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INDIAN ARBITRATION LAW REVIEW

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IALR Indian Arbitration Law Review

CONSENT OF THE PARTIES IS A FUNDAMENTAL PRINCIPLE OF ARBITRATION: DELHI HIGH COURT

The Delhi High Court, on request of the Plaintiff, restrained the Defendant from going further with arbitral proceedings before the learned Sole Arbitrator appointed by the CNICA, Chennai, in PCA Case No. AA773 titled *Midima Holdings Limited (Malawi) v. Techfab International Private Limited (India)*. The Court stated that since arbitration is a remedy that is founded on the consent of parties, the agreed procedure for the appointment of an arbitrator must be scrupulously followed. This, however, does not appear to have been done in the present case as the appointment of arbitrator was not done in accordance with the agreement and with the consent of the parties.

ARBITRATION IS A REMEDY IN ADDITION TO THE SARFAESI ACT: MADHYA PRADESH HIGH COURT

In addition to the remedies provided by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), the Madhya Pradesh High Court in Jabalpur recently ruled in the case of *Umesh Kumar Gupta v. The Collector, Rewa District*, that a financial institution may also use the provisions of the Arbitration and Conciliation Act, 1996 ("A&C Act") for the resolution of disputes involving non-payment of amounts. The Court decided that the SARFAESI Act's Sections 35 and 36 made it evident that the A&C Act provisions are available.

The Bench further stated that the Apex Court had construed the phrase "any other law for the time being in force" to imply any other law functioning in the same sector, or the field occupied by the SARFAESI Act, in *Vishal N. Kalsaria v. Bank of India*. The Court cited the ruling of the Apex Court in *M. D. Frozen Foods Exports Private Limited v. Hero Fincorp Limited*, which established that arbitration is an adjudicatory process while SARFAESI actions are enforcement proceedings.

ALLAHABAD HIGH COURT QUASHES SECTION 34 ORDER OF THE DISTRICT COURT STATING THAT REDUCTION OF INTEREST IS NOTHING BUT MODIFICATION OF ORIGINAL ARBITRATION AWARD.

The Allahabad High Court in *Sushil Kumar Mishra v. State Of U.P.* stated that the District Court exercising jurisdiction under Section 34 of the A&C Act is not authorized to alter an award. The Court held however, that an award may be partially severed and overturned, as long as it does not impact the remaining portion of the award

Based on the ruling in *Larsen Air Conditioning and Refrigeration Company v. Union of India*, Justice Shekhar B. Saraf held that the reduction of interest is illegal and goes against the principles set by the Supreme Court. The reduction of interest is essentially a modification of the original arbitration award.

DIRECTORS OF A COMPANY CANNOT BE MADE PARTIES TO ARBITRATION THROUGH 'GROUP OF COMPANIES' DOCTRINE: DELHI HIGH COURT

The High Court of Delhi in *Vingro Developments Pvt Ltd v. Nitya Shree Developers Pvt Ltd* ruled that directors of a company cannot be made parties to an arbitration under the 'Group of Companies' doctrine. The relationship between the company and its directors is defined as that between a 'Principal' and an 'Agent' under Section 182 of the Indian Contract Act, 1872. According to Justice Dinesh Kumar Sharma, the agent cannot be held personally liable for acts performed on behalf of the company under Section 230 of the Indian Contract Act,1872.

THE CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION (CIETAC) ARBITRATION RULES 2024 CAME INTO FORCE ON 1ST JANUARY, 2024

The China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules 2024 came into force on 1st January, 2024. Seen as an upgrade from the previous 2015 Rules, the CIETAC has brought with them extensive revisions, which reflect the internationally followed best-practices in Arbitration Law.

The new rules grant the tribunal, once constituted, the power to determine its jurisdiction vis-à-vis CIETAC, as opposed to the previous 2015 rules that automatically gave the tribunal jurisdiction. Another significant change is with respect to Third Party Funding (TPF). The funded parties are now required to disclose the details of the TPF arrangement to CIETAC, and further to disclose any such information that is required by the constituted Tribunal. In a futuristic move, the CIETAC also encourages the use of technology in the Arbitration process, in an effort to smoothen the process and eliminate any administrative blockages.

