

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.

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Dear Readers,

Welcome to the February 2015 edition of India Legal Update!

In this issue, we have featured two informative articles on the recent reforms in the Labour and Employment law in India. The new Government has ushered significant changes in the labour law front, which we have highlighted in the section 'Legal Suite'.

Rajani, Singhania and Partners successfully represented Intamex S.A, a Company incorporated in Switzerland before the Hon'ble Delhi High Court in a civil suit filed by Camco Multi Metal Ltd. Read about it all in the 'Court Room' segment of the issue.

Under 'Legal Insight' we have discussed a ruling of the Supreme Court on the circumstances in which the Court is free to deviate from the terms of the contract and appoint an independent arbitrator by ignoring the procedure prescribed under the Arbitration and Conciliation Act, 1996.

Hope you find this issue interesting and informative.

Look forward to your suggestions and feedback at info@rsplaw.in

Best Regards,



Dipak Rao
Partner



Dipak Rao

NEW DELHI

RS&P House,
P-24 Green Park Extension,
New Delhi 110016, India
T: +91 (11) 4747 1414
E: new.delhi@rsplaw.in

MUMBAI

Krishna Chambers,
59 New Marine Line,
Mumbai 400020, India
T: +91 (22) 4096 1000
E: mumbai@rsplaw.in

BANGALORE

401, Prestige Meridian II,
30, Mahatma Gandhi Road,
Bangalore 560001, India
T: +91 (80) 4113 1900
E: bangalore@rsplaw.in

HYDERABAD

614, Babukhan Estate,
Basheer Bagh,
Hyderabad 500001, India
T: +91 (40) 4210 2424
E: hyderabad@rsplaw.in



Sunil Kumar
Partner
sunil.kumar@rsplaw.in

Legal Suite

Labour Law Reforms in India

By Sunil Kumar

India is witnessing rapid changes on the labour law front with the coming into power of the new Government since May 15th 2014. The State Government of Rajasthan has taken steps to initiate legislative changes in the law and the Union Cabinet has cleared proposals for making changes in the Central Legislations dealing with labour issues.

The following are some of the key changes for which legislative amendments have been so far initiated in Rajasthan Assembly:

State of Rajasthan

- 1 A Bill has been passed to amend the Industrial Disputes Act to provide that in cases involving retrenchment, lay-off and termination of workers, the requirement of taking government permission shall apply only to Factories/ Industrial establishments employing up to 300 workers as against the existing limit of 100. Pursuant to this law such establishments which employ less than 300 workers would not be required to take prior permission from the State Government before they retrench or lay off workers. The amendments as passed by Rajasthan Assembly have to be approved by the President of India for it to be implemented in the State.
- 2 A Bill amending the Factories Act has been passed to provide that the maximum limit for over-time work be raised to 100 hours as against the present limit of 50 hours.
- 3 Similarly, the Bill for amending the Contract Labour Act has been passed to raise the applicability of the Act to establishments employing more than 50 workers as against the current limit of 20.
- 4 The Factories Act will apply to factories employing 20 workers with the aid of power and 40 workers employed in factories without the aid of power. The present limit is 10 workers with power and 20 without power.
- 5 The Factories Act has also been amended to remove the



restriction on night shift by women working in factories subject to adequate safety for women in transportation facilities.

The above Amendments will be forwarded to the President of India for granting his assent to make the above changes operative as laws in the State of Rajasthan. As these amendments have been made to Central Legislations, which deal with subjects in the

Concurrent List of the Constitution, they need the President of India's assent.

Government of India

The Union Cabinet has approved proposals for amendments to the following three labour legislations:

Factories Act, 1948

Night Work:

Norms for woman factory workers to be relaxed, restrictions to be removed

Overtime:

Limit to be raised to 100 hours from 50 in a quarter

Safety & Health:

Centre to get power to make rules on key aspects of occupational safety and Health

Apprenticeship Act, 1961

Employers:

The provision prescribing imprisonment for employers for not implementing the Act to be removed. A Rs.500 fine per shortfall of apprenticeship month to be imposed.

New Traders:

Companies could add new trade under the Act without the Centre's approval.

