

Arbitration Award Passed After The Prescribed Time Liable To Be Set Aside

The Division bench of the Bombay High Court in the matter of *Bharat Oman Refineries Limited vs. M/s. Mantech Consultants*,¹ has held that if the award passed by the Arbitrator after efflux of period prescribed in the agreement is bad in law and liable to be set aside.

The issue before the Court was whether the award passed by arbitrator after the efflux of time as contemplated in the Arbitration Agreement is valid.

The Bombay High Court relying mainly on the judgement of NBCC Ltd.,² the Supreme Court observed that “*The arbitrator was bound to make and publish his award within the time mutually agreed to by the parties, unless the parties consented to further enlargement of time.*”

The Division Bench of the High Court of Bombay further observed in the case of NBCC Ltd.,

“22. Taking into consideration the arguments of the appellant, it is necessary to mention here that the Court does not have any power to extend the time limit under the Act unlike Section 28 of the 1940 Act which had such a provision. The Court has therefore been denuded of the power to enlarge time for making and publishing an Award. It is true that apparently there is no provision under the Act for the Court to fix a time limit for the conclusion of an arbitration proceeding, but the Court can opt to do so in the exercise of its inherent power on the application of either party. Where however the arbitration agreement itself provides the procedure for enlargement of time and the parties have taken recourse to it, and consented to the enlargement of time by the arbitrator, the Court cannot exercise its inherent power in extending the time fixed by the parties in the absence of the consent of either of them.”

The Bombay High Court held that the Arbitration Agreement contemplated a time limit therefore the time does extend either by the conduct of one of the parties or one of the parties and the Arbitrator and based upon the same dismissed the Appeal and held that (a) the Arbitration Agreement prescribes a period within which the Award was to be passed and (b) the said period has expired and has not been extended by mutual consent of the parties, - the award passed by the Arbitrator after efflux of such period is bad in law and contrary to the agreed terms by which the parties as well as the Arbitrator are bound.

Another Judgement one must bear in mind is the Judgment of the Hon'ble Delhi

High Court in the case of *Peak Chemical Corporation Inc. vs. National Aluminium Co. Ltd.*, wherein the Hon'ble Delhi High Court had held that it would not be in the interest of justice to set aside the Award on the ground of delay alone.

Thus, what emerges from the above is :-

a) If the Arbitration Agreement contemplates a time bound schedule for passing of the award and the award is passed beyond the period prescribes, then it is likely to be set aside;

b) If the Arbitration Agreement stipulates no time frame for passing of the award and if the award is passed after an inordinate delay, the Court on the ground of delay alone cannot set aside the award and has to look into the other grounds under Section 34 of the Arbitration and Conciliation Act, 1996 also whether the award is against the Public Policy of India to set aside the award.

1 Appeal No. 702/ 2011 in Arbitration Petition No. 477 of 2006

2 (2010) 2SCC 385

3 2012 2II AD (DEL) 304

CCI clears state oil firms of cartelisation charges

Anti-trust regulator , Competition Commission of India (“**CCI**”) has cleared state-owned oil marketing firms – Bharat Petroleum Corporation Limited (**BPCL**), Hindustan Petroleum Corporation Limited (“**HPCL**”), and Indian Oil Corporation (“**IOC**”) of charges that they formed a cartel and fixed the price of bio-diesel, saying that they have not violated provisions of the competition law.

Royal Energy had alleged that since its product was causing a threat to diesel supplied by IOC, BPCL and HPCL, they started informing their clients that they would be supplying bio-diesel blended petro-diesel to them directly. It was also alleged that as per purchase policy of OMCs, they were supposed to purchase bio-diesel at a pre-determined rate, which at the time of filing the information was Rs 26.50 per litre, while price of bio-diesel sold independently by the informant was Rs 31 per litre.

After considering a complaint from Royal Energy that the OMCs had collectively decided to procure bio-diesel at a lower price, the CCI said it found that since the price of diesel was under the control of the Government, PSU OMCs were not allowed to fix, determine and enhance the retail selling price of diesel on their own. Taking into account the totality of circumstances and the constraints under which PSU OMCs are functioning, the Commission agreed that, the conduct of the OMCs in this case cannot be said to be anti-competitive.

