



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

**🔍 What's inside this edition?**

- 👉 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
- 👉 Making Headlines: Featuring our Partners' thought leadership

Equip yourself with actionable insights to tackle complex disputes and shape successful outcomes

## **ADROIT CLAIMS & ADR CONSULTANTS (ACAC)**

### **ADR NEWS LETTER- Volume 01/26**

**OUR OFFICES AT:** COIMBATORE, HYDERABAD - INDIA | MUSCAT - OMAN | DUBAI - UAE

[WWW.ADROITPMC.COM](http://WWW.ADROITPMC.COM) | [LINKEDIN PROFILE](#)

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

**Dear Colleagues and Readers,**

I am pleased to present the 19th Edition of the ADROIT ADR Newsletter, continuing our commitment to sharing practical insights and judicial developments in construction law and arbitration.

This edition features key rulings from Indian courts, including clarity on the distinction between **claims for damages and debt**, reaffirmation of the enforceability of contractual limitation clauses, and the Supreme Court's definitive ruling on the commencement of arbitral proceedings under Section 21 of the Act. Together, these decisions reinforce contractual sanctity, procedural certainty, and limited judicial intervention in arbitral awards.

We also focus on critical aspects of **delay analysis and contract administration**, highlighting the importance of the **Baseline Programme** as the foundation for proving delay and entitlement in construction disputes.

Alongside these legal discussions, we continue to strengthen professional capacity through our training initiatives, including the **Introduction to Construction Arbitration course**, aimed at bridging the techno-legal gap for aspiring arbitration professionals.

I thank our readers, contributors, and professional associates for their continued trust and engagement. ADROIT remains dedicated to promoting clarity, fairness, and technical excellence in dispute resolution.



[A.Ramasubramanian B.E., LLB., FCIARB,](#)  
Managing Director/ Lead Consultant - ADR

## IN THIS ISSUE

1. Claim for Damages is not a Debt until proved **2**
2. Upholding enforceability of an arbitration award **5**
3. The Baseline Schedule: The Benchmarks of delay analysis **7**
4. Receipt of Notice Marks Commencement of an Arbitration **9**
6. Learn Construction Arbitration at your Ease **10**
7. New Course: Introduction to Construction Arbitration **11**

### **Missed a past edition?**

 Explore legal updates, and ADR expertise — Catch up on all previous issues of our newsletter here:

 [Visit our Newsletter Archive](#)

---

# MONTHLY NEWSLETTER

---

## **CLAIM FOR DAMAGES IS NOT A DEBT UNTILL PROVED**

It is pertinent to understand that A contract is not a property. It is only a promise supported by some consideration upon which either the remedy of specific performance or that of damage is available.

The party who is injured by the breach of a contract may bring an action for the damages. The term 'Damages' means compensation in terms of money for the loss suffered by the injured party. Burden lies on the injured party to prove his loss.

***A claim for damages arising out of breach of contract, whether for general or liquidated damages, remains only a claim till its adjudication by the court and become a debt only after court awards it. Till then and on the basis of the claim alone, the claimant is not entitled to present a winding up petition of the defendant company on the ground of its inability to pay debts.***

Indian judiciary has time again reiterated the above stipulation that the Claim for damages is not a debt until it is adjudicated.

## **Distinction between debt and damages in terms of the Indian Contract Act, 1872**

Concept of damages, liquidated and unliquidated, could be found in s.74 and s.73 of the Indian Contract Act, 1872.

There have been multiple judgments on the subject matter. Madras High Court in the case of Newfinds India Ltd. versus Vorion Chemicals and Distilleries Ltd. held that the term "Debt" would refer to a definite sum and does not include any claim for unliquidated damages or for a sum of money which is capable of being ascertained.

The Supreme Court of India has dealt with the concept of debt versus damages, in the cases of Iron and Hardware (India) Company versus Firm Shamlal and Brothers and Union of India versus Raman Iron Foundry.

