amendment) Act, 2026, passed this month, keeps that requirement but adds a safeguard: if the challenge is pending beyond six months the court must release at least half the award to the supplier. The difference is instructive. A contractual pre-deposit conditions access to the tribunal at the outset; the statutory pre-deposit conditions a challenge to an award that has already been made after a statutory process. The larger Bench will be concerned only with the first, but the two questions are cousins, and this month's explainer treats them together.

Two other Supreme Court decisions of the month deserve attention. In NPCC v. Ishvakoo (11 August) the Court upheld post-award Section 9 orders in favour of an award-debtor whose bank guarantees had been encashed contrary to an earlier court arrangement, the first application of the "rare and compelling" standard set in Home Care Retail Marts in April. In KKH Finvest v. Ashiesh Shukla (5 August) it held that an employee-shareholder who had signed only a separate share purchase agreement, stated to be "independent of and unconnected with" the main settlement, was nevertheless a veritable party to the arbitration under the settlement because his transfer of shares was indispensable to it. A contractual declaration of independence will not by itself insulate a party from a composite-transaction reference.

Finally, a matter watched by every tribunal. In HCL Infosystems v. the Rajasthan power distribution companies, the Rajasthan High Court had directed a three-member tribunal in a Rs. 528 crore dispute, said to have run to 198 hearings and some Rs. 13 crore in fees, to cut its fees by five per cent for each month of delay and to refund the proportionate amount. The Supreme Court stayed the pronouncement of the award and the refund direction while allowing the proceedings to continue; Justice Bagchi observed that "arbitration was supposed to be efficient, convenient, and cost-efficient. The delay is too long." The message to tribunals is not subtle.

WHAT TO TAKE AWAY

- S.K. Jain (2009) still binds until the larger Bench rules; raise and record the objection at the Section 16 stage and plead ICOMM Tele and Article 14.
- The six questions include equal treatment (Section 18), Article 14, Section 28 of the Contract Act, the adequacy of costs under Section 31(8), and refundability.
- A contractual pre-deposit to invoke arbitration is a different creature from the statutory 75 per cent deposit to challenge an MSEFC award, which the 2026 amendment keeps with a 50 per cent release after six months.
- Public bodies using pre-deposit clauses should review them now rather than after the reference is decided.

BY CONSENT, A NEW ARBITRATOR

In Rajasthan Rajya Vidyut Utpadan Nigam v. Parsa Kente Collieries (8 August), a Bench of Chief Justice Surya Kant and Justices Joymalya Bagchi and V. Mohana modified a Rajasthan High Court order appointing Justice Arun Mishra as sole arbitrator in a coal-mining dispute, recording that "the parties have mutually agreed for appointment of Justice Sanjay Kishan Kaul, former Judge of this Court". Even after a Section 11 appointment, a consensual substitution can be effected at the SLP stage.

6

questions referred to a larger Bench on pre-deposit clauses

Santosh Associate, 17 Aug

90/30/90

days: mediation, reference and award under the amended MSMED Act

Assent 13 Aug 2026

363

cases administered by ICSID in FY2026, a record

Statistics of 14 Aug

27 Aug

Mediation Council of India established

Section 31(1), Mediation Act, 2023

Santosh Associate v. Haryana State Industrial and Infrastructure Development Corporation

17 August 2026 · Justices Manoj Misra and Manmohan · 2026 INSC 872; 2026 SCC OnLine SC 1584

A clause requiring a contractor to deposit ten per cent of any claim above Rs. 1 lakh before invoking arbitration was upheld below on the authority of S.K. Jain (2009). The two-judge Bench doubted S.K. Jain, endorsed ICOMM Tele (2019), held that pre-deposit conditions cannot render the right to sue illusory, framed six questions and referred them to the Chief Justice for a larger Bench.

WHY IT MATTERS See the cover story; until the larger Bench rules, plead the objection at the Section 16 stage.