Civil Aviation may be out of CCI ambit

The civil aviation sector could be out of the ambit of the Competition Commission of India, once the proposed Civil Aviation Authority (“**CAA**”), an independent regulatory authority for the sector, is put in place. The CAA would have the final authority and powers on economic regulations and consumer protection. The CAA has been mooted to overcome the constraints faced by regulator Directorate General Of Civil Aviation in terms of recruitment and retention of technical manpower and inability to quickly address ongoing operational issues due to lack of adequate administrative and financial authority. Legal experts say that though the proposal to set up the CAA is at a formative stage, it depends on the kind of teeth that the regulator is given.

Civil Aviation may be out of CCI ambit

In February Bharatmatrimony.com complained that Google had abused its dominance by engaging in discriminatory and retaliatory practices relating to AdWords. The CCI has launched an anti-trust probe into Google's online advertising practices, deepening the Internet giant's legal woes in the country.

AdWords, which earned the bulk of Google's \$36.5-billion advertising revenues worldwide in 2011, sells keywords to companies which appear in the site's search engine, allowing them to promote their product online. Sources at Bharatmatrimony.com said that the company had filed the complaint over AdWords' sale of keywords relating to Bharatmatrimony.com to its matchmaking rivals such as Shaadi.com

ALTERNATIVE INVESTMENT FUND

The Securities and Exchange Board of India (“**SEBI**”) notified Alternative Investment Funds Regulations (“**AIF Regulations**”) on 21st May 2012, thereby repealing the SEBI (Venture Capital Funds) Regulations, 1999, with a view to monitor unregulated funds, encourage formation of new capital and consumer protection thus increasing the market efficiency. AIF Regulations are the outcome of the Concept Paper issued in August 2011 which was drafted to shift SEBI's regulatory strategy from the existing facilitative regime to a mandatory regime.

A significant requirement of the regulation is that AIFs are barred from raising capital from investors unless they obtain registration with the SEBI. The following types of private pools of capital will be brought within SEBI's mandatory registration regime: (i) Venture Capital Funds; (ii) Private Investment in Public Equity Funds; (iii) Private Equity Funds; (iv) Debt Funds; (v) Infrastructure Equity Funds; (vi) Real Estate Funds; (vii) Small and Medium Enterprises Funds; (viii) Social Venture

Funds; (ix) Strategy Funds; and (x) Residual category (including hedge funds).

Applicability: AIF Regulations are applicable to any fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate, which collects funds from investors, whether Indian or foreigner for investing in accordance with a defined investment policy. Mutual funds under the SEBI (Mutual Funds) Regulation, 1996 and SEBI (Collective Investment Schemes) Regulations, 1999, Family trust, ESOP trusts, employee welfare trusts, collective investment schemes, holding companies etc. are expressly excluded.

Existing VCFs shall continue to be regulated by the VCF Regulations till the existing fund or scheme managed by the fund is wound up and such funds are not permitted to launch any new scheme or raise any capital commitments beyond the original targeted corpus unless they seek registration.

Prerequisites before raising fund: Before raising any funds, AIFS will be required to state its investment strategy, investment purpose and business model in an information memorandum which is to be filed with SEBI at least 30 days prior to the launch of the scheme giving material detail about the AIF. The procedure of filing an information memorandum before raising funds is somewhat similar to that prescribed for companies coming out with public offers.

Categories of funds: Based on the objectives sought to be achieved, the AIFs have been classified into three categories. Category I include those AIFs for which certain incentives or concessions might be considered by SEBI or Government of India or other regulators in India and which shall include Venture Capital Funds, SME Funds, Social Venture Funds, and Infrastructure Funds. Category II includes those which do not fall in Category I and III and which does not undertake leverage or borrowing other than to meet day-to-day operational requirements and cannot engage in derivatives investments. Category III has those AIFs including hedge funds which trade with a view to make short term returns and may employ leverage including through investment in listed or unlisted derivatives.

