



**Navigate Construction Arbitration Landscape with The ADROIT's Newsletter designed for Legal and Construction Professionals**

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- 👉 The Legal Segment: Deep dive into pivotal legal topics
- 👉 Arbitration Updates: Key trends and case highlights from the last quarter
- 👉 Virtual Spotlight: Recap of impactful virtual events
- 👉 Firm's Recognition: Celebrating milestones and accolades
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## **ADROIT CLAIMS & ADR CONSULTANTS (ACAC)**

### **ADR NEWS LETTER- Volume 11/ 25**

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## **From the Desk of the Managing Editor**

**Dear Colleagues and Readers,**

It gives me immense pleasure to present the 17th Edition of our ADR Newsletter, as we continue our mission to share meaningful insights, practical guidance, and global developments from the world of construction law and arbitration.

In this edition, detailed analysis of the Delhi High Court's decision in Union of India v. MS Krishna Constructions Company, which reinforces a fundamental principle under Sections 73 and 74 of the Indian Contract Act: loss or damages must be established, even when claiming liquidated damages or penalty.

We also bring to focus foundational principles that shape contract administration—quid pro quo, the enforceability of Inspection Reports (IRs) as acceptance proof, and the “No Loss, No Penalty” rule, which continues to influence damages and forfeiture claims under Indian law. These concepts are essential for construction professionals managing daily contractual risks.

Our team is proud to share updates from recent international engagements and professional contributions, including speaking opportunities and thought leadership commitments, underscoring Adroit's expanding presence in the global ADR community.

As always, we extend our sincere gratitude to our readers, clients, and partners. Your continued trust motivates us to raise industry standards and contribute to a stronger, more transparent dispute-resolution ecosystem.



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

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# MONTHLY NEWSLETTER

## LOSS OR DAMAGES MUST BE ESTABLISHED, EVEN TO CLAIM LIQUIDATED DAMAGES OR PENALTY - HIGH COURT OF DELHI

**Key Takeaway:** *Even for claiming liquidated damages or penalty, the claimant must establish that some loss or damage was actually suffered. While the exact quantum need not be proven, the existence of loss is essential. In this case, since the Union of India failed to demonstrate any loss, the Arbitrator rightly denied the counterclaims. The Delhi High Court upheld this position, reiterating that contractual breach alone cannot justify compensation in the absence of proven loss—consistent with longstanding jurisprudence under Sections 73 and 74 of the Indian Contract Act.*

UNION OF INDIA .v MS KRISHNA CONSTRUCTIONS COMPANY O.M.P. (COMM) 369/2022, I.A. 14345/2022 & I.A. 14347/2022

The disputes between the parties arose out of a contract for construction of a school building and quarters, for a Kendriya Vidyalaya at Chhindwara, Madhya Pradesh.

..., the learned Arbitrator found that the Union was not entitled to retain the bank guarantee amount, security deposit, or levy any compensation upon the respondent, as it had failed to establish that it had suffered any loss at all.

Union of India challenged the award thru this petition.

16. The learned Arbitrator has relied upon several judgments of the Supreme Court, including Fateh Chand v. Balkishan Dass, Maula Bux v. Union of India, Kailash Nath Associates v. DDA, alongwith a judgement of this Court in Indian Oil Corpn. v. Lloyds Steel Industries 2023 SCC OnLine Del 83214

A point was raised in the course of hearing as to whether the award is vitiated by the fact that the learned Arbitrator was unilaterally appointed by the Union. However, learned counsel for both sides have taken instructions, and placed documents on record, to show that both the Union and the respondent had waived the applicability of Section 12(5) of the Act in writing., in support of his conclusion that compensation can only be awarded in favour of a person, who has suffered loss or damage. Although the extent of loss or damage is not required to be proven, the fact that loss or damage has been suffered must be established, even to claim liquidated damages or penalty.

