

June 2014

**DISPUTE RESOLUTION | Special Issue**

INDIA LEGAL UPDATE is a journal of Rajani, Singhania & Partners which offers a legal perspective on the new business climate and opportunities in India in keeping with the existing laws, current happenings and events in Corporate India.

**In This Issue**

► **Legal Suite**

Enforcement of Foreign Award- Affirmation by Court is NOT a condition precedent  
*By Vikas Goel & Kunal Dutta*

► **Legal Insight**

Ravi Somani v. Union of India  
*By Vikas Goel & Medha Shah*

► **Court Room**

Maintainability of Suit Seeking Anti-Arbitration Injunction  
*By Madhu Sweta & Sumit Gupta*

► **Newsquest**

An Update on the Legal Realm

► **Synapse**

Rajani, Singhania & Partners at a glance

[www.rsplaw.net](http://www.rsplaw.net)

Dear Reader,

Welcome to the Dispute Resolution Special issue of India Legal Update June 2014!

Our lead article 'Enforcement of Foreign Award' gives the readers an insight into the Court's ruling that affirmation of the Foreign Award by the court of the country, where arbitration took place, is not necessary before enforcing the same in India.

In the 'Court Room' section we have discussed the maintainability of a suit seeking anti-arbitration injunction before the High court.

Interestingly Hon'ble High Court of Delhi recently decided on the fairness and constitutionality of re-striking Commemorative Coins that had already been minted in earlier times. The particular case is discussed in the 'Legal Insight' section.

I hope you will enjoy reading this special issue of India Legal Update.

Look forward to your suggestions and feedback at [news@rsplaw.in](mailto:news@rsplaw.in)

Best Regards,



**Vikas Goel**  
Partner  
New Delhi



**New Delhi**

RS&P House,  
P 24, Green Park Extension,  
New Delhi 110016 (India)  
Tel +91 (11) 4747 1414  
Email: [new.delhi@rsplaw.in](mailto:new.delhi@rsplaw.in)

**Mumbai**

Krishna Chambers,  
59 New Marine Line,  
Mumbai 400020 (India)  
Tel +91 (22) 4096 1000  
E-mail: [mumbai@rsplaw.in](mailto:mumbai@rsplaw.in)

**Bangalore**

#401, Prestige Meridian II,  
30, Mahatma Gandhi Road,  
Bangalore 560001 (India)  
Tel +91 (80) 4113 1900  
E-mail: [bangalore@rsplaw.in](mailto:bangalore@rsplaw.in)

**Hyderabad**

#614, Babukhan Estate,  
Basheer Bagh,  
Hyderabad 500001 (India)  
Tel +91 (40) 4210 2424  
E-mail: [hyderabad@rsplaw.in](mailto:hyderabad@rsplaw.in)

O June | 2014



► VIKAS GOEL  
PARTNER  
vikas.goel@rsplaw.in



► KUNAL DUTTA  
SENIOR ASSOCIATE  
kunal.dutta@rsplaw.in

# Legal Suite

By Mr. Vikas Goel and Mr. Kunal Dutta

## Enforcement of Foreign Award-Affirmation by Court is NOT a condition precedent

The Hon'ble Supreme Court in a recent judgment titled Escorts Limited Vs. Universal Tractor Holding LLC upheld the decision of a Single Judge of the Delhi High Court that the principle of 'double exequatur' (meaning double recognition) has no application in view of the change in the Arbitration & Conciliation Act, 1996, which did away with the application of the rule. The Apex Court examined the issue "whether affirmation of the foreign award by the court of the country, where arbitration took place, is necessary before enforcing the same in India". The facts of the case, (briefly stated) were that a dispute arose between Escorts Ltd (Indian Company) and Universal Tractor Holding LLC (US Company). Escorts Ltd through its subsidiary held a 51% stake in a company called Beever Greek Holdings

(BCH). The balance 49% shares of BCH were held by Universal Tractor Holding LLC, a US Company. By an agreement, the said Company sold its shareholding in BCH for a price of Rs.1.2 million dollars to the Petitioner's subsidiary. The purchase price was agreed to be paid in four installments. After payment of the first two installments, Petitioner's subsidiary defaulted in making payment of the balance of the purchase price. The US Company filed a suit in the State of North California, USA. In the proceeding before the USA Court, a consent order was passed whereby both the parties agreed to refer the matter for arbitration. The relevant part of the aforesaid consent order is extracted below:



