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ADR NEWS LETTER- Volume 06/26

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From the Desk of the Managing Editor

Dear Colleagues and Readers,

It gives me great pleasure to present the latest edition of the ADROIT ADR Newsletter, bringing together significant legal developments and practical insights from the evolving field of arbitration and dispute resolution.

In this edition, we examine important judicial pronouncements addressing the necessity of a valid and concluded arbitration agreement for seeking interim relief under Section 9 of the Arbitration and Conciliation Act, the validity of arbitral awards signed only on the final page, and the authority of arbitral tribunals to determine their own jurisdiction despite prior court appointments of arbitrators.

We also discuss a noteworthy decision reaffirming that unsubstantiated complaints or allegations, without legally recognized disqualifications, cannot form the basis for the removal of an arbitrator. These developments reinforce key principles governing arbitral proceedings and contribute to greater certainty in dispute resolution practice.

Further, we continue our commitment to professional development through our online learning initiatives in construction arbitration and international arbitration, aimed at supporting aspiring arbitration professionals and industry practitioners.

We sincerely thank our readers, clients, contributors, and professional associates for their continued support and trust. Through this newsletter, we remain committed to sharing practical knowledge, promoting professional excellence, and advancing the effective resolution of commercial and construction disputes.

A.Ramasubramanian B.E., LLB., FCIARB,
Managing Director/ Lead Consultant - ADR

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MONTHLY NEWSLETTER

INTERIM MEASURE UNDER S.9 OF THE ARBITRATION ACT NECESSITATES A VALID AND CONCLUDED AGREEMENT BETWEEN THE PARTIES - HIGH COURT OF DELHI

Midpoint Commodeal Private Limited vs. Fidatocity Homes Private Limited and Ors. (29.05.2026 - DELHC)

The High Court of Delhi addressed a petition by Midpoint Commodeal Private Limited against Fidatocity Homes Private Limited and others, seeking interim measures under Section 9 of the Arbitration and Conciliation Act, 1996.

The core issue was whether a valid arbitration agreement existed between the parties. The court found that no such agreement was concluded, as the draft agreements containing the arbitration clause were never finalized or executed.

The controversy arising in the present case is, therefore, not limited merely to determining whether certain sums of money were exchanged between the parties or whether commercial discussions and negotiations had taken place between them from time to time. The principal issue requiring consideration by this Court is whether such negotiations ever culminated into a concluded, binding, and legally enforceable agreement embodying a clear consensus ad idem between the parties with respect to the essential terms governing their relationship.

More particularly, this Court is required to examine whether there existed a mutual and unequivocal intention on the part of the parties not only to undertake defined contractual obligations inter se, but also to submit any disputes arising therefrom to arbitration in terms of a valid arbitration agreement within the meaning of Section 7 of the A&C Act.

At this stage, it would be apposite to advert to the foundational principles embodied in the Indian Contract Act, 18728, which govern the formation and enforceability of contracts in law. Section 2(e) of the ICA defines an "agreement" to mean "every promise and every set of promises, forming the consideration for each other." The statutory definition itself makes it abundantly clear that the existence of reciprocal promises founded upon mutual assent forms the very basis of a legally recognizable agreement.

The statutory scheme under Section 2 of the ICA clearly postulates that contractual obligations arise only where there exists a clear manifestation of assent by the parties to the same proposal.

This Court is unable to hold, even prima facie, that a valid and enforceable arbitration agreement existed between the parties within the meaning of Section 7 of the A&C Act. The material on record does not disclose any concluded consensus ad idem between the Petitioner and Respondent Nos. 1 and 2 on the essential terms of the transaction, nor any unequivocal agreement evincing a mutual intention to submit disputes to arbitration.

Consequently, the petition was dismissed for lack of jurisdiction, with the court clarifying that it expressed no opinion on the merits of the underlying monetary claims.

Author: A.Ramasubramanian
Managing Director/ Lead Consultant - ADR

FINAL-PAGE SIGNATURES ARE SUFFICIENT FOR THE ARBITRATION AWARD; ARBITRATORS NEED NOT SIGN EVERY PAGE OF AN AWARD

Dubai Court of Cassation, Appeals Nos. 778 & 887 of 2025 (11 September 2025) - Enforcement of FOSFA Foreign Arbitral Awards

Summary

The Dubai Court of Cassation considered challenges to the enforcement of two foreign arbitral awards arising from FOSFA commodity contracts. The award debtor argued that enforcement should be refused because the awards were signed only on the last page, the signatory lacked authority under UAE law, and the awards granted compound interest allegedly contrary to public policy. The case also addressed the scope of judicial review of foreign awards in the UAE.