17. This principle has, in my view, been correctly appreciated by the learned Arbitrator. The authorities on this point, including the judgments referred to in the impugned award, have been analysed in the recent judgment of a Coordinate Bench in R.B. Enterprises<sup>9</sup> , making reference to all earlier judgments unnecessary. This Court has traced the jurisprudence on Sections 73 and 74 of the Indian Contract Act, 1872, commencing with the judgment in Fateh Chand, which held that no compensation can be awarded as a consequence of breach, in the absence of any resulting legal injury.

An arbitral award was set aside in R.B. Enterprises, as damages had been awarded in the absence of any evidence as to the loss suffered. It was specifically held that, in a case where the parties led no evidence, reliance on a finding of breach of contract, and a stipulation of pre-estimated damages, were insufficient.

Conversely, in the present case, the absence of evidence would, as held by the learned Arbitrator, lead to a justified denial of the Union's counter claims.

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

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## **QUID PRO QUO IN CONTRACTS**

It is "something for something" wherein both the parties ensure to give and receive a benefit, and it is legally referred to as "consideration."

### **Key Aspects of Quid Pro Quo in Contracts:**

#### ***Consideration:***

For a contract to be valid, each party must provide consideration. This means that each party must exchange something of value, such as money, services, goods, or promises.

The consideration need not be of equal value, but it must be something that the law recognizes as having value to the parties.

#### ***Mutuality:***

Both parties must agree to the exchange, and each must expect to receive something in return for what they provide. This mutual exchange makes the agreement binding.

If only one party benefits without giving anything in return, the contract may lack consideration and may not be enforceable.

### **Types of Consideration:**

- **Tangible Goods:** A company might deliver products in exchange for payment.
- **Services:** A service provider could perform work in return for compensation.
- **Promises:** Sometimes, the consideration is a promise to do or not do something in the future, such as delivering goods or providing services.

### **Invalid Quid Pro Quo:**

If one party's consideration is illegal, impossible, or not a real commitment (such as a vague or unenforceable promise), the contract may be void. Contracts that involve quid pro quo exchanges of illegal activities (e.g., bribery or illicit services) are unenforceable by law.

**Author: Madhu Mithra  
Senior Partner - International ADR**

## THE INSPECTION REPORT (IR): YOUR PROOF OF ACCEPTANCE

**Key Takeaway:** *A signed Inspection Report legally "closes the book" on that piece of work. It shifts the burden of proof away from you and onto the client. It moves your argument from a weak "We did it correctly" to a powerful "You agreed it was correct, and here is your signature to prove it."*

### The "Pain Point":

You've reached the final accounting. The client is withholding 15% of your payment, claiming a long list of "defects" in work you completed six months ago. They argue the work was never done to specification. You know you did it correctly, but how do you prove it?

The dispute becomes your word against their "snagging list." The arbitrator is forced to weigh your testimony against the client's current (and possibly biased) assessment. This is a defensive battle you should never have to fight.

This is the "pain point" the Inspection Report (or Inspection Request) is designed to solve. It's the formal, contractual process of handing over a completed work portion and getting it signed off.

### The Narrative It Builds: It creates an irrefutable, time-stamped record that proves:

- What you completed (e.g., "Waterproofing for Area C, 2nd Floor").
- When you presented it for inspection (e.g., "Date on the Inspection Request").
- That they accepted it (e.g., "The client engineer's signature on the Inspection Report, dated [Date], with 'Approved' checked").

**Author: V Durga  
Associate - Arbitration - ADR**

## THE "NO LOSS, NO PENALTY" RULE

**Key Takeaway:** *If a breach causes you no financial harm, you are not entitled to claim damages, even if a penalty sum is pre-agreed in the contract.*

In the world of contracts, what happens when a party breaches a deal, but the other party ends up suffering no financial loss? Can they still keep the security deposit or invoke a penalty clause?