*"2. The case will be stayed from the date and time of entry of this order until completion of arbitration between the plaintiff and EAMI. Upon the issuance of a decision by the arbitrators, this Court may confirm and enter*

<sup>1</sup> (2013) 10 SCC 717



*judgment upon such decision in accordance with the Federal Arbitration Act and may conduct such further proceedings as are necessary to resolve plaintiff's claims against Escorts Limited."*

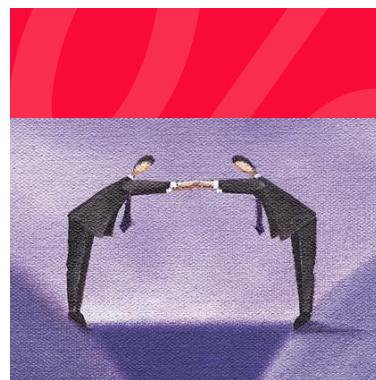
*"8. The plaintiff agrees that entry of this order resolves the defendant's motion to dismiss. The Court shall retain jurisdiction for the purposes of entering an order confirming the arbitration decision pursuant to the Federal Arbitration Act."*

At the arbitration, the US Company succeeded and sought to enforce arbitration award by filing execution proceedings in India. The Petitioner, the Indian Company, objected to the enforcement of the foreign award on the ground that unless the foreign court

confirms the award, the same could not be executed in India. The Petitioner emphasized that Section 48(1)(e) of the Arbitration and Conciliation Act, 1996 requires that the foreign award which is sought to be enforced should have become binding on the parties under the law from which the award has been made. Petitioner cited Section 9 of Federal Arbitration Act of US and the judgment of the Supreme Court of India in the case of ONGC Vs Western Company of North America<sup>2</sup> to buttress the argument that enforcement of the award is to be refused if the award has not become binding on the parties. The Respondent, the US Company, on the other hand, countered Petitioner's arguments by submitting that Section 9 as cited by the Petitioner was relevant for domestic awards and the foreign awards are governed by Section 202 of the Federal Arbitration Act of US. The Respondent submitted that requirement of a double exequatur has been removed in view of the provisions of New York Convention which have been adopted under the Arbitration and Conciliation Act, 1996. The Respondent cited judgments of foreign courts in support of its contention that it was not material for enforcement of a

foreign award that such an award is affirmed by judgment of a foreign court before it could be enforced in India.

The Supreme Court after noticing the contentions of the parties, upheld the order passed by the High Court and dismissed the SLP. The Supreme Court held that Petitioner's submissions to the effect that the Respondent ought to have proceeded for confirmation of the foreign award under the US Law before coming to India for its execution, was not tenable in view of the changed law doing away with the rule of double exequatur. The Supreme Court further noticed that even as per the requirement of US Law, the party who does not want the award to be enforced has to give a three months' notice, which has not been done by the Petitioner and even on that ground, the stand of the Petitioner was not tenable.



*The Supreme Court held that Petitioner's submissions to the effect that the Respondent ought to have proceeded for confirmation of the foreign award under the US Law before coming to India for its execution, was not tenable in view of the changed law doing away with the rule of double exequatur*

<sup>2</sup> (1987) 1 SCC 496



## Ravi Somani v. Union of India

By Mr. Vikas Goel & Ms. Medha Shah

The Hon'ble High Court of Delhi recently discussed and decided on the fairness and constitutionality of re-striking Commemorative Coins that had already been minted in olden times. This article discusses issues put forth before the Hon'ble Court in the case of Ravi Somani v. Union of India and Another (WP (C) 2667/2013 & CM APPL. 5044/2013) and the judgment passed thereon.

### Issues

The main issue put forth before the Hon'ble Court was whether the India Government Mint (IGM) Kolkata could reissue Commemorative coins with exactly same specifications as that of earlier struck commemorative coins or the same was not permissible in law?

### Facts

IGM, Kolkata, a unit of Security Printing & Minting Corporation of India Limited (SPMCIL) published an advertisement in The Times of India on March 31, 2013 inviting applications for bookings of Commemorative Coins on the occasion of the 150th birthday of Swami Vivekananda and 60 years birth anniversary of IGM, Kolkata along with three other Commemorative Coins of Sant Tukaram, hundred years birth anniversary of Dr. S.P. Mukherjee and birth centenary of Lal Bahadur Shastri.