In the case of Greenhills Exports (Private) Limited versus Coffee Board, Bangalore, The Karnataka High Court summarized the principles from above referred and other decisions relating to debt and damages as under:-

“(i) A ‘debt’ is a sum of money which is now payable or will become payable in future by reason of a present obligation. The existing obligation to pay a sum of money is the sine qua non of a debt.

“Damages” is money claimed by, or ordered to be paid to, a person as compensation for loss or injury. It merely remains as a claim till adjudication by a Court and becomes a ‘debt’ when a Court awards it.

(ii) In regard to a claim for damages (whether liquidated or unliquidated), there is no ‘existing obligation’ to pay any amount. No pecuniary liability in regard to a claim for damages, arises till a Court adjudicates upon the claim for damages and holds that the defendant has committed breach and has incurred a liability to compensate the plaintiff for the loss and then assesses the quantum of such liability. An alleged default or breach gives rise only to a right to sue for damages and not to claim any ‘debt’.

A claim for damages becomes a ‘debt due’, not when the loss is quantified by the party complaining of breach, but when a competent Court holds on enquiry, that the person against whom the claim for damages is made, has committed breach and incurred a pecuniary liability towards the party complaining of breach and assesses the quantum of loss and awards damages. Damages are payable on account of a fiat of the Court and not on account of quantification by the person alleging breach.

(iii) When the contract does not stipulate the quantum of damages, the Court will assess and award compensation in accordance with the principles laid down in Section 73. Where the contract stipulates the quantum of damages or amounts to be recovered as damages, then the party complaining of breach can recover reasonable compensation, the stipulated amount being merely the outside limit.

(iv) When a contract provides that on default by a buyer to pay for and take delivery of goods, the seller is entitled to recover the loss incurred on resale, interest on delayed recovery of the price, godown charges, insurance charges and other expenses incurred by the seller till resale, it cannot be said the buyer incurs the liability to pay those amounts automatically, when he fails to take delivery.

Failure to take delivery may be due to several valid or lawful reasons which may show that the failure to take delivery is not a 'default' or 'breach' in which event, no pecuniary liability may fasten on him.

(v) Even if the loss is ascertainable and the amount claimed as damages has been calculated and ascertained in the manner stipulated in the contract, by the party claiming damages, that will not convert a claim for damages into a claim for an ascertained sum due. Liability to pay damages arises only when a party is found to have committed breach. Ascertainment of the amount awardable as damages is only consequential."

#### **Concluding notes:**

***Primary obligation under the contract will give rise to 'debt' and the secondary obligation coming into existence in terms of contract provisions on breach of primary duty will give rise to 'claim for damages'***



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

---

## UPHOLDING ENFORCEABILITY OF AN ARBITRATION AWARD

### C & C Constructions Ltd. vs. IRCON International Ltd. (2025)

#### Dispute Summary

✍️ C & C entered into a construction contract with IRCON for the construction of five Road Over Bridges (ROBs) at various locations in Rajasthan.

✍️ A dispute arose over project delays that the contractor attributed to the employer's actions.

✍️ The contractor claimed monetary compensation for delays and associated losses under the contract. These claims were referred to arbitration under the contractual dispute resolution clause

✍️ The contract contained a limitation of liability provision, providing that delays caused by the employer would entitle only an extension of time, not damages or compensation.

✍️ The tribunal, while considering contractual terms and evidence, rejected the contractor's claim for damages for employer-induced delay, holding that the limitation clause barred such compensation.