Judgement

The Court of Cassation upheld enforcement and rejected all objections, holding that:

- Final-page signatures are sufficient; arbitrators need not sign every page of an award.
- Capacity/authority issues decided in arbitration cannot be re-litigated at the enforcement stage (res judicata).
- Compound interest in a foreign award does not, by itself, violate UAE public policy.
- Review of foreign awards is strictly limited to Article V of the New York Convention, whose grounds are exhaustive

UAE courts cannot annul foreign awards; their role is confined to enforcement control, and Article 222 of the Civil Procedure Law does not expand this power.

Author: Madhu Mithra
Senior Partner - International ADR

PRIOR COURT APPOINTMENT OF ARBITRATOR DOES NOT BAR TRIBUNAL FROM DECLINING JURISDICTION

Dubai Court of Cassation, Case No. 481/2025 (Civil) - 16 October 2025

Summary

This case concerned whether a prior cassation judgment ordering the appointment of an arbitrator prevents the arbitral tribunal from later declining jurisdiction. The dispute arose from a 2019 distribution agreement containing a UAE-seated arbitration clause. In 2022, the parties entered into a settlement agreement providing for Kuwaiti court jurisdiction.

In 2023, the claimant sought court appointment of an arbitrator. After procedural history including cassation review and remand, an arbitrator was appointed. The arbitrator later issued an award declining jurisdiction, holding that the original agreement including the arbitration clause had been terminated by the settlement agreement.

The Court of Appeal annulled the award, finding that the arbitrator had violated the resjudicata effect of the prior cassation judgment that led to the appointment.

Judgement

The Dubai Court of Cassation reversed the annulment and upheld the award declining jurisdiction, holding that:

Appointment of an arbitrator does not determine jurisdiction: The earlier cassation judgment did not finally rule on the validity or survival of the arbitration clause and therefore created no res judicata on jurisdiction.

Kompetenz-Kompetenz applies: Determination of arbitral jurisdiction is primarily for the arbitral tribunal. Courts must not pre-empt that role merely by appointing an arbitrator.

Judicial review comes later: Courts may review jurisdictional issues only at the annulment or enforcement stage after the tribunal has ruled

Arbitrator clause was terminated: The parties' later settlement agreement, which expressly provided for Kuwaiti court jurisdiction, replaced the earlier dispute resolution mechanism, extinguishing the arbitration clause.

Accordingly, the arbitrator's decision declining jurisdiction was valid, and no res judicata principle had been violated.

Author: Madhu Mithra
Senior Partner - International ADR

MERE COMPLAINTS CANNOT REMOVE AN ARBITRATOR

NHIDCL v. NSPR VKJ JV & Ors.| O.M.P. (T) (COMM.) 44/2025 |Delhi High Court | 15.10.2025

Background

NHIDCL filed a petition under **Sections 14 and 15 of the Arbitration and Conciliation Act, 1996** seeking termination of the Presiding Arbitrator's mandate in a SAROD arbitration arising from an **EPC Agreement** for road construction in West Bengal. The Presiding Arbitrator was appointed by draw of lots under SAROD Rules.

NHIDCL alleged the Arbitrator was named in an FIR before the Madhya Pradesh Lokayukta and pending corruption complaints — arguing de jure ineligibility and justifiable doubts about impartiality. The Court dismissed the petition.

Key Legal Principles

👉***De jure ineligibility has a narrow scope:*** Only disqualifications listed in the Seventh Schedule qualify. An unproven complaint — with no conviction, no FIR, and no prima facie judicial finding — does not meet this threshold.

👉***Bias falls under Sections 12 and 13, not Section 14:*** Allegations of justifiable doubt about impartiality must be raised before the Tribunal. If unsuccessful, the party may challenge the award under Section 34. These grounds cannot be re-routed through a Section 14 petition.

👉***Mere registration of an FIR does not prove guilt***: An FIR sets criminal investigation in motion — it is not a legal finding and cannot substitute for concrete evidence.

👉 ***The arbitration framework demands balance***: Proven corruption compromises arbitral integrity. But terminating a mandate on unverified allegations is equally dangerous — it could be weaponised by any party dissatisfied with proceedings.

Key Takeaways

Removing an Arbitrator mid-proceedings is a serious remedy. Courts will not exercise this power lightly. A party seeking termination under Section 14 must demonstrate an actual, legally recognized disability — not suspicion, not newspaper reports, and not a complaint that has produced no tangible legal consequence. The distinction is critical for practitioners: conviction creates de jure ineligibility; a complaint does not. If you believe an Arbitrator is biased, raise it before the Tribunal under Section 13. Approach the Court under Section 14 only when a Seventh Schedule disqualification genuinely exists.

"An allegation without evidence is not a ground. It is a risk to your own credibility."

Author: K Jainivas
Associate Partner - Arbitration

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