The Commemorative Coins of Sant Tukaram, hundred years birth anniversary of Dr. S.P. Mukherjee and Birth Centenary of Lal Bahadur Shastri had been issued earlier to commemorate the respective memorable events. These coins were now being reissued on the basis of administrative approval of the competent authority, SPMCIL and to meet the public demand of these coins.

Mr. Somani, a coin collector, who claimed to be collecting Commemorative Coins since 1964, since the time IGM had started minting these coins, took objection to the reminting of these coins, on the grounds that the commemorative coins cannot be re-struck and if allowed to do so the originally minted coins would lose their value. To seek some relief in the matter he proceeded to file a Writ Petition against the Union of India and the IGM before the Hon'ble High Court of Delhi.

### Arguments advanced by Mr. Somani

Mr. Somani argued that the Commemorative coins were being printed for the second time with exactly the same specifications as were minted in the years 2001, 2002 and 2004. The only difference was the enhancement of the price.

He submitted that the Commemorative coins are not to be minted regularly or consistently as they are collected for a special purpose and for being scarce and appreciating in value over time, and if the same coin is printed again after almost 10 years, it will carry no value and the coins minted earlier will also lose its value. He contended that if the same commemorative coin is allowed to be minted again the very meaning of the word "commemorative" would become otiose.

## Legal Insight

He further argued that there was absolutely no reason to issue the commemorative coins in the name of Dr. Shyama Prasad Mukherjee, Sant Tukaram and Lal Bahadur Shastri since their centenary was celebrated about 10 years back. The government had earlier released these coins ten years back at a cheaper rate and were issuing the same coins at a higher price. This would indicate that IGM had started a profit oriented business in the name of Commemorative Coins.

His last argument was that commemorative is issued by various countries all over the world in the honour of their people or to celebrate an event but these commemorative coins are never reissued.

He prayed to the High Court to declare that the issuance of the same coins with same specification and date is unjust, unfair, mala fide and unconstitutional and to further issue a Writ, Order or Direction quashing the impugned advertisement given in the Times of India dated March 31, 2013.

### Arguments on behalf of IGM

We represented IGM and on its behalf contended that minting of Commemorative coins falls within the ambit of the Coinage Act, 2011 and all provisions of the said Act had been complied with. It was also submitted that Commemorative coins are always treated as special coins and these coins did not lose their value and credential with the passage of time. IGM submitted that the commemorative coins are re-struck to meet public demand and their decision was based on the opinion given by the Ministry of Law.

IGM further submitted that a writ petition can only be filed against the State for seeking redressal against its actions which are a violation of law and Mr. Somani in his petition had not pointed out what law, if any, had been violated by IGM.

IGM then prayed to the High Court of Delhi to quash the writ petition as Mr. Somani had filed the petition for personal gain and there was no ground for violation of any fundamental rights or larger public policy or any statute and therefore, Mr. Somani is not entitled to any relief claimed as this case is outside the scope and ambit of writ jurisdiction.



Vikas Goel  
Partner  
[vikas.goel@rsplaw.in](mailto:vikas.goel@rsplaw.in)



Medha Shah  
Associate  
[medha.shah@rsplaw.in](mailto:medha.shah@rsplaw.in)

### Conclusion

The Hon'ble High Court of Delhi, agreed with the arguments put forth by the IGM and decided the case in its favour. High Court opined that because of re-minting/ re-striking of Commemorative coins, Mr. Somani can only allege that he suffered a financial loss and cannot make that a ground for declaring that issuance of a commemorative coin with the same specification and date is unjust, unfair, mala fide and unconstitutional or illegal.

The High Court further held that neither any bar nor any prohibition has been found on re-striking of commemorative coins with the same specifications as the original in the Coinage Act, 2011. Also, some of the commemorative coins sought to be issued are in the name of political and social leaders who are icons of this country and, therefore, it cannot be said that coins in their names can be minted only on their birth centenary.



# MAINTAINABILITY OF SUIT SEEKING ANTI-ARBITRATION INJUNCTION

## Court Room

Citation : Himalya International Ltd. Vs. Simplot India Foods Pvt. Ltd (Simplot India LLC) & Anr.  
Case No. : CS (OS) 1231/2013  
Decided On : 17.01.2014  
Court : Delhi High Court  
Counsels : Rajani, Singhania & Partners on behalf of Simplot India LLC.



