

Chloro Controls (I) P. Ltd. (Appellant) v. Severn Trent Water Purification Inc. & Ors. (Respondent)¹ - Another landmark Judgement by the Hon'ble Supreme Court of India.

This landmark judgement will completely change the way in which international commercial arbitrations would now function. The Supreme Court of India was called upon to answer and interpret 'the expression 'person claiming through or under' as provided under section 45² of the Arbitration and Conciliation Act, 1996 ("Act").

The brief facts of the case is that there was a joint venture agreement ("the principal agreement") between an American company (Capital Controls (Delaware) Company Inc.), an Indian company (Chloro Controls India Pvt. Ltd.) and the director of the Indian company (Mr. M.B. Kocha). The principal agreement also provided for several ancillary agreements required to be entered into between the Indian company, the group of companies to which the American Company belonged (the Severn Trent Group) and the director of the Indian company, amongst others. While the principal agreement contained an arbitration clause, a few of the ancillary agreements did not. Further, not all the Respondents in the original suit were parties to the arbitration agreement.

The Supreme Court relying upon jurisprudence internationally stated that there were two distinct schools of thought existing. One espousing a pro-arbitration approach, which even allowed non-signatory parties to be subject to arbitration, if the facts in the case justified the referral to arbitration, while the other school of thought had a narrow vision and adopted a strict approach providing that only if the subject matter of the dispute was covered by the arbitration clause and that the parties to the dispute were parties to the arbitration agreement could a matter be referred to arbitration.

The court held that if the Court is satisfied that there is a valid and enforceable arbitration agreement, then the expression 'person claiming through or under' provided under Section 45 of the Act indicates that the section does not refer to parties to the agreement but persons in general and if a party is able to establish that a person is claiming through or under the signatory to the arbitration agreement then the matter could be referred to arbitration. The court has clarified that such a reference can be made in only exceptional cases to justify a reference.

Following were certain important factors which the court provided would have to be considered while dealing with such an issue:

- Direct relationship to the party signatory to the arbitration agreement;
- Direct commonality of the subject matter;

- Agreement between parties being a composite transaction;
- Transaction should be of composite nature where performance of principal agreement may not be feasible without the aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute; and
- Whether a composite reference of such parties would serve the ends of justice.

The court thereafter deliberating upon the various agreements executed by the parties pointed out that they all formed part of a composite transaction where the Principal Agreement was similar to a mother agreement and the other agreements were executed were ancillary and for effective implementation of the Principal Agreement.

Finally the Court held that in facts of this case, the parties could be referred to arbitration even though certain parties were not signatories to the Principal Agreement.

This judgment is a clear indication of the robust pro-arbitration jurisprudence emerging in India. One of the major hurdles of foreign investors was the expensive and time consuming dispute resolution mechanism and arbitration was adopted as an answer to the problem. The judgment now makes it clear that in situations of composite transactions, transactions involving group companies, arbitration clauses in the principal agreements would be acted upon in an international commercial arbitration.

The Court clarified that the decision as laid down in the case of Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya³, was not to be considered as that case arose under section 8 of the Act, and not under section 45. It also stated that unlike the facts in Sukanya Holdings where the subject-matter of the suit was broader than the subject-matter of the arbitration agreement, the present case involved a principal agreement and some ancillary agreements with a composite transaction between the same parties or parties covered by section 45 of the Act.

Thus, the test adopted by the Court was whether applying the broad wording of section 45, the issue could be decided in its entirety by the arbitral tribunal. It noted: “Even if different forums are provided, recourse to one of them which is capable of resolving all their issues should be preferred over a refusal of reference to arbitration.”

1. CIVIL APPEAL NOS. 7135-7136 OF 2012 (Arising out of SLP (C) No.26514-26515 of 2011)

2. Section 45. Power of judicial authority to refer parties to arbitration.-

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of

which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

3. 2 (2003) 5 SCC 531

Kapil Wadhwa and Others V Samsung Electronics Co Ltd & Another - Judgment allowing parallel imports in India

Introduction

The Division Bench of the Delhi High Court recently held that parallel imports are allowed under Indian laws and does not amount to infringement of Trademark of the registered proprietor. The said judgment specified that the Indian Trademark laws recognizes the principle of international exhaustion, which implies that goods lawfully acquired abroad can be imported and sold in India. Further, such acts did not require any intimation or permission of the Trade Mark owner and squarely falls outside the ambit of an infringement action.