The Supreme Court of India settled this decisively in *Kailash Nath Associates v. DDA (2015) 4 SCC 136*

### What Happened?

- **The Deal:** A company (Kailash Nath Associates) was the highest bidder for a plot auctioned by the Delhi Development Authority (DDA) and paid a 25% earnest money deposit.
- **The Breach:** The company failed to pay the remaining balance on time, breaching the contract.
- **The Forfeiture:** The DDA cancelled the allotment and forfeited the entire deposit, citing the contract's penalty clause.
- **The Twist:** The DDA then re-auctioned the same plot and sold it for a massive profit.

### The Supreme Court's Judgment:

The Court ruled that the DDA's forfeiture was illegal and ordered the deposit to be returned.

The judgment clarified a vital principle of Section 74 of the Indian Contract Act: Damages are meant to be compensatory, not a "windfall profit."

**Author: K Jainivas**  
**Associate Lawyer - ADR**

## OUR TEAMS PRESENCES IN THE INTERNATIONAL CONFERENCE

Our Managing Director and Lead Consultant **Mr Ramasubramanian** will be a speaker during *ADR WEEK* by *School of Law, SRMIST, Kattankulathur, Chennai, Tamil Nadu* and *MedArb International*.

### Topic : **Mediation for the Construction Disputes**

Date: 25 - 27 November, 2025

Venue : SRMIST, Chennai

The poster for ADR WEEK 2025 (25-27 November) is presented by SRMIST, MedArb, and Manupatra. It features a grid of 24 speaker portraits with their names and locations. The speakers include Prof. Kazushi Yamamoto (Japan), Adv. Susheela Sarathi (India), Mr. D. R. Siva Kumar (India), Dr. Sara Aouni (USA), Prof. (Adv.) Dipak G. Parmar (India), Ms. Nancy Maryara (Kenya), Mr. Ramasubramanian (India), Dr. Reju Raj (England), Dr. Anish Srivastava 'Lal' (India), Dr. Chandrika Subramanyan (Australia), Mr. Arindam Das (India), Adv. Prem Rajakumari (India), Mr. Anil Changaroth (Singapore), Ms. Brenda Edith Vargas (Mexico), Adv. Arunngam Thilagaranjan (India), Adv. Themwohi S. (India), Hanwa Kaka Usman Esq. (Nigeria), Mr. Vishwa Badrinath (India), Ms. Rakmani Menon (India), Chloma S. Jack, Esq. (Nigeria), Prof. (Dr.) Daxanshi Srivastava (India), Mr. Ganesh Subblan (India), Fariq Abbas, Esq. (Nigeria), and Fola Nade, Esq. (Nigeria). The bottom of the poster displays logos for various organizations including TEFA, PAN-MEDIATION CENTRAL, CSJ, ABU SALAAM, CHANGAROTH, Cyber-IPR, ADROIT, SWI, and many others.

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- Free e-course on '**The introduction to the International Arbitration**
- Advanced course on **International Arbitration Practices**

The above e-courses help **CIArb aspirants** and young and aspiring Arbitration professionals sail through the certification courses seamlessly.

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 **Portal Link - <https://lnkd.in/gqJPCu3b>**