Madhu Sweta  
Partner  
madhu.sweta@rsplaw.in



Sumit Gupta  
Senior Associate  
sumit.gupta@rsplaw.in

RSP successfully defended Simplot India LLC before the Delhi High Court in a suit filed against Simplot seeking anti-arbitration injunction.

### Facts of the case

Simplot India LLC is one of the world's leading manufacturer & supplier of frozen french fries for the fast food chain. To capture the Indian market, in 2011, Simplot India LLC (Simplot) entered into a Shareholder's Agreement (SHA) with Himalya International Ltd (HIL) and a Joint Venture entity named as Himalya Simplot Private Limited (HSPL) was incorporated. Disputes arose between the JV Partners and both the parties decided to wind up the JV. Pursuant to clause 12.3 of the SHA, Simplot invoked arbitration before Singapore International Arbitration Centre (SIAC) in Singapore. HIL filed a suit seeking a decree for permanent injunction restraining Simplot from invoking arbitration before Singapore International Arbitration Centre.

HIL filed a suit before the High Court alleging that the invocation of arbitration at Singapore was illegal due to non-compliance by Simplot of the pre-arbitral steps as contemplated in the SHA before invoking arbitration, thus rendering the invocation clauses redundant.

### Submission of the Parties

Simplot moved an application under Order VII Rule 11 of the Civil Procedure Code, 1908 seeking rejection of the suit. It was submitted that such a suit has barred under Section 5 of the Arbitration Conciliation Act, 1996 (the Act), which, vide the non-obstante clause prevented judicial intervention in arbitration unless the intervention was provided for under the Act itself. The Act did not vest any right to approach courts for such relief and rather provided under Section 16 that all issues including procedural matters must be raised before the Arbitral Tribunal itself, which had very wide powers to determine its own jurisdiction and decide all such issues. Reliance was placed on the judgment in the case of *Aurohill Global Commodities Vs. MSTC Ltd. (2007) 7 SCC 120*, *Roshan Lal Gupta Vs. Parasram Holdings*,

**157 (2009) DLT 712** and *Clearwater Capital Partners (Cyprus) Ltd. Vs. Gurmehar Singh Majithia & Ors. 189 (2012) DLT 362*.

HIL admitted that they had not challenged the existence or the validity of the arbitration agreement. It was submitted that the judgment relied upon by Simplot pertained to suits where there was a challenge to the validity of the Shareholder Agreement. Reliance was placed on Article 21 of the Act and the judgment of the Hon'ble Supreme Court in the case of *Venture Global Engineering vs. Satyam Computer services Ltd., AIR 2008 (SC) 1061* where it was held that since all the courts below had failed to take into consideration the specific clause in the Shareholders agreement and the conduct of the parties, the orders passed were set aside.

### Decision

The High Court allowed the application filed by Simplot and rejected the suit seeking anti-arbitration injunction. The Hon'ble Court relying upon the aforesaid judgments held that no suit for such a relief can be entertained by the Court when HIL had prior thereto elected to refer the disputes for arbitration pursuant to the SHA. The issues raised by the HIL namely, non-compliance of Clauses 12.3 (a) and 12.3 (b) of SHA, are issues which have to be gone into by the Arbitral Tribunal. Section 5 of the said Act takes away the jurisdiction of the Civil Court and hence, the said statutory provision has to be given effect to. The remedy available to HIL is to approach the Arbitral Tribunal.

The High Court further held that the Supreme Court's judgment in the case of *Venture Global* is of no help to the HIL as in that case the issue was whether the award in question which was a foreign award, Part I of the Arbitration and Conciliation Act would be applicable. There is nothing said in that judgment which would help HIL to support the maintainability of the present suit.

The Court finally rejected the plaint holding that such a relief falls foul of Section 5 of the Act and hence a suit based on such a relief was barred by law.

**SEBI permits acquisition of shares to NRs/NRIs**

A non-resident (NR) [Or a Non Resident Indian (NRI)], who has acquired and continues to hold control in an Indian company in accordance with SEBI (Substantial Acquisition of shares and Takeover) Regulations, has been permitted, under the FDI scheme, to acquire shares of that company on a stock exchange in India through a registered broker.