KKH Finvest v. Ashiesh Shukla

5 August 2026 · Justices Sanjay Kumar and Sanjeev Sachdeva · 2026 INSC 803

A memorandum of settlement provided for the acquisition of a company for about Rs. 8 crore, with promoters, management and certain shareholders to transfer their shares. An employee-shareholder holding 1,480 shares did not sign the memorandum but executed a separate share purchase agreement the same day, stated to be “independent of and unconnected with” it. The Delhi High Court excluded him from the reference. The Supreme Court set that aside: applying Cox & Kings and ONGC v. Discovery Enterprises, his transfer of shares was indispensable to the settlement, the transactions were a composite whole, and “the participation of a non-signatory in the performance of the underlying contract is the most important factor” in deciding whether it is bound. Identically situated shareholders could not be treated differently.

WHY IT MATTERS The veritable-party doctrine reaches individuals, and a “this agreement is independent” clause will not by itself defeat a composite-transaction reference.

National Projects Construction Corporation v. Ishvakoo (India)

11 August 2026 · Justices K.V. Viswanathan and Alok Aradhe · 2026 INSC 828

Under a 2002 memorandum for works at Agra, Ishvakoo received a Rs. 3.5 crore mobilisation advance secured by bank guarantees; a 2005 Delhi High Court arrangement allowed NPCC to invoke them only if found entitled after arbitration. NPCC invoked them in 2017 anyway; the arbitrator dismissed Ishvakoo's claims without addressing the advance, and NPCC had filed no counter-claim. Ishvakoo challenged the award and obtained post-award Section 9 orders directing NPCC to deposit Rs. 3.5 crore. The Supreme Court upheld them: an award-debtor may invoke Section 9 after the award in rare and compelling cases to prevent irreparable prejudice and preserve the efficacy of the Section 34 challenge, on a significantly higher threshold; here, allowing NPCC to retain the money would be unjust enrichment contrary to the 2005 arrangement.

WHY IT MATTERS The first application of Home Care Retail Marts (April); post-award Section 9 is not the award-holder's preserve, but the standard is demanding.

Rajasthan Rajya Vidyut Utpadan Nigam v. Parsa Kente Collieries

8 August 2026 (order) · Chief Justice Surya Kant, Justices Joymalya Bagchi and V. Mohana · SLP (C) 25773/2026

The Rajasthan High Court had appointed Justice Arun Mishra as sole arbitrator under Section 11 in a dispute under a 2008 coal mining and delivery agreement. Without accepting the Nigam's grounds, the Supreme Court modified the order after recording that the parties had mutually agreed to the appointment of Justice Sanjay Kishan Kaul as sole arbitrator.

WHY IT MATTERS A consensual substitution of a court-appointed arbitrator can be effected at the SLP stage.

Central Depository Services (India) v. Daksha Narendra Bhavsar

7 August 2026 (interim order) · Justices J.B. Pardiwala and K. Vinod Chandran · SLP (C) 26300/2026

An investor's demat shares were transferred and pledged without authority by her broker, which was also a depository participant; a tribunal awarded her Rs. 86.02 lakh against CDSL and the Bombay High Court upheld the award. The Supreme Court stayed the High Court's judgment, issued notice returnable 10 September, and permitted CDSL to pursue recovery from the broker, observing that it needed "to closely look into the matter".

WHY IT MATTERS The extent of a depository's liability in exchange arbitration for a participant's fraud is now before the Court; an interim order only.

Indian Commercial and Arbitration Bar Association v. Union of India

13/14 August 2026 (order) · Chief Justice Surya Kant, Justices Joymalya Bagchi and V. Mohana · W.P.(C) 900/2020

In the long-pending petition on implementation of the Commercial Courts Act, 2015, the Court called for updated, nationwide data on commercial litigation to assess whether additional commercial courts and appellate benches are needed.

WHY IT MATTERS Commercial Courts are the first-instance forum for most award challenges and executions outside the chartered High Courts; the data exercise may shape their capacity.