Key conditions: Under the AIF Regulations:

- The Alternative Investment Fund shall not accept from an investor an investment of value less than 10 million
- AIF shall have a minimum corpus of 200 million.
- The manager or sponsor for a Category I and II AIF shall have a continuing interest in the AIF of not less than 2.5% of the initial corpus or 50 million whichever is lower. For Category III Alternative Investment Fund, the continuing interest shall be not less than 5% of the corpus or 100 million, whichever is lower.
- Schemes may be launched under an AIF subject to filing of information memorandum with the Board along with applicable fees.

- Category I and II AIFs shall be close-ended and shall have a minimum tenure of 5 years. However, Category III AIF may either be close-ended or open-ended.
- AIFs shall have maximum 1000 investors.

Conclusion: The implementation of AIF Regulations is a step in a progressive direction and should go a long way in steering the growth of the industry, while at the same-time balancing the need for managing risks to the investors and ensuring the stability of the financial system. However, keeping the market exigencies in the mind, it is yet to be seen as to how these regulations mould themselves to promote the activities of the players in the market.

The Copyright (Amendment) Bill, 2012 gets a nod from Rajya Sabha

The Copyright (Amendment) Bill, 2012, (“**Bill**”) first introduced in 2010, which seeks to protect owners of literary or musical works and has now been duly passed by the Rajya Sabha and proposed be presented to the Lok Sabha before it becomes law, much to the delight of singers, writers and composers. The Bill which is to provide exclusive and moral rights to performers in conformity with the World Intellectual Property Organisation's (“**WIPO**”) Copyright Treaty and Performances and Phonograms Treaty, has divided much of the showbiz world. The Bill amends the Copyright Act, 1957, and makes special provisions for those whose work is used in films or sound recordings (lyricists or composers, for instance). Rights to royalties from such works, when used in media other than films or sound recordings, shall rest with the creator and can only be assigned to heirs or copyright societies which act in their interests. The Bill ensures to provide authors, or their representatives, the right to claim damages against use of their work (while under copyright). Under the Bill, the new royalty would be (a) 50 percent for music label; (b) 25 percent for producer; and (c) 25 percent to be split between the lyricist and the composer. Currently, 100 percent goes to the music label.

Major Highlights of the Bill

- Expands definition of copyright to protect owners of literary or musical works.
 - Also protects performers and allows them to make sound or visual recordings of their performances and reproducing them in any medium.
 - Copyright of a film currently rests with the producer for 60 years. The bill extends copyright to a director as well, but for 70 years.
 - Makes special provisions for those whose work is used in films or sound recordings (e.g. lyricists or composers).
 - Allows for the production of copyrighted work in special formats (such as Braille), for use by persons with disability, without infringing copyright
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India and China are signatories to the NY Convention, which implies that Indian courts should not have constraint in enforcing arbitral awards made in China and Hong Kong.

However, under the Indian Arbitration and Conciliation Act 1996, India will only apply the New York Convention to the recognition and enforcement of awards made in territories that the Indian Central government has declared in the Indian Official Gazette to be territories to which the New York Convention applies.

The Central Government has notified on 19th March, 2012 the People's Republic of China (including Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China) as a Convention Country and henceforth award passed by the Arbitrators in these jurisdiction will be considered as a foreign award and will be enforceable in India. This will help remove any concern that Hong Kong awards may not be enforceable under Indian law, and will boost Hong Kong's attractiveness as a seat in arbitrations involving Indian parties.

International Contribution

Document: RBI Continuing To Manage Inflation

In taking a look at the state of the Indian economy, Hiren Rawal, Senior Private Banker at ABN AMRO Jersey, finds that inflation is still running the show.

» [download document \[pdf, 275 KB\]](#)

News 10 @ a glance

Supreme Court Judge elected as the judge of the International Court of Justice

India's nominee Justice Dalveer Bhandari of the Supreme Court was on Friday elected to the post of Judge of the International Court of Justice in the elections held in New York, United States.

Amendment to Divorce laws

The Government has made some

crucial amendments to divorce laws, giving women half a share in the husband's residential property irrespective of whether it was acquired before or during the marriage. The amendment was cleared by the Union Cabinet on 17th May 2012.

