

INDIA JURIS

Indian Supreme Court upholds choice of foreign seat by an arbitral institution

(IMAX V E-CITY)¹

The Indian Supreme Court on 20th March 2017 considered whether to maintain a petition challenging a foreign award under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) in India, under the pre-BALCO regime, which permits challenges to foreign awards in India unless the parties have expressly or impliedly excluded the operation of Part I of the Act. The Court held that the choice of institutional arbitral rules (ICC Rules in this case) and the consequent choice of seat by the arbitral institution (London) operated as exclusion of Part I of the Act, thereby ousting the jurisdiction of Indian Courts to maintain and entertain a challenge to the foreign award. The Court in allowing the appeal dismissed the order of the Bombay High Court.

The Indian Supreme Court's decision is a peculiarly interesting pro-arbitration judgment:

- An arbitral institution's choice of seat, made in consultation with parties, was upheld as a valid and binding choice of seat in the absence of an express choice of seat

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Information Utility Guidelines as notified by the Insolvency and Bankruptcy Board

With effect from the 1st of April 2017, the Insolvency and Bankruptcy Board of India has put forward guidelines that provide for the registration and regulations of the IUs.

- Some of the guidelines are as follows:
 1. It must be a public company with a minimum net worth of 50 Crores.
 2. More than half of the directors of the board must be independent directors.
 3. Persons residing outside India should not hold more than 49% of its voting share or paid up equity capital.
 4. The control of IU must not be with persons registered outside India.

WORLD PRACTICE

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