ALSO WATCHED

HCL Infosystems v. Rajasthan discoms: the Court stayed a High Court direction that a three-member tribunal cut its fees by five per cent per month of delay and refund proportionately, while letting the proceedings continue; Justice Bagchi: "The delay is too long." September brought several significant judgments (NSDC v. Surya Wires on guarantors and Section 7(5); National Seeds Corporation v. National Agro Seed on court deposits; NEEPCO v. Astra on pre-reference interest); these belong to the next issue.

DELHI HIGH COURT**Union of India v. Goodrich Foodtech**

8 August 2026 · Justice Subramonium Prasad · O.M.P. (COMM) 375/2022

A sole arbitrator appointed by the Ministry of Defence's Competent Financial Authority awarded the supplier Rs. 6.35 crore. The award was set aside as a nullity: the appointing authority was an official of a party, so the appointment offended Section 12(5) read with the Seventh Schedule, and waiver requires an express written agreement after the dispute arose. "The appointment of the arbitrator is void ab-initio and renders the Impugned Award nullity." Even the successful party loses when the appointment was unilateral.

DELHI HIGH COURT**Daiichi Sankyo v. Malvinder Mohan Singh (enforcement)**

31 August 2026 · Justice Subramonium Prasad · O.M.P.(EFA)(COMM.) 6/2016

In the decade-old enforcement of Daiichi's Singapore-seated award against the former Ranbaxy promoters, the Court ordered a comprehensive forensic audit into alleged dissipation of assets involving Fortis Healthcare, the former promoters and seventeen financial institutions, to examine whether court orders were evaded to frustrate enforcement.

CALCUTTA HIGH COURT**CE Testing Company v. Madhucon Projects (MSMED award)**

3 August 2026 · Justice Gaurang Kanth · EC-COM 72/2025

A supplier sought to execute a Rs. 4.63 crore award of the West Bengal Facilitation Council. The copy served bore only typed "Sd/-" notations with a third-party certification. Held: this is not delivery of a "signed copy" under Section 31(5); the Section 34 clock never began, the proceedings had not terminated, and execution under Section 36 was premature. "A certificate by a third party, however authorised, that an unseen original was signed cannot be equated with a copy that itself bears the signatures."

DELHI HIGH COURT**Union of India v. Sterlite Technologies**

12 August 2026 · Justice Avneesh Jhingan · O.M.P. (COMM) 395/2023

The Department of Telecommunications raised a pan-India demand of Rs. 8.55 crore from a single-site inspection; the arbitrator set it aside, finding that Sterlite provided only passive infrastructure. Dismissing the Section 34 petition: "The view taken by the arbitrator is plausible and suffers from no legal or factual error, much less perversity"; proceedings under Section 34 "are not an appeal and evidence cannot be re-appreciated merely because another view is possible".

KARNATAKA HIGH COURT**Aroha Labs Pte v. Prem Dharmani**

3 August 2026 · Justice M.G.S. Kamal · AP.IM. 4/2026

Master service agreements between a Singapore company and Indian consultants provided for SIAC arbitration seated in Singapore. The Court granted Section 9 relief over disputed software: under the proviso to Section 2(2), Indian courts retain Section 9 jurisdiction in foreign-seated arbitrations unless the parties expressly agree otherwise, and "mere existence of an arbitration clause providing place of arbitration outside India itself cannot be construed as 'an agreement to the contrary'". An alter-ego analysis bound a non-signatory entity controlled by the consultant.

BOMBAY HIGH COURT**Osterreichischer Lloyd Seereederei v. Victore Ships**

5 August 2026 · Justice Arif S. Doctor · Comm. Arb. Pet. 403/2025

A charterer that ignored repeated notices of an LMAA arbitration seated in London resisted enforcement of the award under Section 48(1)(b). Rejected: "Such voluntary abstention can by no stretch of imagination be characterised as an inability to present one's case", and seat or jurisdiction objections not raised before the tribunal cannot be raised at enforcement.