THE ENGLISH HIGH COURT COOMENTS ON CONFLICT BETWEEN ARBITRAL AWARDS AND STATE IMMUNITY

The English High Court recently decided on the conflict between arbitral awards and state immunity in the matter of *Border Timbers Ltd and Anr v. Republic of Zimbabwe*. The arbitration proceeding was begun by two Zimbabwean companies invoking the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID), with regards to legal title over a disputed property. An arbitral tribunal, in 2015, accordingly granted the claimants the legal title, or alternatively, compensation. An ad hoc tribunal in 2018 upheld this award and valued the compensation at US$125 million.

Seeking to enforce this award under the Arbitration (International Investment Disputes) Act 1966, which implements ICSID law in the English Courts, the claimants moved the enforcement Court in 2021, where an *ex parte* enforcement order was made against the Republic of Zimbabwe. Zimbabwe then moved the English High Court claiming that this was violative of State Immunity. The claimants, in response, argued that certain provisions of the ICSID override State Immunity.

The Court, interestingly, upheld Zimbabwe's argument, however, did not set aside the enforcement order, stating that in the present case, the question of sovereign immunity would not even arise, because of the procedural regime that applies under the Arbitration (International Investment Disputes) Act, 1996. Thus, while a State's Immunity cannot be set aside under the ICSID's provisions, in the current case, the enforcement order was ultimately upheld and Zimbabwe was given permission to approach the Court of Appeal.

ENGLISH COURT OF APPEAL UPHOLDS THE SOVEREIGN IMMUNITY OF VENEZUELA - UK P&I CLUB & ANOR V REPUBLICA BOLIVARIANA DE VENEZUELA

Another case concerning state immunity was heard by the English Court of Appeal in the matter of *UK P&I Club & Anor v. Republica Bolivariana de Venezuela*. A Venezuelan navy patrol vessel collided with a cruise liner and sank, giving rise to the dispute between Venezuela and the cruise liner's insurers. The insurers claimed that Venezuela was bound by London-seated arbitration, and were granted an anti-suit injunction against the country, preventing it from beginning litigation. The insurers then began an arbitral proceeding against the country, wherein jurisdiction came to be challenged, and the parties agreed to stay the arbitral proceeding while the question of the injunction would be decided.

The English High Court held in Venezuela's favour that State Immunity, under Section 13(2)(a) of the State Immunity Act 1978, would prevent the application of such an injunction. This decision was subsequently upheld by the Court of Appeal as well.

SINGAPORE COURT OF APPEAL'S ANSWER TO HOW AN ENFORCEMENT COURT SHOULD TREAT A SEAT-COURTS DETERMINATION AS TO AN ARBITRAL AWARD

The Singapore Court of Appeal (SGCA) has addressed a frequently raised question regarding the validity of a seat-Court's decision when presented before an enforcement Court. This matter arose in the case of *Deutsche Telekom v. India*, where the Republic of India contested the jurisdiction of the tribunal in proceedings before the Swiss Federal Supreme Court (Swiss Court) concerning an arbitral award against it. Despite India's argument, the Swiss Court dismissed it and sided with Deutsche Telekom (DT).

Following the Swiss Federal Supreme Court's ruling in favor of DT, company sought to enforce the award in Singapore. In the subsequent proceedings before the Singapore Court of Appeal, India attempted to reassert the lack of jurisdiction of the tribunal. However, the SGCA ruled that India was precluded from raising this argument for two key reasons. Firstly, in line with the principle of transnational issue estoppel, India could not raise an argument already decided by the seat-Court. Secondly, the primacy principle dictated that the seat-Court's decision should be presumptively determinative. Consequently, due to these two reasons, the SGCA rejected India's objection to the jurisdiction, affirming the validity of the seat-Court's decision before an enforcement Court.

ZEE ENTERTAINMENT - SONY GROUP MERGER DEAL BREAKS DOWN - ARBITRATION IN SINGAPORE

Sony Group terminated the 10 billion dollar deal with Zee Entertainment and claimed 90 million dollars as the termination fee from Zee Entertainment. Subsequently, Sony initiated emergency arbitral proceedings against the other company before the Singapore International Arbitration Centre (SIAC). On the same day, a Zee shareholder initiated a petition before the National Company Law Tribunal (NCLT) seeking the enforcement of the merger.

These facts give rise to complicated questions about the jurisdiction of the impleaded dispute settlement bodies, and at a wider perspective, about the potential conflict between international law and domestic law. In the present case, the SIAC will be looking at the dispute purely from a contractual point of view, whereas the NCLT from an Indian domestic-law perspective, specifically keeping in mind the provisions of the Companies Act, 2013.