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Dispute Resolution and Arbitration

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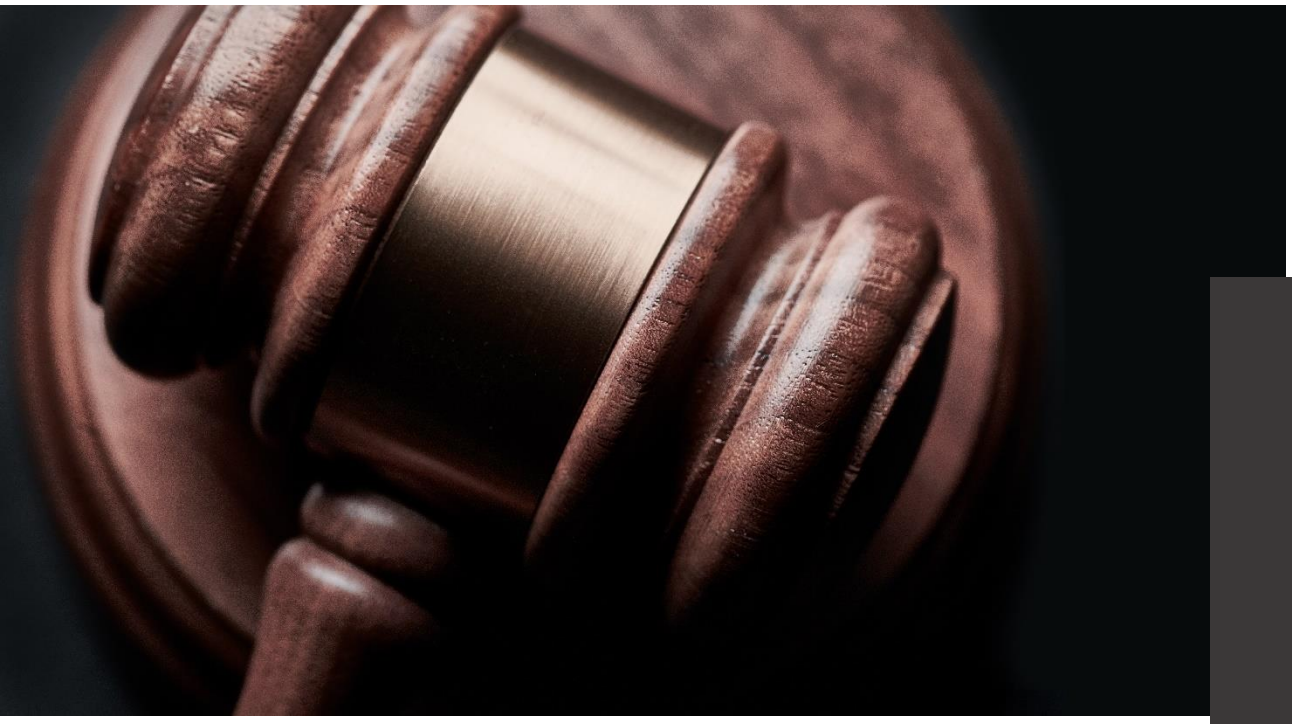
DISPUTE RESOLUTION AND ARBITRATION UPDATE