BOMBAY HIGH COURT

S.E. Investments (Paisalo Digital) v. Star Bazaar

4 August 2026 · Justice Jitendra Jain

Section 12(5) operates prospectively; a pre-October 2015 appointment is void only if made without contractual authority and without the other side's consent. "What cannot be done directly cannot be achieved by interpretative process indirectly." Compare the Tripura High Court in Kashinath Bhattacharjee v. BSNL (10 August): Section 12(5) applies to pre-2015 agreements where the arbitration had not commenced before 23 October 2015; and the Delhi High Court in Hanson Agro v. GAIL: the 2015 eligibility amendments do not apply retrospectively merely because the Section 34 challenge is post-amendment.

OTHER AUGUST RULINGS

In brief

August 2026 · Delhi, Punjab & Haryana, Kerala, Gauhati and Karnataka High Courts

NHAI v. Louis Berger Group JV (Delhi, 3 Aug): no award of O&M charges for services not yet rendered. Vantage Integrated Securities v. Spark Technologies (Delhi DB, 5 Aug): a unilateral notice cannot create a contractual right to recover liquidated damages. Union of India v. Triveni Constructions (P&H): an award is executable wherever assets lie. DLF Southern Towns v. Aditya Deo (Kerala): a tribunal cannot appoint an advocate-commissioner under Section 17 to gather evidence. SRK Metals v. State of Assam (Gauhati): an MSMED interest claim survives payment of the principal. A.R. Krishnamani v. Lakepoint Builders (Karnataka, 25 Aug): additional evidence in Section 34 only in rare and exceptional cases.

CALCUTTA HIGH COURT

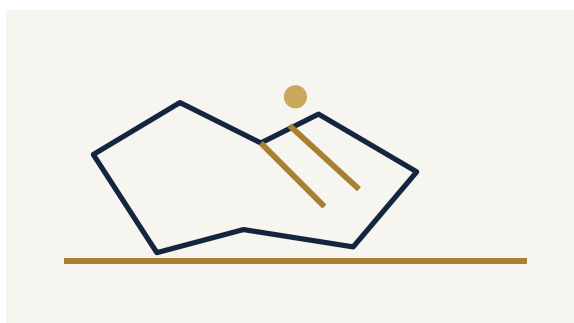
Kolkata Municipal Corporation v. Bengal Shelter Housing Development

14 August 2026 · Justice Shampa Dutt (Paul) · CO 1409/2026

A tribunal's procedural order was set aside and the examination-in-chief of all claimant witnesses directed to be recorded before any cross-examination: a tribunal, though not bound by the CPC, "can draw sustenance from its provisions" to prevent later witnesses from filling evidentiary gaps.

INDIA Policy & institutions

Legislation · Government · arbitral institutions



The MSMED (Amendment) Act, 2026 received assent on 13 August; the Mediation Council of India was established by notification on 27 August; and the Gujarat High Court Arbitration Centre announced its first Arbitration Week at GIFT City.

3-18 AUGUST 2026

The MSMED (Amendment) Act, 2026

Introduced in the Rajya Sabha on 28 July, the Bill passed the Rajya Sabha on 3 August and the Lok Sabha on 7 August, received Presidential assent on 13 August and was published in the Gazette on 18 August. Under the amended Section 18, mediation before the Facilitation Council must conclude within ninety days of first appearance; the reference to arbitration must follow within thirty days of the mediation ending; and the award must be made within ninety days of completion of pleadings. Councils are to have three to five members including at least one from the field of law, with States free to constitute more than one; jurisdiction follows the supplier's registered address; online dispute resolution is enabled. A new Section 18A makes settlements and awards recoverable as arrears of land revenue and treats them as debts under insolvency law. Section 19's seventy-five per cent pre-deposit is retained, but if a challenge is pending beyond six months the court must release at least half the award to the supplier. A new Section 15A mandates TReDS for central public sector enterprises' payments to MSMEs.

MONSOON SESSION · TO 13 AUGUST 2026

Arbitration Bill: still nothing

The session passed the Supreme Court (Number of Judges) Amendment Bill, raising the sanctioned strength to thirty-eight, and the Tribunals Reforms Bill, 2026, creating a National Tribunals Commission, but no Bill to amend the 1996 Act. In February the Government had told Parliament that the Arbitration Council of India "has not been constituted as yet". In September the Chief Justice of India publicly flagged the delay and said the Government is working on a fresh Bill; that belongs to the next issue.