 **Stay tuned!**  Our exciting new course —

***International Construction Arbitration* — launches on December 4, 2025!**

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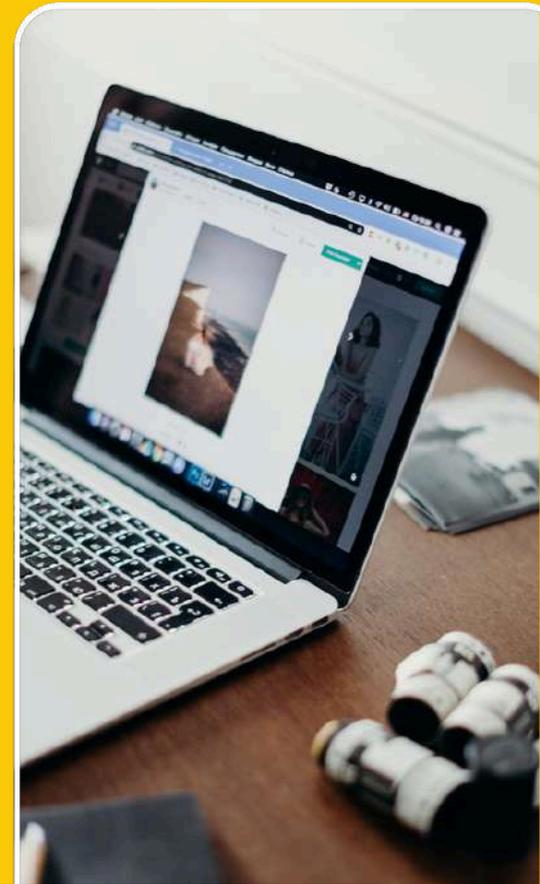
# Learning at your own pace

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### Reach us at:

[poorni@adroitpmc.com](mailto:poorni@adroitpmc.com)

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For your construction claims and Arbitration advisory, please reach us at:

**email :** [ram.s@adroitpmc.com](mailto:ram.s@adroitpmc.com)

### COIMBATORE OFFICE

Registered office:  
A-202 OAK Canopy,  
Coimbatore -641005

### NEW DELHI OFFICE

Greater Kailash II  
New Delhi 110048

### OMAN OFFICE

ADROIT ME - Post Box 228,  
Postal Code 211,  
Muscat - Oman

Website : [www.adroitpmc.com](http://www.adroitpmc.com) | [LinkedIn Profile](#)

## **NEWSLETTER EDITORIAL:**

**A.RAMASUBRAMANIAN B.E., LLB., FCIARB,**

MANAGING DIRECTOR / LEAD CONSULTANT - ADR

Mail Id: [ram.s@adroitpmc.com](mailto:ram.s@adroitpmc.com) | [LinkedIn Profile](#)

**MANIKANDAN MURUGESAN BE.,MCIARB,.MRICS.,MICCP.,MQSI.CIOB**

DIRECTOR - MIDDLE EAST OPERATIONS - ADR

Mail Id: [manikandan@adroitpmc.com](mailto:manikandan@adroitpmc.com) | [LinkedIn Profile](#)

**KARTHIKEYAN K, M.C.A.,LL.B.**

LEGAL HEAD - COMMERCIAL COURTS

Mail Id: [karthik@adroitpmc.com](mailto:karthik@adroitpmc.com)

**MADHUMITHRA, BBA., LLB., ACIARB**

SENIOR PARTNER - ADR,

Mail Id: [madhu@adroitpmc.com](mailto:madhu@adroitpmc.com) | [LinkedIn Profile](#)

**DURGA V B.A.,L.L.B,** ASSOCIATE - ARBITRATION

Mail Id: [durga@adroitpmc.com](mailto:durga@adroitpmc.com) | [LinkedIn Profile](#)

**JAINIVAS BBA., LLB,** ASSOCIATE LAWYER

Mail Id: [jainivas@adroitpmc.com](mailto:jainivas@adroitpmc.com) | [LinkedIn Profile](#)

**ASHMITHA BBA.,LL.B(HONS.),** LAWYER - LEGAL RESEARCH

Mail Id: [ashmitha@adroitpmc.com](mailto:ashmitha@adroitpmc.com)

## **OUR PARTNER**

**ATIM LAW FIRM - VIETNAM**

**HUYNH NGUYEN (HENRY),** MANAGING PARTNER

Mail Id: [huynhnt@atim.com.vn](mailto:huynhnt@atim.com.vn) | [LinkedIn Profile](#)

## **COMPILATION -**

**POORNIMA, BBA., MBA,** MANAGER - FINANCE AND CRM

Mail Id: [poorni@adroitpmc.com](mailto:poorni@adroitpmc.com) | [LinkedIn profile](#)