Contributors

Amrita Narayan
Partner

Faranaaz Kharbhari
Counsel

Manan Shukla
Partner

Pragya Ohri
Partner

Kshitiz Khera
Associate Partner

Rahul P Jain
Associate Counsel

Ashwin Rakesh
Senior Associate

Ishwar Ahuja
Senior Associate

Kanika Kumar
Senior Associate

Aditi Soni
Associate

Jutishna Saikia
Associate

Khushboo Rupani
Associate

Mahafrin Mehta
Associate

Balasore Alloys Ltd v M/s. Medima LLC

G.A. No. 871 of 2020 with G.A. No. 872 of 2020 in C.S. No. 59 of 2020

Background facts

- The Plaintiff is a company engaged in the business of manufacturing and exporting ferro-alloys. M/s Medima LLC (**Defendant**) is a limited liability company incorporated under New York (USA) State laws and is engaged in the business of trading of ferro-chrome.
- In 2017, the parties entered into an arrangement whereby high carbon ferro chrome (**Goods**) would be manufactured by the Plaintiff which would in turn be sold and distributed exclusively by the Defendant in USA and Canada. This arrangement was governed by an Agreement dated June 19, 2017 (**2017 Agreement**) for the period of June-July 2017. Clause 14 of the agreement clearly stated that the Agreement and formal agency agreement to be executed in furtherance of the same would be governed by the laws of India and in event any disputes were to arise out of these agreements, the same would be referred to settlement through arbitration as per arbitration laws of India.
- In furtherance of clause 14(a) of the 2017 Agreement, another agreement came to be executed on March 31, 2018 (**2018 Agreement**). It is pertinent to note that the term of 2018 Agreement was retroactively extended to be operative from March 31, 2017 to March 31, 2021. The 2018 Agreement laid down the blueprint for all future transactions between the parties and while it would be operative on a retroactive basis, all individual shipments of the goods, related to such subsequent cases of sale and purchase between the parties, would be governed by the 2018 Agreement.
- However, in sharp contrast to the 2017 Agreement, as per Clause 23 of 2018 Agreement, any dispute arising out of the same would be submitted to arbitration in UK as per the Rules of Arbitration of International Chamber of Commerce (**ICC**) in accordance with British law.
- With regards to the various purchase orders executed between the parties, there were 3 modes of payment which divided the said orders into 3 distinct classes. The purchase orders contained independent clauses which persisted with the Indian arbitration laws.

- On March 31, 2020 a Notice of Dispute was addressed by the Defendant to the Plaintiff, thereby invoking Clause 23 of the 2018 Agreement and stating that if the dispute was not resolved within 30 days, Respondent would be constrained to refer the dispute to arbitration before the ICC, London.
- Vide reply dated April 13, 2020 Plaintiff alleged that this dispute pertains to independent purchase contracts and would therefore be governed by Indian arbitration and provisions of 2018 Agreement would not apply. Further, Plaintiff informed the Defendant to invoke these Indian arbitration clauses under Arbitration and Conciliation Act, 1996 (**Act**)
- After the lapse of the mandatory 30-day period on April 13, 2020 Defendant filed a Request for Arbitration before ICC. In furtherance of the same, ICC informed the Plaintiff about filling of RFA and urged them to nominate their arbitrator and file their written response within 30 days.
- Plaintiff raised objections to the existence and validity of arbitration clause in 2018 Agreement vide its letter dated June 12, 2020 and urged ICC secretariat to place this matter before ICC Court to decide upon this preliminary issue before constitution of an arbitral tribunal. Plaintiff also requested that the arbitral tribunal be composed of a sole arbitrator instead of a panel of three arbitrators.
- By a communication dated June 16, 2020, ICC informed Plaintiff that the requests made by them had not been referred to ICC Court and would be decided by arbitral tribunal once constituted. Further, Defendant vide its letter dated June 17, 2020 reiterated primacy of 2018 Agreement and pushed for a 3-member arbitral tribunal to be constituted. ICC vide a letter dated June 22, 2020 confirmed the constitution of a 3-member arbitral tribunal.
- In light of the aforesaid, Plaintiff filed the present application seeking an injunction against the ICC arbitration proceedings.

Issues at hand?

- Does the High Court (**HC**) have power and jurisdiction to grant an anti-arbitration injunction against a foreign seated arbitration, and if so, under what circumstances can it be granted?
- If the answer to the above question is in the affirmative, do the facts and circumstances in the present case warrant the grant of such an ad interim injunction?