#### Supreme Court's Ruling:

*The Supreme Court dismissed the appeal and upheld the arbitral award favouring IRCON. The Court ruled that:*

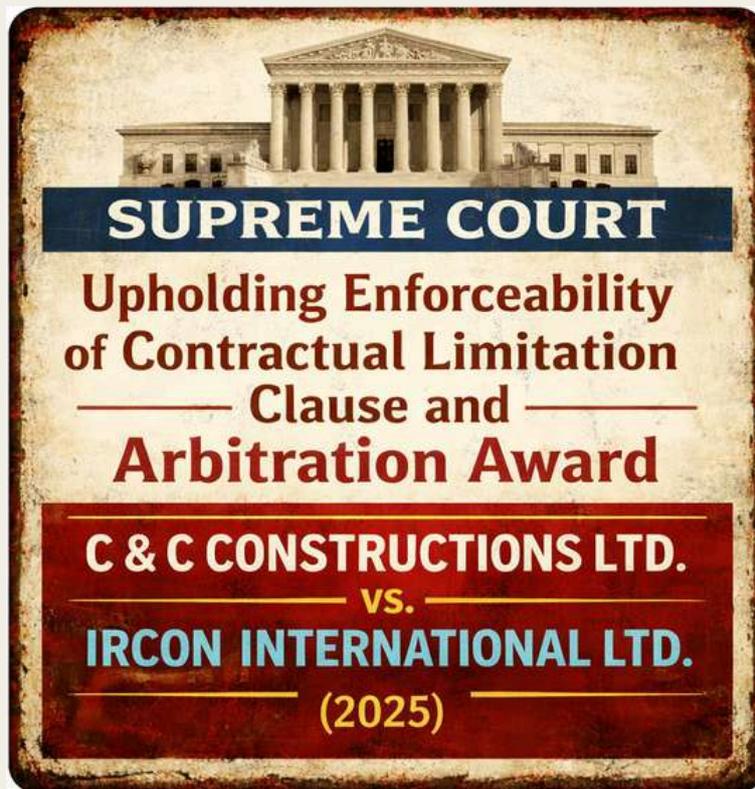
✓ The contractual limitation clause (Clause 49.5) was valid and enforceable as per the plain language of the contract.

✓ Since the contractor had expressly accepted the clause and repeatedly sought extensions of time under it, this conduct reinforced that the clause barred claims for additional damages.

✓ The arbitral tribunal was right to interpret and apply the contractual terms as agreed, and judicial review cannot override explicit contractual bargains — even if such terms limit liability for delay claims.

✓ The Court reaffirmed limited judicial interference with arbitral awards: unless a contractual interpretation is wholly perverse, in conflict with law, or contrary to public policy, courts must show judicial restraint in reviewing awards.

Accordingly, The appeal was dismissed, and the arbitral award was enforced intact. Contractor's claims for damages due to employer-induced delays were barred by the agreed contract terms and could not be entertained.



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

## THE BASELINE SCHEDULE: THE BENCHMARK OF DELAY ANALYSIS

**Key Takeaway:** *The Baseline is the foundation of your narrative. Whether created at the start of the project or reconstructed during the dispute, it provides the "starting line" necessary to prove delay. You cannot measure how far you have been pushed off course if you cannot prove where you were originally standing.*

☛ In any delay dispute, the most frequent question an arbitrator asks is: "Compared to what?" To prove that a project was delayed by 60 days, you must first establish the "starting line"—the original plan. This "original plan" is the Baseline Programme.

☛ A common challenge in many arbitrations is that a contractor may not have submitted a detailed baseline at the start of the project. This often leads to the belief that a delay claim cannot be quantified. However, the Baseline is a contractor's document—it represents the contractor's intended sequence and pace of work at the time of the contract.