20 AUGUST 2026

Panel counsel guidelines for the Union

The Department of Legal Affairs issued the Panel Counsel Empanelment Guidelines, 2026 for advocates representing the Union of India before the Supreme Court, High Courts, district courts and tribunals, of interest to young lawyers who handle government arbitration matters.

BACKDROP

Government procurement and the Rs. 10 crore line

Commentary through August continued to track the effects of the Finance Ministry's June 2024 memorandum confining arbitration in domestic public procurement to disputes below Rs. 10 crore, and NHAI's removal of arbitration clauses. The question whether commercial courts can absorb the resulting caseload is one the Supreme Court's data call in the ICABA petition may begin to answer.

27 AUGUST 2026

Mediation Council of India established

By notification under Section 31(1) of the Mediation Act, 2023, the Central Government established the Mediation Council of India with its head office in Delhi, as a body corporate to perform the functions of the Act: registration of mediators, recognition of mediation institutes and service providers, standards, and a repository of settlement agreements. The chairperson and members were not named in the notification. The Council is the missing piece that speakers at the ICA conference in April said had kept the Act from taking off.

19-22 AUGUST 2026 · GANDHINAGAR

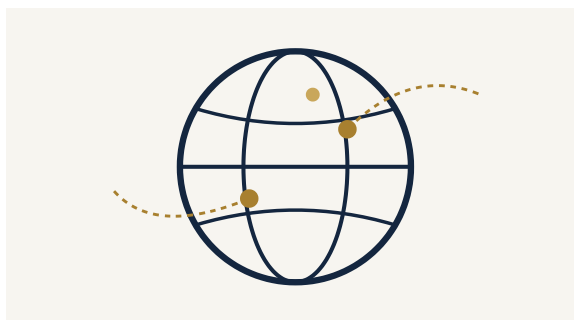
GHAC Arbitration Week announced

The Gujarat High Court Arbitration Centre announced its first Arbitration Week for 3-6 September at GIFT City, on the theme "Building Gujarat's Institutional Arbitration Ecosystem", with Supreme Court Justices P.S. Narasimha, K.V. Viswanathan, N.V. Anjaria and Vipul M. Pancholi, former Justices R.F. Nariman and L. Nageswara Rao, the Attorney General, the Solicitor General, ICC Court Vice-President V.K. Rajah and Chief Justice Sunita Agarwal among the participants. Registration opened on 5 August.

AUGUST 2026 · DELHI

DIAC recruitment: shortlist and interviews

DIAC published the list of candidates shortlisted for interview for the Deputy Counsel posts on 12 August; results were declared on 3 September. Its Practice Direction on virtual preliminary hearings and half-yearly newsletter were posted in late July.



On 31 August the PCA-administered Court of Arbitration in the Indus Waters proceedings held that the Treaty remains fully in force; India did not participate and has consistently rejected the Court's jurisdiction.

31 AUGUST 2026 · THE HAGUE

Indus Waters: the Treaty “remains fully in force”

In PCA Case No. 2023-01, Pakistan v. India, the Court of Arbitration (Professor Sean D. Murphy presiding, with Professor Wouter Buytaert, Professor Jeffrey P. Minear, Judge Awn Al-Khasawneh and Dr Donald Blackmore) issued an Award on the Status of the Indus Waters Treaty unanimously rejecting India's April 2025 decision to hold the Treaty “in abeyance”: the Treaty contains no suspension clause, sovereignty confers no unilateral right to suspend, and no material breach or fundamental change of circumstances was established. “The Indus Waters Treaty remains fully in force, and India must observe its obligations under the Treaty.” A separate order granted three of Pakistan's five requested interim measures concerning the Ratle project, until ninety days after the Neutral Expert's decision expected in July 2027. India did not participate in the hearing held in April at the Peace Palace and has consistently rejected the Court's jurisdiction.

