

MONTHLY ROUND-UP

NATIONAL INTERNATIONAL COMMERCIAL CORPORATE

INDIAN ARBITRATION LAW REVIEW

APRIL 2024

NO REQUIREMENT OF FRESH SECTION 21 NOTICE FOR RE-COMMENCING THE ARBITRATION THE FIRST AWARD IS SET ASIDE UNDER SECTION 34

In the case of Kirloskar Pneumatic Company v. Kataria Sales Corporation, the Bombay High Court has held there is no requirement of Section 21 notice for re-commencing the arbitration after the first award is set aside under Section 34 of the A&C Act. The Court rejected the Respondent's argument that a fresh notice under Section 21 was necessary. It held that since the arbitration mechanism was already triggered and the proceedings had commenced, there was no need for a new notice. The judgment held that the dispute between the parties remained the same, and the Petitioner sought the appointment of a competent arbitrator, not a new invocation of arbitration. Thus, in such a situation there would be no requirement of a fresh invocation notice as the opposite party would already be aware of the existence of the dispute.

ABSENCE OF SPECIFIC PRAYER FOR IMPLEADMENT OF NON-SIGNATORY DOESN'T PRECLUDE ARBITRAL TRIBUNAL FROM APPLYING GROUP OF COMPANIES DOCTRINE

In the case of Cardinal Energy and InfraStructure Private Ltd. vs Subramanya Construction and Development Co. Ltd, the Bombay High Court single bench of Justice R I Chagla held that the arbitral tribunal has the power to decide whether the non-signatory is bound by the Arbitration Agreement and to implead the non-signatory. The Court held that the absence of a specific prayer for the impleadment of a non-signatory in a Section 11 Application does not preclude the application of the 'group of companies' doctrine by the arbitral tribunal.

CALCUTTA HIGH COURT DISMISSES PETITION OPPOSING ENFORCEMENT OF FOREIGN ARBITRAL AWARD BASED ON CONSTRUCTIVE RES-JUDICATA

In the case of Centrotrade Minerals & Metals Inc v. Hindusthan Copper Limited, the High Court of Calcutta has dismissed an application by Hindustan Copper Limited (HCL) under Sections 48/49 of the A&C Act seeking to refuse enforcement of the foreign award in favour of the Centrotrade Minerals. The bench of Justice Sugato Majmudar held that once the enforceability of an award is affirmed by the Supreme Court, it cannot be opposed on a new ground which could have been taken in earlier proceedings in relation to the enforceability. It held that such an application would be barred by constructive res-judicata.

USE OF THE WORD 'SEAT' IS NOT COMPULSORY IN AN ARBITRATION CLAUSE: DELHI HIGH COURT

In the case of *Anju Jain v. M/s WTC Noida Development Company Pvt Ltd*, the High Court of Delhi has held that the use of word 'seat' in an arbitration clause is not compulsory to determine the jurisdiction of the Court(s) which would have jurisdiction over the proceedings arising out of the arbitration agreement. The bench of Justice Pratibha M. Singh held that there would be no seat and venue dichotomy when the jurisdiction conferred on other courts is made subject to the arbitration agreement. It held that in absence of any contrary Indicia, the referred place would be the seat of arbitration.

SECTION 6 COMMERCIAL COURTS ACT IS ENABLING PROVISION, DOESN'T OVERRIDE ARBITRATION AGREEMENT: ALLAHABAD HIGH COURT DISMISSES APPEAL

In the case of *North Eastern Railway vs Calstar Steel Ltd*, the Allahabad High Court division bench of Chief Justice Arun Bhansali and Justice Vikas Budhwar held that Section 6 of Commercial Courts Act, 2015 is an enabling provision and does not override agreements made between parties regarding jurisdiction. It held that even if a Commercial Court has jurisdiction as per Section 6, this jurisdiction can be excluded by an arbitration agreement between the parties specifying a different jurisdiction based on their territorial situs.

REGISTRATION OF SHARES IN FAVOR OF THE PLEDGEE AS THE "BENEFICIAL OWNER" DOES NOT AMOUNT TO A SALE OF SHARES: DELHI HIGH COURT

In the case of *STCI Finance Ltd v. Sukhmani Technologies Pvt Ltd*, the High Court of Delhi has held that mere registration of shares in favor of the pledgee as the "beneficial owner" does not amount to a sale of shares, and the pledgee is not required to account for any sale proceeds until the shares are actually sold to a third party. The bench of Justice Neena Bansal Krishna held that the pledgee's right of redemption of shares remains alive until such actual sale takes place. It set aside an arbitration award wherein the arbitrator held that once the pledgee becomes the beneficial owner of the pledged shares, it becomes entitled to the credit of the value of the pledged shares.