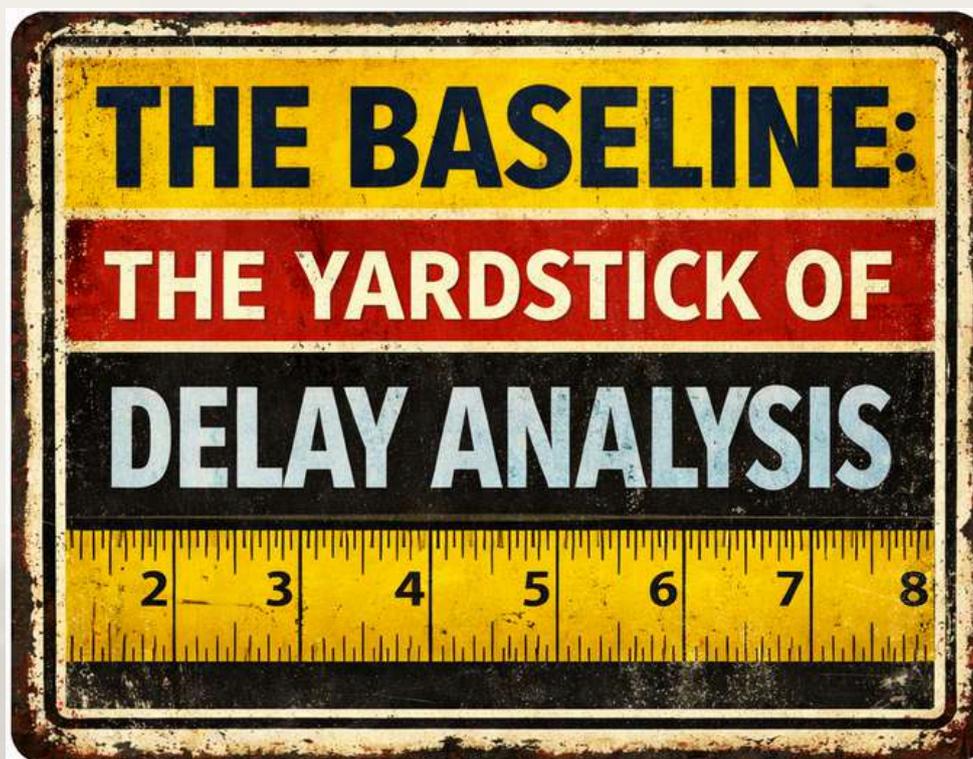
☛ If a formal baseline was not maintained during the project, it can be created retrospectively during the dispute stage. Using the original tender drawings, the contract's completion date, and the contractor's initial resource plan, experts can reconstruct the "As-Planned" logic in scheduling software.

☛ While it is always better to have an approved baseline from Day 1, a reconstructed baseline allows the arbitrator to see the project's logic through the contractor's eyes at the start. It moves the conversation from a vague **"The project took too long"** to a precise demonstration: *"We planned to finish the piling in 30 days; the employer's site access delay pushed this to 50 days, impacting the entire critical path."*

☛ In the eyes of the SCL Delay and Disruption Protocol, the baseline is the foundation of any reliable delay analysis. It is not just a schedule; it is the contractually intended roadmap for the project. Without it, a claim for an Extension of Time (EOT) is merely an estimate. With it, the claim becomes a mathematical calculation of variance.

**A well-constructed baseline proves:**

- The Planned Sequence: Which activities were supposed to happen first (e.g., Foundation before Superstructure).
- The Critical Path: Which activities were the "bottlenecks" that would delay the entire project if they slipped by even one day.
- The Basis of Measurement: It provides the "zero point" from which all future delays, disruptions, and changes are measured.



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

## RECEIPT OF NOTICE MARKS COMMENCEMENT OF AN ARBITRATION

In **Regenta Hotels Pvt. Ltd. vs. M/S Hotel Grand Centre Point**, the Supreme Court overturned a Karnataka High Court ruling to clarify the timeline of arbitral proceedings.

**Key Takeaway:** *Under Section 21 of the Act, arbitral proceedings officially commence the moment the respondent receives the notice to refer the dispute, rather than the date an arbitrator is appointed or a judicial petition is filed. This ruling establishes that receipt of notice is the sole "trigger" for determining limitation periods, the maintainability of Section 11 petitions, and the validity of pre-arbitral interim measures.*

### Case Background

- The dispute originated from a 2019 franchise agreement between Regenta Hotels and a Srinagar-based partnership. A legal tug-of-war ensued regarding whether the arbitration began when the notice was received or when the arbitrator was actually appointed.
- The Karnataka High Court had previously ruled that commencement dates from the appointment of the arbitrator. However, the Supreme Court has now set aside that order, reinforcing the statutory mandate of the Arbitration and Conciliation Act.