Decision of the Court

- Court took into consideration several judgments relied upon by both the parties, including the different legal positions in *Kvaerner Cementation India Ltd*[1] and *Patel Engineering*[2] pertaining to the power of a civil court to grant an injunction that may impede the progress of an arbitral proceeding. However, Court placed its reliance on majority opinion of Supreme Court (**SC**) in *Patel Engineering* wherein a majority of the judges had conclusively rejected the argument that an arbitral tribunal solely has competence, to the complete exclusion of civil courts, to determine its own jurisdiction.
- With regards to the first issue, it was held that the Courts in India do have the power to grant anti-arbitration injunctions. However, Court stated that such a power should be used sparingly and only in the circumstances as set out in SC's decision in matter of *Modi Entertainment Network*[3].
- On the second issue, the Court held the Plaintiffs submission of ICC clause in 2018 Agreement to be inoperative as it ran counter to the facts of the present case and stated that the Plaintiff failed to conclusively discharge its burden of exhibiting that ICC is either a *forum non-conveniens* or that the proceedings initiated before it by the Respondent are vexatious in nature as has been ruled in *Modi Entertainment Network*.
- The Court was able to infer that both parties had thought about their convenience and all relevant factors before submitting to non-exclusive jurisdiction of the Courts of their choice. Therefore, the choice of ICC as a forum could not be written-off or merely treated as an alternative forum by Plaintiff, just because a dispute had now emerged. The parties had consciously chosen a third, independent and non-partial seat for arbitration. Moreover, the law to be applied was also elected to be English law (neutral) and not American law or Indian law. Having chosen such a neutral venue and applicable law, Court observed that neither party is at a disadvantage before ICC.
- The Court further took note of the Plaintiff's conduct stating that they are not averse to the endorsement of their participation in ICC arbitration as is evident from their pleas to have arbitration conducted by a sole arbitrator and the fact that if their plea for determination of a valid

Our View

Even though it has been held that Civil Courts have the power to grant injunctions against foreign seated arbitrations, the threshold required to be met by a party seeking such an injunction has been set quite high. A party seeking an anti-arbitration injunction against a foreign seated arbitration is required to discharge the burden of proving that there exists an issue of *forum non-conveniens*, or that the proceedings launched before a neutral foreign forum is vexatious or oppressive, failing which there can be no interference by a civil court even in cases involving potential multiplicity of proceedings.

[1] (2012) 5 SCC 214
[2] (2005) 8 SCC 618
[3] (2003) 4 SCC 341

arbitration agreement was not adjudicated by ICC Court, plaintiff would retain undiluted rights to argue the same once arbitral tribunal was so constituted in accordance with extant ICC Rules.

- It was held that the parties agreed to 2018 Agreement and purchase orders with their eyes open, and if multiple proceedings may arise due to certain ambiguities, so be it. That fact alone cannot make one of the proceedings vexatious. Considering the same the second issue was answered by the Court in the negative.

Rail Vikas Nigam Ltd v. Simplex Infrastructures Ltd

MANU/DE/1367/2020

Background facts

- The Appellant, Rail Vikas Nigam Ltd (**Rail Vikas**), is a public sector undertaking engaged in business of railway construction projects for Indian Railways. On September 27, 2010, Petitioner issued an Invitation to Bid for construction of viaduct and related works for 4.748 km length in Joka-BBD Bag Corridor of Kolkata Metro Railway Line. In response to this, Respondent, Simplex Infrastructure Ltd (**Simplex**), submitted its bid which was accepted by Rail Vikas by way of a letter dated December 28, 2010. Shortly thereafter, the parties executed a formal contract on January 28, 2011.
- The project was delayed, and disputes arose between the parties. Repeated claims of Simplex remained unfulfilled and Simplex ultimately invoked arbitration against Rail Vikas under the contract. The court appointed nominee arbitrator on behalf of Rail Vikas, and three-member arbitral tribunal was formed. In its first sitting which took place on January 15, 2019, the tribunal recorded that its fee would be assessed as per Schedule IV to the Arbitration and Conciliation Act, 1996 (**Act**).
- The parties completed all pleadings thereafter and made part payment towards fees of arbitrators. On January 09, 2020, in its eight sitting, tribunal extended the time for rendering an award by six months with consent of parties, and after observing that only two installments of INR 5 lakh each had been paid towards arbitrators' fee, directed the parties to pay the outstanding dues which, in terms of Schedule IV to the Act, was observed as INR 49,87,500. Aggrieved by this fixation of the tribunal's fee, Rail Vikas approached the tribunal averring that fee fixed exceeds statutory ceiling limit of INR 30,00,000 prescribed in Schedule IV of the Act. The tribunal refused to reduce the fee and rejected Rail Vikas's application.
- Four months after the rejection of the application, Rail Vikas approached High Court of Delhi (**HC**) under Section 14 of the Act seeking termination of the mandate of the tribunal.

Issue at hand?

- Whether there is a limit of INR 30 lakh for arbitrator's fee under Schedule IV of the Act?

