



Indian judiciary continues its support to international arbitration

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SNAPSHOT

The High Court of Delhi, in the case of *Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.*,¹ has continued to show Indian judiciary's support for international arbitrations. This judgement follows the pro-arbitration stance adopted by the Indian judiciary in recent times, and reflects India's commitment to being an arbitration friendly jurisdiction.

The Court has struck down challenges to a petition seeking interim relief in a Singapore seated arbitration. The Court also provided a liberal interpretation to the Arbitration and Conciliation (Amendment) Act, 2015 ("**Amendment Act**"), and held that the provisions of the Amendment Act are applicable to all arbitration related court proceedings instituted after the Amendment Act came into force, even if the related arbitration was commenced before the Amendment Act.

ISSUES BEFORE THE COURT

In this case the parties had agreed to resolve their disputes through arbitration, seated in Singapore. The relevant Joint Venture Agreement ("**JVA**") was governed by Singapore law, and the arbitration was to be conducted in accordance with the rules of the Singapore International Arbitration Centre ("**SIAC**").

After disputes arose between the parties, the Petitioner initiated arbitration proceedings in Singapore. They also filed for appointing an emergency arbitrator. On this application, the emergency arbitrator granted certain interim reliefs to the Petitioner. Subsequently, a consent award was passed by the sole arbitrator, reiterating the reliefs granted in the emergency award.

In due course, the Respondent acted in contravention of the Emergency Award. The Petitioner therefore filed an application before the Delhi High Court, under section 9 of the Arbitration and Conciliation Act, 1996 ("**Act**"), seeking interim reliefs similar to what had been granted under the Interim Emergency Award ("**Petition**"). The maintainability of the Petition was challenged by the Respondent.

After considering the submissions of the parties, the court summarized the issues as:

- a) Whether the provisions of the Amendment Act were applicable to the Petition?
- b) If the answer to the above is in the affirmative, whether the parties had excluded application of Part 1 of the Act, since the arbitration was seated in Singapore and the governing law of the JVA was Singapore law?
- c) Whether the Petitioner can approach the Delhi High Court for interim reliefs, considering it has already obtained an emergency award from the arbitral tribunal?

APPLICABILITY OF THE AMENDED ACT

The primary contention of the Respondent was that, since the Petition was filed before the Amendment Act came into force, the judgment of the Supreme Court in *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*² was applicable in this case and the Petitioner was barred from approaching the courts of India under Part I of the Act, as this was a Singapore seated arbitration.

The Petitioner on the other hand sought to rely on the exception carved out by the Amendment Act by way of a proviso to section 2(2) of the Amendment Act, stating that sections 9, 27, 37(1)(a) and 37(3) from Part 1 of the Act would be applicable for foreign seated arbitrations, subject to an agreement to the contrary.

The Court after setting out detailed reasons, held that the Amendment Act would be applicable to all arbitration-related court proceedings commenced after 23 October 2015, even if the related arbitration is instituted prior to 23 October 2015.

The Court relied on section 26 of the Amendment Act, which provide that the Act will not be applicable to the arbitral proceedings commenced before the Amendment Act, while it would apply *in relation to* arbitral proceedings commenced on or after the commencement of the Amendment Act.

The Court held that the use of the phrase "in relation to" indicates that the legislature intended the second limb of the

¹ O.M.P. (I) (COMM.) 23/2015 & CCP (O) 59/2016, IA Nos. 25949/2015 & 2179/2016

² (2012) 9 SCC 552

provision to have a wider sweep covering all proceedings which are connected to arbitral proceedings, including court proceedings. The Court also referred to recent judgments of the Calcutta High Court³, Madras High Court⁴, and the Bombay High Court⁵ in which a similar conclusion was reached.

EXCLUSION OF PART 1 OF THE ACT, BY AGREEMENT OF THE PARTIES

The Respondent also argued that, even if the Amendment Act was held to be applicable, the proviso to section 2(2) was subject to an agreement to the contrary by the parties. It was contended that the parties in this case had impliedly excluded Part 1 by choosing Singapore as the seat of arbitration, and choosing Singapore law as the governing law of the JVA.

The Court did not accept the contention of the Respondent, and held that the parties had not excluded the application of section 9 in terms of the proviso to section 2(2). While the Court accepted that the exclusion of the provision could be implied or express, it held that the whole purpose of introducing the proviso to section 2(2) was to allow a party to approach courts in India even if it had chosen a foreign seat. Therefore, a mere choice of seat or governing law did not impliedly exclude application of Part 1 of the Act. Exclusion of Part 1 of the Act must be clearly manifested in the agreement between the parties.

ENFORCEABILITY OF EMERGENCY/ INTERIM AWARD, ISSUED IN A FOREIGN SEATED ARBITRATION

The last issue before the court was whether the Petitioner was permitted to approach the Delhi High Court for interim relief, considering it has already obtained an emergency/ interim award in the arbitration.

The Court held that a party is not precluded from seeking interim measures from a court merely because it obtained a similar order from an arbitral tribunal. It further held that the court, in considering a petition under section 9, should not be influenced by the orders of the arbitral tribunal. In this context, the Court also observed that the Act does not contain any provisions for enforcement of an emergency/ interim award issued in a foreign seated arbitration, and therefore, an emergency award was unenforceable in India. Therefore, an application under section 9 is probably the only recourse left for the parties to seek interim measures of protection in India, for foreign seated arbitrations.

CONCLUSION

This judgement reflects the growing positive outlook of Indian judiciary towards arbitrations. Specifically, Indian judiciary's support of the parties' choice of international arbitration.

However, the judgement also highlights the lacuna in Indian arbitration law, for enforcement of emergency awards (both domestic and foreign) and interim awards in foreign seated arbitrations. This issue did not get addressed in the Amendment Act, and it is up to the judiciary to now provide a broader interpretation to allow enforcement. If not, an interim measure of protection, that needs to be executed in India, will continue to need a section 9 application to the courts.

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³ Sri Tufan Chatterjee v. Sri Rangan Dhar, 2016 SCC online Cal 483.

⁴ New Tirupur Area Development Corporation v. Hindustan Construction Company Limited, Madras High Court, A. NO. 7674 of 2016 in O.P. No. 931 of 2015.

⁵ Rendezvous Sports World v. the Board of Control for Cricket in India, Bombay High Court, Chamber Summons No. 1530 of 2015.