Copyright Violation - Blocked access to the torrent websites

All of India's major Internet Service Providers have blocked access to all leading torrent websites like The Pirate Bay and Torrent Reactor, and even video and link sharing ones like Vimeo, Dailymotion, Pastebin and Xmarks. This is based on a '*John Doe*' injunction from the Madras High Court obtained by a film industry outfit in Chennai seeking protection against copyright violations of the Tamil film '3'.

Acquisition of stake by Bharti Airtel

Sunil Mittal led Bharti Airtel announced that it will acquire 49 per cent stake in Qualcomm's Inc's fourth-generation (4G) broadband venture in the country for \$165 million. Bharti Airtel proposes to buy a 26 per cent stake held by two Indian partners in the Qualcomm broadband venture and the remaining by subscribing to fresh equity, the company said in statement.

Enforcement of the gas sale and purchase agreement with

Turkmenistan

The US-backed Turkmenistan-Afghanistan-Pakistan-India Gas Pipeline Project is no longer a pipe-dream like the Iran-Pakistan-India project, as India inked the gas sale and purchase agreement with Turkmenistan on 23rd May 2012.

Amalgamation of Tata Chemical's subsidiary with itself

Tata Chemicals will amalgamate its wholly owned subsidiary, Wyoming 1 (Mauritius), with itself. This is consequent to the sanction given by the Bombay High Court for the scheme of amalgamation on May 4. As Wyoming 1 is a wholly owned subsidiary, number of shares of Tata Chemicals will be issued and allotted in exchange of the equity shares of Wyoming 1. All assets and liabilities of Wyoming 1 stands transferred to and vested in the company. The scheme is with effective 23rd May 2012.

Judgment in the Indraprastha Gas Ltd's ("IGL") and the Petroleum and Natural Gas Regulatory Board ("PNGRB") case

The Delhi High Court reserved its judgment on Indraprastha Gas Ltd's ("IGL") and the Petroleum and Natural Gas Regulatory Board ("PNGRB") case. IGL had challenged a PNGRB order on network tariff and compression charge issued on 9th April 2012.

IGL has decided not to change its tariff structure until the court gives its verdict. Similarly, PNGRB will not take any coercive action against IGL. According to the PNGRB order, IGL can charge Rs 38.58 for every million British thermal unit (a measurement of heat value of fuels) for transmission of gas, against Rs 104.05 that it charges now. Also, CNG compression tariff was pegged at Rs 2.75 per kg. IGL charges Rs 6.66. These rates are to be retrospectively applicable from April 1, 2008.

Protection of Children from Sexual Offences Bill, 2011 passed by the Lok Sabha

The Lok Sabha on 22nd May passed the Protection of Children from Sexual Offences Bill, 2011. The Bill, already passed by the Rajya Sabha, will protect children below 18 from sexual abuse, and seeks to set up special courts for speedy trial of cases against them and provide stringent punishment extending up to life term for offenders.

Google officially owns the Motorola Mobility

Google CEO Larry Page on 22nd May, 2012 announced that his company now officially owns Motorola Mobility. The acquisition price was \$40 per share in cash. The deal is expected to "enable Google to supercharge the Android ecosystem and will enhance competition in mobile computing.

Motorola Mobility is expected to remain a licensee of Android and Android will remain open. Google said it plans to run Motorola Mobility as a separate business.

NMDC and Rashtriya Ispat Nigam Ltd plans to invest in the joint venture project

NMDC and Rashtriya Ispat Nigam Ltd will float an equal joint venture to set up a 450 km slurry pipeline to transport iron ore fines and a pellet plant at Vishakapatnam. The two companies plan to invest a total of Rs 2200 crore in the joint venture project. The pipeline between NMDC's Bailadila mines in Chattisgarh and Visakhapatnam will have a capacity to transport 10 million tonnes per annum (mtpa) and will entail a cost of Rs 1200 crore including the filtration plant. Another Rs 1,000 crore is being planned to invest in the 4 mtpa pellet plant.