Source:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=8859&Mode=0>

**RBI simplifies Documentation for NBFC Registration**

The Reserve Bank of India has simplified the documentation for Non-Banking Financial Companies (NBFCs). Now, there will be a common application form for NBFCs, Non-Banking Financial Company-Micro Finance Institutions (NBFC-MFIs), NBFC-Factors and Infrastructure Development Finance- Non-Banking Financial Companies (IDF-NBFCs). The application form for Core Investment Companies (CICs) has been redesigned and there are two checklists of documents – one for registration as Non-Banking Financial Company-International Finance Corporation (NBFC-IFC) and the other for registration as IDF-NBFC.

Source:

[http://www.rbi.org.in/scripts/BS\\_PressReleaseDisplay.aspx?prid=31234](http://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=31234)

...?

# NEWSQUEST

**Corporate Governance in listed entities – Amendments to Clauses 35B and 49 of the Equity Listing Agreement**

The requirements under the Companies Act, 2013 and the rules notified on March 27, 2014 would be applicable to every company or a class of companies (both listed and unlisted). It has been decided to review the provisions of the Listing Agreement with the objective to align it with the provisions of the Companies Act, 2013, adopt best practices of corporate governance and to make the corporate governance framework more effective. The revised Clause 49 would be applicable to all listed companies with effect from October 01, 2014. However, the provisions of Clause 49(VI)(C) as given in Part-B shall be applicable to top 100 listed companies by market capitalisation as at the end of the immediate previous financial year. The revised Clause 35B would be applicable to all listed companies and the modalities would be governed by the provisions of Companies (Management and Administration) Rules, 2014.

Source:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1397734478112.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1397734478112.pdf)

**Applicability of PAN requirement for Foreign Nationals**

Attention of Ministry has been drawn to difficulties being faced by Foreign Nationals while filing Incorporation form (INC-7) due to mandatory requirement of submission of PAN details of intending Directors at the time of filing the application for incorporation. It is clarified that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation. Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned.

Source:

[http://www.taxmanagementindia.com/visitor/detail\\_circular.asp?ID=52817&t=Applicability-of-PAN-requirement-for-Foreign-Nationals](http://www.taxmanagementindia.com/visitor/detail_circular.asp?ID=52817&t=Applicability-of-PAN-requirement-for-Foreign-Nationals)

**Denel (SOC) Ltd** - Represented Denel (SOC) Ltd, a company incorporated in and owned by Government of South Africa. The said company had various contracts with Government of India for supply of defence hardware. Disputes have arisen in all the contracts which led to initiation of multifarious proceedings before different courts as well as arbitration proceedings. Represented Denel in the writ petition filed by them challenging the order of its blacklisting by Government of India. Also, representing Denel in a petition for quashing of FIR lodged by Government of India against the officers of Denel and others. The firm is also representing them before the Debts Recovery Tribunal in proceedings initiated by SBI after encashment of counter bank guarantee.



**Kennametal India Limited** - The firm successfully handled matter before High court of Karnataka preferred by the client challenging order passed by the Special land Acquisition Officer depriving Kennametal from receiving compensation due to frivolous claims by the other parties.



## SYNAPSE

**RCI India Private Limited** - Advising the client on its international travel business, foreign exchange related issues. Also representing the client before consumer courts at various locations in the country and also before the Competition Commission. Also advising the client on day to day legal issues including vetting of agreements, drafting of notices and replies.



**East India Udyog Limited** - Assisted East India Udyog Limited in disputes arising out of Joint Venture contracts with a Nigerian Company in matters pertaining to criminal proceedings, legal notices, complaints etc.



**IDBI Bank** - Representing IDBI bank before the Supreme Court of India in a matter involving disputes arising out of transaction for transfer of immovable property of a company in liquidation.



India Legal Update is published solely for the interests of clients and associations of Rajani, Singhania & Partners. This document is for general guidance only and does not constitute definitive advice. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. You may also subscribe to the e-newsletter through our website [www.rsplaw.in](http://www.rsplaw.in)

Copyright © 2014 Rajani, Singhania & Partners.

**Editor** - Roopa Somasundaran **Design** - Rahul Maurya

**Delhi** - Dipak Rao **Mumbai** - Reena Grover **Bangalore** - Shilpa Shah **Hyderabad** - Tara Sarma