Facts of the case

The suit was originally filed by the Respondents ('Samsung Electronics Co Ltd' and 'Samsung India Pvt Ltd') whose complaint was that the Appellants (Kapil Wadhwa & Others) were importing Samsung printers from foreign markets and selling them in India without their consent whereby infringing their registered trademark's rights in India. The Appellant had contended before the Single Judge that since the goods were lawfully acquired by them abroad, they were entitled to import such goods and sell them anywhere in the world including India. The Single Judge disagreeing with the Appellant's contentions held that India follows the principle of national exhaustion and therefore importing and selling goods under a trademark, without the consent of the authorized licensee is not permitted in India. The Appellants thereafter appealed to the Division Bench of the High Court which in turn reversed the decision of the learned Single Judge and gave a verdict in favour of parallel imports.

Issues

The key issues before the Division Bench of the High Court was whether the trademark law in India follows the principle of national exhaustion or international exhaustion and whether a person who lawfully acquires and imports products from foreign market has the right to sell those products in India without amounting to infringement of Trademark of registered proprietor in India. The division bench came to an authoritative conclusion after carefully examining the provisions of

Analysis

Section 29 of the Trademark Act deals with infringement of trademark and a clear reading of Section 29(1) and Section 29(6) together renders the act of import of goods without the authorization of registered proprietor as infringement of Trademark. However, Section 29 of the Act cannot be read in isolation as Section 30 of the Act operates as an exception to Section 29. According to Section 30(3) of the Act, sale of goods by a non-proprietor is permitted where the goods are 'lawfully acquired' by that non-proprietor after they are put 'on the market' by the proprietor. The Division Bench while interpreting section 30(3) of the Trademark Act held that 'the market' does not particularly refer to the domestic market as opined by the Single Judge but it refers to the "international and/or domestic market", whereby approving the contention that importing and selling goods lawfully acquired in the foreign market does not constitute infringement of trade mark of the registered proprietor.

The Division Bench further held that the expression 'in any geographical area' in the statement of objects and reasons of the Trademark Bill, 1999 clearly envisages that the legislative intent was to recognize the principle of international exhaustion in Indian trademark law.

Hence, import and sale of goods are permitted in India if the goods are lawfully acquired in any foreign country.

However, the Division Bench in strict consideration of customers' interest, directed the importers to prominently display in their place of business that no warranty or after sale services are offered by the registered proprietor of the goods as the goods are imported from foreign markets. Also the Division Bench restrained the defendants from mettagging their website to that of Samsung.

Conclusion

This judgment clears the stand on legitimacy of parallel imports in India and will have a remarkable impact on the retail market in all commodities which includes food industry. This may not be the last we may have heard on the issue of parallel imports as many large companies who will be affected in India would probably approach the Supreme Court to bring conclusiveness to this contentious issue.

ECB's by Small Industries Development Bank of India (SIDBI)

SIDBI is included as eligible borrower for availing ECB for on-lending to MSME

sector but is subject to such borrowing being INR or foreign currency. ECBs including outstanding ECBs, up to 50 per cent of their owned funds, will be under the automatic route and beyond 50 per cent, will be under the approval route, subject to a ceiling of USD 500 million per financial year.

[» Source](#)

National Telecom Policy, 2012 Migration of current version of Internet Protocol IPv4 to IPv6

The Government of India has envisaged providing "Broadband on Demand" by 2015 in the recent National Telecom Policy (NTP) emphasizing the role of Internet in socio-economic development of the country.

[» Source](#)

Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2012

As per the Amendment, the successful bidders of 2G spectrum re-auction can avail foreign currency borrowing in the nature of bridge finance for the purpose of making upfront payment towards spectrum allocation and refinancing the same by making fresh borrowing in foreign exchange. Such borrowings can also be availed from the ultimate parent company.

[» Source](#)

Amendment in Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards

Amendment to certain instructions has been made after several representations received from Full Fledged Money Changers (FFMCs) and taking into account the procedure followed for money changing in other countries.

[» Source](#)

International Contribution

Document: Modestly Better

With positive signs at a global level and reforms in India gradually sinking in, Hiren Rawal, Senior Private Banker at ABN AMRO Jersey, stresses that cautious optimism is the order of the day...

[» download document \[pdf, 350 KB\]](#)

Fall in tourist inflow led the Govt. to rethink.