AMBIT:

Contractual workers, daily workers, agency workers and casual workers to come under the Act.

Parity:

Holidays, leaves, shift working for apprentices to be made the same as regular workers.

Labour Law Act, 1988

Registers:

The need for small firms to maintain registers under the Scheduled Acts to be lowered to two, very small firms may maintain only one.

E-Recorders:

Records to be maintained in electronic media.

Definition:

Small establishments to mean firms employing between 10 and 40 people.



The Government at the Centre will move appropriate legislative Amendments in the Parliament. These Amendments will pass the above changes into law with a view to allowing greater flexibility to industry at a national level. The changes proposed are not radical in nature but have preferred a gradual approach towards reform so that both industry and labour can adapt to the new environment. Some of the changes like lifting restriction on night shift by women are progressive reforms to allow women equality with men in the work place. Similarly, the move to dispense with documentary records and registers and replace them with E-Records is also in line with the needs of a modern manufacturing sector which wants to move data to electronic media. It is to be noted that labour laws are on the Concurrent List of the Constitution of India and States are competent to pass the necessary laws subject to the President's assent. The larger objective is to reduce government intervention and allow industry greater freedom to manage industrial relations. De-regulation of laws and lesser bureaucracy is also with the object of improving the ease of doing business in India.



In exceptional circumstances, court would be free to deviate from the terms of the contract while appointing arbitrators.

There appears to be a shift from classical notion that High Court while exercising its power under Section 11 of the Arbitration and Conciliation Act, 1996 (“Act”) must appoint the arbitrator as per the contract between the parties. The Supreme Court has held, in fair number of cases, that where the circumstances so warrant the court would be free to deviate from the terms of the contract and appoint an independent arbitrator by ignoring the procedure prescribed under the arbitration agreement between the parties.

The Hon’ble Supreme Court of India has, in a recent judgment passed in the case of **Northern Railway Vs Tripple Engineering Works** reported in **2014 SCC Online SC 620 (Civil Appeal No. 6275 of 2014)** reaffirmed the said position. The Court upheld a decision of Patna High Court appointing a retired judge as an arbitrator to resolve the disputes and differences between the parties to the contracts which provided for appointment of railway officers as an arbitrator. The Hon’ble Apex Court took note of the fact that in the two contracts which were forming subject matter of the proceedings before the court, the arbitrators were appointed in the year 1996. Despite that, arbitration proceedings in one of the contracts were not concluded whereas the same had not even commenced in the other contract. The Apex Court, after taking cognizance of its earlier pronouncement in various cases, held that even if the arbitration agreement was to specifically provide for any particular qualifications of an arbitrator, the same would not denude the court of its power under Section 11(6) of the Act, in appropriate cases, to depart from such provision in the agreement. The Court also noted that in the case of **Northern Railway Admiration Vs Patel Engineering Co. Ltd. (2008) 10 SCC 240**, it has been held that provision of Section 11(8) are not mandatory but only embody the requirement of keeping the same in view at the time of exercise its jurisdiction u/s 11(6) of the Act. The Court also considered another decision in the case of **Union of India Vs Singh Builders Syndicate (2009) 4 SCC 523** wherein a retired judge was appointed as an arbitrator as against the contractual requirement of appointment of specified officer, on the ground that arbitration proceedings had not concluded for a decade making a mockery of the process. Based on the precedence and the facts of the present case, the Court held that no interference was required with the decision of the Patna High Court that has appointed a retired judge as against the contractual requirement of railway officer to be appointed as an arbitrator. Expressing its concern over the inordinate delay in conclusion of the arbitration proceedings, the

Legal Insight

Hon'ble Apex Court held as under:

"In the present case, admittedly the award in respect of disputes and differences arising out of the contract no. CAO/CON/722 is yet to be passed. Though the appellant-Railway has in its pleadings made a feeble attempt to contend that the process of arbitration arising out of the said Contract has been finalized, no material, whatsoever, has been laid before the Court in support thereof. The arbitration proceedings to resolve the disputes and differences arising out of Contract No. CAO/CON/738 has not even commenced. A period of nearly two decades has elapsed since the contractor had raised his claims for alleged wrongful termination of the two contracts. The situation is distressing and to say the least, disturbing. The power of the Court under the Act has to be exercised to effectuate the remedy provided thereunder and to facilitate the mechanism contemplated therein. In a situation where the procedure and process under the Act has been rendered futile, the power of the Court to depart from the agreed terms of appointment of arbitrators must be acknowledged in the light of the several decisions noticed by us. We are, therefore, of the view that no infirmity much less any illegality or failure of justice can be said to be occasioned by the order passed by the High Court so as to warrant any interference. We, therefore, unhesitatingly dismiss this appeal filed by the appellant-railways."