26 AUGUST 2026 · SINGAPORE

ICSID opens in Singapore

ICSID launched its first staffed office outside Washington, at Marina Boulevard in Singapore, as a hub for the Asia-Pacific. Secretary-General Martina Polasek called it “a signal of our confidence in Singapore and the region”. A week earlier ICSID signed a cooperation agreement with the Korean Commercial Arbitration Board, including the use of KCAB's Seoul hearing facilities.

14 AUGUST 2026 · WASHINGTON

ICSID's busiest year

ICSID administered 363 cases in the fiscal year to 30 June 2026, “the highest number of cases in a fiscal year in its history”, and registered 60 new cases, bringing the cumulative total to 1,118. Of the new cases 62 per cent arose under bilateral investment treaties, 24 per cent under other treaties, 8 per cent under contracts and 6 per cent under domestic investment laws; oil and gas accounted for 25 per cent and mining for 18 per cent. Respondent states in South and East Asia and the Pacific accounted for only 3 per cent.

17 AND 28 AUGUST 2026

Two more parties to the Singapore Convention on Mediation

Mauritius ratified the Convention on 17 August, becoming its twenty-third State party, and Uzbekistan acceded on 28 August, the twenty-fourth; each enters into force for that State six months later. India signed the Convention in 2019 but has not ratified. With the Mediation Council of India now established, the question of ratification is likely to return.

14 AND 24 AUGUST 2026 · THE HAGUE

PCA: a UNCLOS conciliation and a new UN mandate

A conciliation commission between Cambodia and Thailand was constituted on 14 August under Annex V of the UN Convention on the Law of the Sea (PCA Case No. 2026-35). On 24 August the PCA announced that it will act as registry and appointing authority under a new UN Administrative Instruction for disputes with UN consultants and individual contractors.

SINCE 1 JUNE 2026 · PARIS

ICC Rules 2026: the first quarter

August closed the first full quarter of filings under the 2026 ICC Rules: electronic communications by default, Terms of Reference no longer mandatory, early determination of unmeritorious claims, a three-month highly expedited track, the expedited-procedure threshold at USD 4 million and reduced administrative costs below USD 10 million. Indian parties, who returned to the ICC's top ten nationalities in 2025, will feel the changes first in construction and energy disputes.

EARLY SEPTEMBER 2026 (FOR CONTEXT)

Views from abroad on India's courts

At GHAC Arbitration Week, ICC Court Vice-President V.K. Rajah said the Supreme Court's award-modification ruling had "created uncertainty" among practitioners outside India, and former Justice R.F. Nariman said some recent arbitration judgments had reopened settled questions. Both remarks fall in September and will be covered in full next month.

READING THE AWARD

The Court of Arbitration's press release and the Award on the Status of the Indus Waters Treaty are published on the PCA's website (pca-cpa.org, Case No. 2023-01), together with the Order on Interim Measures. India's position that the Court lacks jurisdiction is recorded in the Ministry of External Affairs' statements.

YOUNG PRACTITIONER'S EXPLAINER

Pre-deposits: the contractual kind and the statutory kind

Santosh Associate concerns a clause that conditions the right to arbitrate on a deposit; Section 19 of the MSMED Act conditions the right to challenge an award on one. Young practitioners meet both. This explainer separates them and lists what to do about each.

1

Contractual pre-deposit to invoke arbitration

Common in state agency and PSU contracts: deposit a percentage of the claim before the arbitrator is appointed. S.K. Jain (2009, three judges) upheld such a clause; ICOMM Tele (2019, two judges) struck one down as arbitrary. Santosh Associate (17 August 2026) doubts S.K. Jain and refers six questions to a larger Bench. Until then S.K. Jain binds, but the objection should be raised at the Section 16 stage, recorded, and argued on Section 18 equal treatment, Article 14, Section 28 of the Contract Act and the sufficiency of costs powers under Section 31(8).