A decision to review the visa restrictions was taken by the Prime Minister's Office (PMO) in January 2012 after concerns were raised by the tourism ministry that the negative perception following the move had affected flow of tourists to India. The order dated November 23 issued by the ministry of home affairs said, "The provision relating to the two-month gap between two visits of a foreign national to India on a tourist visa has been reviewed by the government. It has now been decided to lift the restriction of two-month gap on re-entry of foreign nationals coming to India." The Indian government eased restrictions on tourist visas, which had mandated a two-month gap between consecutive visits by foreign nationals. However, nationals of Afghanistan, China, Iran, Pakistan, Iraq, Sudan, Bangladesh, foreigners of Pakistani and Bangladeshi origin and "stateless persons" will continue to come under the 60-day gap rule.

GMR Maldives row: Maldives wins the Court Case

Maldives has won a court case allowing it to cancel a \$511 million airport development contract with GMR Infrastructure, clearing the way for it to take over its main airport. The contract for Ibrahim

Nasir International Airport, agreed in 2010, was the largest foreign investment in the south Asian tropical island chain famous for its luxury beach resorts. But it has become embroiled in a bitter political argument, threatening to cloud foreign investor sentiment towards a country seeking overseas cash for many of its tourism projects.

SC ticks off Centre on info panel review plea

The Supreme Court asked the government to clearly spell out the legal points on which it has sought review of the court's verdict making it mandatory to appoint only judges as heads of Central and state information commissions. During the last hearing, the apex court had said its verdict for appointment of people from judicial background in information panels was not aimed at rehabilitating judges but to make the panels independent of government's influence.

Delhi HC asks Cipla to prove its drug doesn't infringe Roche patent

A division bench of the Delhi high court has asked Cipla Ltd to prove that its anti-lung cancer drug doesn't infringe a patent belonging to Swiss drug maker F. Hoffmann-La Roche Ltd for its drug Tarceva. The division bench issued a notice to the Indian generic drugmaker on an appeal by Roche challenging a

decision by a single bench of the same court in September acquitting Cipla of any patent infringement. Roche was granted a patent for the drug, known as Erlotinib in generic terms, by the Indian patent office in 2007. Cipla launched a generic version of the drug in 2009 after challenging the validity of the patent in the patent office. The Delhi high court had in September said Cipla's product was a variant of Erlotinib and hence didn't directly infringe Roche's patent.

Bank Finance for Purchase of Gold

The Reserve Bank has advised banks not to grant any advances for purchase of gold in any form, including primary gold, gold bullion, gold jewellery, gold coins, units of gold exchange traded funds and units of gold mutual funds. Banks may, however, provide finance for genuine working capital requirements of jewellers. The scheme of gold (metal) loan detailed in the Reserve Bank's circular of December 31, 1998 as amended from time to time, will continue to be in force.

SEC charges Four Indian Brokerages for violation

US market regulator Securities and Exchange Commission (SEC) has charged four Indian brokerages — Ambit Capital, Edelweiss, JM Financial and MotilalOswal for providing brokerage services to

institutional investors in US without being registered with the SEC as required under the federal securities laws however they agreed to settle the charges after a payment of more than \$1.8 million (about Rs 10 crore). Besides, the SEC is further probing the role of other companies, which may include some from India, for potential violation of similar nature.

All IPO disclosures legally binding on companies: SEBI

A listed company is legally bound to abide by commitments made in its public offer documents, even if they do not fall under mandatory requirements and post- IPO are claimed to have been made involuntarily. The change was made because it is significant from the point of view of investor protection. SEBI further added that a Prospectus is a document with legal validity and the company is legally bound to abide by the disclosures made therein.

Chidambaram asks RBI to start issuing new bank licences

Finance Minister P Chidambaram made it clear to RBI that it has the powers to issue new bank licences. The Finance Minister said amendments to the Act are simply to formalise powers that the Central bank is seeking and bring them together into the legislation.

RBI rules out introduction of

Islamic Banking

Reserve Bank of India ruled out introduction of Islamic banking in the country but said other methods for channelizing funds based on the principles of Islamic law can be looked at. The introduction of such banking was not possible in the absence of a separate law for Islamic banking.

SEBI to get tough with companies with high promoter holding

About 200 listed companies with promoter stake of more than 75 per cent are set for some tough talk from SEBI, which is contemplating on options including monetary penalties and eventual delisting of non-compliant entities. The deadline for all private sector listed companies to bring down their respective promoter shareholdings to 75 per cent or below is now just seven months away and the regulator has begun the process of identifying those entities that have initiated any process for adhering to this requirement. The regulator will also inform these companies about the potential penalties and other regulatory actions they might face in case of non-compliance.