Conclusion

One can therefore safely conclude that while it shall be the endeavor of the court to give due regard to the provisions in the arbitration agreement between the parties, court is not always bound to follow the same. Where circumstances so warrant, court can deviate from the requirements as agreed between the parties, and can appoint independent and impartial arbitrator.



Vikas Goel
Partner
vikas.goel@rsplaw.in



Kunal Dutta
Senior Associate
kunal.dutta@rsplaw.in

Short Note on the case Camco v. Intamex, CS(OS) 2349/2010

Court Room

Rajani, Singhania and Partners successfully represented Intamex S.A, a Company incorporated in Switzerland before the Hon'ble Delhi High Court in a civil suit filed by Camco Multi Metal Ltd. The civil suit was filed by Camco for recovery of Rs.74,32,700/- against Intamex on the basis of purchase contract entered between the parties for supply of non-ferrous goods. The parties had entered into two contracts for this transaction through exchange of correspondences.



Madhu Sweta
Partner

madhu.sweta@rsplaw.in



Saurabh Bindal
Associate

saurabh.bindal@rsplaw.in

The factual background of the case was that Camco submitted its offer to Intamex for supply of ferrous goods. Intamex accepted the offers, vide, sales confirmation which was signed by both the parties and the contract was concluded. The sales confirmation contained an arbitration clause which provided that differences and disputes arising from the Contract were to be subject to the rules and regulations of London Metal Exchange and submitted to it in London. Thereafter, Camco issued Purchase Contract in which it unilaterally inserted a clause conferring jurisdiction upon the Courts in Delhi. The said purchase contract was not signed by Intamex.

Intamex filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 challenging the maintainability of the suit in view of the arbitration clause. Reliance was placed by Intamex on the judgment of "Bhatia International v. Bulk Trading SA". The application was challenged by Camco on the ground that Part-I of the Arbitration and Conciliation Act, 1996 is not applicable to cases of international commercial arbitration. During the pendency of the matter, the case of Bhatia International was overruled by the Hon'ble Supreme Court in the case of BALCO v. Kaiser on 06.09.2012. Intamex filed another application under Section 45 of Arbitration and Conciliation Act, 1996 and withdrew the Section 8 application filed earlier.

The issue for consideration of the High Court was regarding the validity of the arbitration clause. Camco argued that the arbitration agreement between the parties is invalid for the reason that the purchase contract issued by Camco amounts to final understanding on dispute resolution between the parties. Camco further contended that the sales confirmations issued by Intamex were signed subject to the terms of the purchase contract by Camco. Intamex rebutted that the sales confirmation denote the final understanding between the parties, and contended that the Court could scrutinize the arbitration agreement under Section 45 of the Arbitration and Conciliation Act, 1996 only under limited grounds.

The High Court held that the arbitration agreement referred to in the sales confirmation denoted the final understanding between the parties as it was signed by both the parties and subsequently acted upon. The arbitration agreement was a separate agreement from the main contract and, therefore, the change in the arbitration agreement, if any, was to be specifically accepted by the parties. It was further held that the Court was seized of the application under Section 45 of Arbitration and Conciliation Act, 1996 and had to adjudicate upon the invalidity of the agreement, in case the issue was raised before the Court prior to referring to the Arbitral Tribunal. The Court held that once the Court found that agreement was valid, it was equally obligatory for the Court to stay the suit by exercise of inherent powers and pass appropriate orders as to reference of dispute to arbitration. The grounds raised by Camco to dispute the validity of the arbitration agreement were untenable. Hence, the parties were directed to take necessary steps to appoint the Arbitral Tribunal.