2 Statutory pre-deposit to challenge an MSEFC award

Section 19 of the MSMED Act requires a buyer to deposit seventy-five per cent of a Facilitation Council's award before a court will entertain a challenge; courts may allow instalments (Rajasthan HC, Anamika Conductors) and may first examine an ex facie plea that the award is a nullity (Delhi HC, WAPCOS v. Virgo Aqua, July). The 2026 amendment keeps the deposit but requires release of at least half the award to the supplier if the challenge is pending beyond six months.

3 The clock now written into Section 18

Under the amended Act: mediation before the Council within ninety days of first appearance; reference to arbitration within thirty days of the mediation ending; award within ninety days of completion of pleadings; online dispute resolution available. Whether these timelines are mandatory or directory will be litigated; institutions receiving references should treat them as mandatory.

4 Before you compute limitation or execute

A Facilitation Council award must be delivered as a signed copy under Section 31(5); a certified copy bearing typed "Sd/-" is not enough (Calcutta HC, CE Testing v. Madhucon, 3 August). Until a signed copy is delivered the Section 34 clock does not start and execution is premature. Suppliers should insist on signed copies; buyers should not assume that a defective copy has started their time running.

CHECKLIST

- Contractor facing a pre-deposit clause: object under Section 16, record it, plead ICOMM Tele and Article 14, and consider depositing under protest.
- Employer relying on such a clause: expect it to be tested; check whether the deposit is refundable and who holds it.
- Buyer challenging an MSEFC award: budget the 75 per cent deposit; ask for instalments; after six months, expect a release order.
- Supplier holding an MSEFC award: obtain a copy bearing the arbitrators' signatures before filing execution.
- Everyone: watch for the constitution of the larger Bench and for rules under the amended MSMED Act.

CAREERS & EVENTS

Opportunities & diary

Vacancies · internships · moots · conferences

CONFERENCE · GANDHINAGAR

GHAC Arbitration Week 2026

Gujarat High Court Arbitration Centre · 3–6 September 2026 · GIFT City Club

Four Supreme Court judges, former judges, the Attorney General, the Solicitor General and ICC Court Vice-President V.K. Rajah among the participants; paid online registration from 5 August.

gujarathighcourt.nic.in

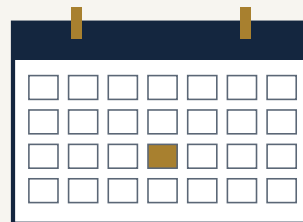
CONFERENCE · THREE CITIES

India ADR Week 2026

Mumbai Centre for International Arbitration · 7–11 September 2026

Bengaluru, Mumbai and New Delhi; more than twenty sessions; closing keynote by the Chief Justice of India. India ADR Week 2027 is already scheduled for 18–24 September 2027.

adrweek.in



DIARY

3 Aug	MSMED (Amendment) Bill passed by Rajya Sabha; 7 Aug by Lok Sabha
7–9 Aug	International ADR Conference, New Delhi (held)
13 Aug	Assent to the MSMED (Amendment) Act, 2026
27 Aug	Mediation Council of India established

COURSE · MUMBAI**CIArb Module 1: Law, Practice and Procedure of International Arbitration**

CIArb India Branch with MCIA · Tutorials 22 August and 26 September 2026

Two tutorial sessions in Mumbai leading to the CIArb Module 1 assessment; fees and registration through CIArb India Branch.

ciarb.org

MOOT · HONG KONG**24th Willem C. Vis (East) Moot**

Vis East Moot Foundation · Registration 25 September–12 November 2026 · orals 7–14 March 2027

Problem released 2 October; clarifications by 7 November; Claimant memorandum 10 December 2026; Respondent memorandum 21 January 2027.

cisgmoot.org

MOOT · VIENNA**34th Willem C. Vis International Commercial Arbitration Moot**

Vis Moot · Registration closes 12 November 2026 · orals 19–25 March 2027

ICDR Arbitration Rules apply this year; problem released 2 October.

vismoot.org

GUIDELINES · GOVERNMENT OF INDIA**Panel Counsel Empanelment Guidelines, 2026**

Department of Legal Affairs, Ministry of Law and Justice · Issued 20 August 2026

Fresh guidelines for empanelment of advocates as Union of India panel counsel before the Supreme Court, High Courts, district courts and tribunals; relevant to advocates seeking government arbitration briefs.