AN AWARD ISSUED BY UNILATERALLY APPOINTED ARBITRATOR CAN BE CONTESTED FOR INVALIDITY OF APPOINTMENT, EVEN BY THE APPOINTING PARTY: DELHI HIGH COURT

In the case of Telecommunication Consultants India Ltd v. Shivaa Trading, the High Court of Delhi has held that an award passed by a unilaterally appointed arbitrator can be challenged on ground of invalidity of such appointment and consequent lack of jurisdiction even by the party who made such an appointment. The bench of Justice Anup Jairam Bhambhani held that a defect of jurisdiction can be challenged at any stage since it goes to the power of the tribunal to decide the dispute. It held that mere participation in the arbitral proceedings cannot be deemed to be an 'express waiver' in terms of Section 12(5) of the A&C Act.

ARBITRATOR CAN AWARD COMPENSATION ON 'GUESSWORK' WHEN LOSS IS DIFFICULT TO PROVE SUBJECT TO MAXIMUM AMOUNT PAYABLE UNDER LD CLAUSE: DELHI HIGH COURT

In the case of Cobra Instalaciones Y Servicios v. Haryana Vidyut Prasaran Nigal Ltd, the High Court of Delhi has held that an arbitrator is empowered to award compensation to an aggrieved party that has suffered losses on the basis of 'rough and ready method' or 'guesswork' when the loss is difficult to prove. The bench of Justices Rajiv Shakhder and Amit Bansal held that as long as there is material available with the arbitrator that damages have been suffered, but it does not give him an insight into the granular details, he is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying damages

UNCITRAL PROPOSES ADVISORY CENTRE FOR INVESTMENT DISPUTES

UNCITRAL's working group III has published a draft statute for creating an advisory centre designed to support member states facing investment treaty claims. The proposed centre would offer legal assessments, assist in selecting arbitrators, and help prepare procedural documents. Open to all states and regional organizations, the centre would be funded by member contributions and service fees. Final decisions on whether the centre will operate under the United Nations or as an independent entity, and its headquarters location, are still pending, with several countries expressing interest in hosting.

JAMS INTRODUCES AI ARBITRATION RULES

JAMS has launched the first specialized arbitration rules for disputes involving artificial intelligence (AI). The JAMS Artificial Intelligence Dispute Rules address the complexities of AI systems and smart contracts, providing a detailed framework for arbitration. JAMS CEO Chris Poole and President Kimberly Taylor highlighted the importance of these rules in offering clear, effective guidelines for resolving AI-related disputes through arbitration, reflecting the institution's commitment to staying at the forefront of alternative dispute resolution.

DUBAI INTERNATIONAL FINANCIAL CENTRE (DIFC) COURT UPHOLDS PROVISIONAL AWARD ENFORCEABILITY

The DIFC Court of Appeal has ruled that a provisional award issued by a London-seated tribunal can be enforced as an 'award' in the DIFC. The case involved a proprietary injunction, a freezing order, and an ancillary disclosure order. The court's decision highlights its interpretation of the DIFC Arbitration Law, which aligns with the UNCITRAL Model Law, and reinforces the enforceability of interim measures from foreign tribunals within the DIFC jurisdiction.

SUPREME COURT OF THE UNITED KINGDOM SUPPORTS ARBITRATION AGREEMENTS

In *Unicredit Bank GmbH v. RusChem Alliance*, the Supreme Court of UK upheld an anti-suit injunction, preventing RusChem Alliance from proceeding with a lawsuit in Russian courts that breached an arbitration clause. This decision underscores the English courts' commitment to enforcing arbitration agreements and maintaining the integrity of agreed arbitration processes, even when the arbitration seat is outside England.

SICC DISMISSES RELIANCE INFRASTRUCTURE'S CHALLENGE

The Singapore International Commercial Court (SICC) dismissed Reliance Infrastructure Limited's application to set aside an arbitral award in favor of Shanghai Electric Co Ltd. Reliance's challenge was based on claims of forgery and lack of authority concerning a guarantee letter. The SICC ruled that Reliance had waived its right to contest these issues by not raising them adequately during arbitration. Additionally, the court found insufficient evidence to support the forgery claims.

STATE COUNTERCLAIMS IN BIT ARBITRATIONS CHALLENGED

In *EEPL Holdings v. Republic of Congo*, an ICSID tribunal denied jurisdiction over counterclaims by the Republic of Congo against a Mauritian investor. This decision reflects the ongoing difficulties sovereign states face in bringing counterclaims under bilateral investment treaties (BITs). The tribunal's unpublished reasons suggest that states may continue to struggle with asserting such claims within the framework of BIT arbitration.

US COURT ENFORCES ARBITRAL AWARD AGAINST INDIA

A significant arbitral award against the Government of India, totaling \$1.2 billion with interest, has been enforced by the US District Court for the District of Columbia. The dispute, *Devas Multimedia v. Antrix Corporation*, originated from a terminated satellite contract between Devas Multimedia and Antrix Corporation, the commercial arm of ISRO. The arbitration, conducted under UNCITRAL rules, resulted in a ruling in favor of Devas, which was upheld by Dutch courts. The US court's enforcement underscores the importance of honoring contractual commitments and the rule of law, even involving sovereign states. This landmark decision highlights the strength of the New York Convention in ensuring international arbitration award enforcement.