Union Government approves ordinance to amend Land Acquisition Act; Changes to come into effect from 01.01.2015



29 December, 2014 - The Union Government has approved the promulgation of an ordinance to amend the Land Acquisition Act, 2013, by including five new categories of projects that would not require prior consent from affected families as well as Social Impact Assessment (SIA). It includes 13 laws that are presently excluded out of the purview of the Act in compensation, rehabilitation and resettlement provisions. These include Land Acquisition (Mines) Act 1885, Atomic Energy Act, 1962, Railway Act 1989, National Highways Act 1956 and Metro Railways (Construction of Works) Act, 1978.

Read More - <http://pib.nic.in/newsite/pmreleases.aspx?mincode=61>

Security for External Commercial Borrowings

January 01, 2015 - Under the extant ECB guidelines, the choice of security to be provided to the overseas lender/supplier for securing ECB is left to the borrower. With a view to liberalising, expanding the options of securities and consolidating various provisions related to creation of charge over securities for ECB at one place, it has been decided that AD Category-I banks may allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender/security trustee, to secure the ECB to be raised/raised by the borrower, subject to certain conditions.

Read More - <http://rbi.org.in/Scripts/NotificationUser.aspx?Id=2402&Mode=0#annex>

RBI resets Interest Rate on FRB, 2017

January 01, 2015 - The rate of interest on the Floating Rate Bonds, 2017 (FRB, 2017) applicable for the half-year (January 02, 2015 to July 01, 2015) shall be 8.66 per cent per annum. The variable base rate for payment of interest shall be the average rate (rounded off up to two decimal places) of the implicit yields at cut-off prices of the last six auctions of Government of India 364-day Treasury Bills held up to the commencement of the respective half yearly coupon period which works out to be 8.32 per cent. The mark-up decided in the auction held on July 1, 2002 was (+) 0.34 per cent (plus 34 basis points). The coupon rate has thus been fixed at 8.66 per cent.

Read More - http://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=32906

Foreign Direct Investment by Foreign portfolio investors

February 03, 2015 - All future investment in government securities by registered Foreign Portfolio Investors (FPIs) shall be required to be made in government bonds with a minimum residual maturity of three years. Further, all future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.

Read More - http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx

Rajani, Singhanian & Partners act on Reliance Industries - Shandong RuYi textile JV

The firm has recently acted as Indian Legal Counsel to Shandong RuYi Science and Technology Group Co Ltd for their participation in the ownership of the Textile Business ("Vimal" Brand Business) of Reliance Industries Limited ("Reliance") on a joint venture basis where Reliance will own a majority 51% stake, with the balance 49% to be owned by CSTT (RuYi). Reliance would initially hive off its textile business (being Reliance group's oldest business) to a special purpose vehicle ("SPV") incorporated by Reliance by way of slump sale. In this SPV, RIL will own a majority 51% stake, with the balance 49% to be owned by CSTT (RuYi). This joint venture with Shandong RuYi will help Reliance reposition the textile business on a high growth plan.

Rajani, Singhanian & Partners act as Legal Counsel to Tintometer India Private Limited

The firm assisted Tintometer India Private Limited in establishing an Internal Complaints Committee (ICC) on conducting inquiry by ICC, evaluation of evidence, drafting of ICC report and following requirements of CPC code.

 SYNAPSE

Essar Steel India Limited appoints Rajani, Singhanian & Partners

The Firm was involved in the US\$2 billion Rupee Dollarisation transaction of Essar Steel India Limited. Dollarising of Rupee loans will lead to significant benefits to Essar Steel, including reduction in interest cost and elongation of debt maturity. This was the first milestone of US\$ 1 billion. The latest dollarisation of debt, which was done in 7-8 transactions, was completed in six months.

IJM Infrastructure appoints Rajani, Singhanian & Partners as Legal Counsel

Legal Counsel to IJM Infrastructure (India) Limited for drafting Opinions on disputes with DMRC. The firm is also involved in filing a petition under Section 9 of the Arbitration and Conciliation Act, 1996 - Injunction on invocation of Bank Guarantee and Injunction on withdrawal from Escrow Account and filing of recovery suit against another infrastructure firm.

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

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