legalaffairs.gov.in

VACANCY · INDIA (CLOSED)**Deputy Counsel, Delhi International Arbitration Centre**

DIAC · Interviews August; results 3 September 2026

DIAC hires young counsel periodically; watch its public notices for the next round.

dhcdiac.nic.in

CONFERENCE · MUMBAI**ICC India Arbitration Conference 2026**

ICC Dispute Resolution Services and ICC India · 31 October 2026 · Trident, Nariman Point

Fee Rs. 2,500; sessions on monetary remedies, digital-asset recovery and an ethics debate.

2go.iccwbo.org

27 Aug

Presolv360 Smart Resolution Summit (held)

3–6 Sep

GHAC Arbitration Week, GIFT City

7–11 Sep

India ADR Week 2026

10 Sep

CDSL v. Bhavsar: notice returnable

12–16 Oct

UNCITRAL Working Group III, Vienna

27–28 Nov

IBA India Litigation and ADR Symposium, New Delhi

Listings are reproduced from the organisers' announcements as on the date of publication; check the organiser's website for changes. Institutions and firms may send arbitration-related vacancies and events for the next issue to admin@delhiarbitrationcentre.com.

“The participation of a non-signatory in the performance of the underlying contract is the most important factor to be considered, as the conduct of the non-signatory parties is an indicator of the intention of those parties to be bound by the arbitration agreement.”

Supreme Court, KKH Finvest v. Ashiesh Shukla, 5 August 2026

“Relief may be granted in rare and compelling cases to prevent irreparable prejudice and preserve the efficacy of the Section 34 challenge.”

Supreme Court, NPCC v. Ishvakoo (India), 11 August 2026

“Arbitration was supposed to be efficient, convenient, and cost-efficient. The delay is too long.”

Justice Joymalya Bagchi, oral observation, HCL Infosystems v. Rajasthan discoms, August 2026

“The Indus Waters Treaty remains fully in force, and India must observe its obligations under the Treaty.”

Court of Arbitration, PCA Case No. 2023-01, Award of 31 August 2026

NEXT ISSUE

The September 2026 issue will cover the Supreme Court’s judgments in NSDC v. Surya Wires, National Seeds Corporation v. National Agro Seed and NEEPCO v. Astra Construction, the Chief Justice’s remarks at India ADR Week on a register of arbitrators’ conflicts and caseloads and on a fresh Arbitration Bill, GHAC Arbitration Week, and the ICC India conference programme.

CONTRIBUTE

Students and young practitioners may send case notes of up to 800 words, or a 1,200-word explainer, on any development in arbitration, conciliation or mediation to admin@delhiarbitrationcentre.com with “DAC Monthly” in the subject line. Selected pieces are published with the author’s name and institution.



**DELHI
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— CENTRE —**
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ABOUT THE CENTRE

Delhi Arbitration Centre

An independent institutional arbitration centre, registered under the Societies Registration Act, 1860 and working in arbitration, conciliation and mediation since 2011. The Centre administers proceedings under the DAC Arbitration Rules, 2023, the DAC Mediation Rules, 2017 and the DAC Conciliation Rules, 2017, maintains a panel of arbitrators drawn from retired judges and senior professionals, and is empanelled for references under section 18(3) of the MSMED Act, 2006.

MODEL ARBITRATION CLAUSE

“Any dispute or difference arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Delhi Arbitration Centre in accordance with the DAC Arbitration Rules for the time being in force, which Rules are deemed to be incorporated by reference in this clause. The seat of arbitration shall be Delhi. The language of the arbitration shall be English.”

REGISTRY

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www.delhiarbitrationcentre.com → Rules of the Centre /
Forms & Procedures

SOURCES CONSULTED FOR THIS ISSUE

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3. livelaw.in — 2026 LiveLaw (SC) 791, NPCC v. Ishvakoo; livelawbiz.com — interim relief to unsuccessful party; scobserver.in — SCO.LR Vol. 8 Issue 3
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