### The Court observed:

***"Commencement is complete and effective for all legal purposes—including limitation and maintainability—once the Respondent receives the notice to refer the dispute to arbitration."***

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

## LEARN CONSTRUCTION ARBITRATION AT YOUR EASE

**Adroit's innovative initiative has the following learning resources:**

👉 Free e-course on

- **Introduction to Arbitration**
- **Introduction to Construction Arbitration**

👉 Advanced course on

- **Introduction to International Arbitration**
- **International Arbitration - Law Practice and Procedure**

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

### RESOURCE PERSONS

👤⚖️ **Ramasubramanian Ammamuthu** | [LinkedIn](#)

👤⚖️ **Manikandan Murugesan** | [LinkedIn](#)

👤⚖️ **Madhu Mithra** | [LinkedIn](#)

### CREATIVE SUPPORT 🗣️⚙️

- Jainivas | [LinkedIn](#)
- Durga V | [LinkedIn](#)
- Poornima | [LinkedIn](#)

### PERKS:

- Uninterrupted Online Access
- Flexible Time
- Course Presented by Practicing Arbitrators
- Real Time Support Via WhatsApp Group

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

📣 **Now Live: [Introduction to Construction Arbitration](#)**

Free Course — **[Join Now](#)**

Get ready to level up your expertise in global construction disputes!

# Introduction into the exciting world of International Construction Arbitration

A Complimentary Primer Session

A foundational overview and a precursor to our upcoming Full-Fledged Certification

## WHAT WE WILL COVER

-  Learn how to co- relate the techno legal aspect
-  Practical insights on construction claim heads and legal entitlements
-  Introduction to special form of contracts such as FIDIC.
-  This primer course will help mastering the forth coming full fledged course on construction Arbitration

## COURSE DIRECTOR



**RAMASUBRAMANIAN  
AMMAMUTHU**

BE, LLB, FCI Arb  
Arbitrator | Expert Witness | Counsel

### PROFILE HIGHLIGHTS:

- 20+ years as Dual-Qualified Engineer & Lawyer
- Empaneled Arbitrator: DIAC (Dubai), ADGM (Abu Dhabi), WIPO (Geneva)

**UNLOCK YOUR CARRIER IN THE CONSTRUCTION  
ARBITRATION**



**JOIN NOW**

## **CONSTRUCTION DISPUTES ADVISORY SERVICES BY ADROIT:**

1. CONSTRUCTION CLAIM ADVISORY- DELAY & COMPENSATION ANALYSIS
2. FORENSIC DELAY AND COMPENSATION ANALYSIS - EXPERT REPORT
4. EXPERT WITNESS ON DELAY/QUANTUM/CONTRACTUAL MATTERS
5. INDEPENDENT EXPERT REPORTS
6. ARBITRATION COUNSEL - ARBITRATOR
7. MSME DISPUTE RESOLUTION / COMMERCIAL COURTS
8. PROFESSIONAL ADR TRAINING - CONSTRUCTION CLAIMS /  
CONSTRUCTION ARBITRATION / CIArb PATHWAY MODULES / MEDIATION

**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  
Tamil Nadu, India

### **UAE OFFICE**

ADROIT Middle East  
Office No : 201/202, Al Hawaii Tower,  
Near Financial Centre Metro Exit 2  
Sheikh Zayed Road, Dubai - UAE.

### **OMAN OFFICE**

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

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

**SANISH KUMAR**  
DIRECTOR OF OPERATIONS - UAE  
Mail Id: [sanish@adroitpmc.com](mailto:sanish@adroitpmc.com)

**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](#)

## **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](#)