Decision of the Court

- The high court considered the arguments of Rail Vikas and examined the entry no. 6 of Schedule IV of the Act. It observed as follows:
  - The plain text of entry no. 6 reveals that for all arbitrations involving sums in dispute exceeding INR 20,00,00,000, there is a base fee prescribed of INR 19,87,500. However, a certain amount of fee, i.e., the variable fee component, follows the word 'plus' and can be further charged by the arbitrator by way of a formula provided to calculate this amount, i.e., 0.5% of the sums in dispute which is over and above INR 20,00,00,000.
  - The base fee is a fixed fee prescribed against the lower limit of the sums in dispute, whereas the variable fee component is prescribed in relation to the upper limit of the sums in dispute. The variable fee component, being additional in nature and calculated on a percentage basis, is dependent on the sums in dispute. This is clear as percentages decrease as the sums in dispute increase from entry nos. 1 to 6 of Schedule IV
  - The word 'plus' is the disjunctive between the base fee and variable fee component, and it is evident that the ceiling of INR 30,00,000 has been imposed on the variable fee component
  - The court further observed that Schedule IV of the Act is also in consonance with the recommendations of the 246th Law Commission Report and/or the Delhi International Arbitration Centre Rules. Therefore, based on the above observations the court dismissed Rail Vikas's petition.

Our View

The judgment is a welcome step. The distinction between base fee and variable fee – where a ceiling of INR. 30,00,000 has been imposed by the Act – will provide requisite clarification as regards computation of the Tribunal's fee under Schedule IV of the Act.

Shailendra Swarup v. The Dy Director, Enforcement Directorate

Civil Appeal No. 2463 of 2014 in SC

Background facts

- Modi Xerox Ltd (**MXL**) made 20 remittances through its banker, Standard Chartered Bank, in the latter half of 1985. Thereafter, RBI issued a letter stating that despite reminder issued by Authorized Dealer (**AD**), MXL had not submitted Exchange Control copy of custom bills of Entry/Postal Wrappers as evidence of import of goods into India.
- On January 10, 2000 MXL amalgamated and merged into Xerox Modicorp Ltd (**XMC**). Thereafter, on February 19, 2001 a show cause notice was issued by Enforcement Directorate (**ED**) to MXL and its directors including the Appellant to show cause as to why adjudication proceedings as contemplated in Section 51 of Foreign Exchange Regulation Act, 1958 (**FERA**) not be initiated. XMC replied to the aforesaid notice vide its reply dated March 26, 2001.
- ED decided to hold proceedings against MXL and its directors, under Section 51 of FERA read with Sections 49(3) and (4) of FEMA. In furtherance of the same, a notice dated October 8, 2003 was sent to MXL and its directors informing them about the commencement of adjudicatory proceedings against them. Appellant replied to the said notice on October 29, 2003 wherein for the first time he had stated that he is a practicing advocate of Supreme Court and that as such he was only a part-time, non-executive director of MXL and was never in-charge of or responsible for the conduct of business of the company. Along with the reply an affidavit of Company Secretary dated July 04, 2003 stating that Appellant was only a part-time Director of MXL and never in charge of day to day business of the company, was also filed.
- After hearing the submissions of the Appellant as well as other directors of MXL, Respondent passed an Order dated March 31, 2004 holding Appellant and other four persons guilty for having contravened the provisions of Section 8(3) read with Section 8(4) and Section 68 of FERA and imposed upon them a penalty of INR 1,00,000/- each.
- Aggrieved by the order dated March 31, 2004, Appeal No.622 of 2004 was filed by the Appellant before Appellate Tribunal for Foreign Exchange which was dismissed on March 26, 2008. Against the aforesaid Order, a Criminal Appeal was filed by the Appellant before Delhi High Court (**HC**). By way of an Order sated November 18, 2009, HC dismissed the Appeal (**Impugned Order**).
- Challenging the impugned Order, Appellant filed the present appeal before Supreme Court (**SC**).

Issues at hand?

- Whether the plea taken by Appellant in his reply dated October 29, 2003 that he was only a part-time, non-executive Director and was never in charge of nor even responsible for the conduct of business of the Company at the relevant time was an afterthought, since no such plea was taken in reply given on March 26, 2001?
- Whether appellant has brought any material on record either before Adjudicating Authority or Appellate Tribunal to prove that he was only a part-time, non-executive Director not responsible for conduct of business of Company at the time of commission of offence?
- Whether Adjudicating Authority, Appellate Tribunal and HC erred in holding contravention of provisions of Section 8(3), 8(4) and Section 68 of FERA by Appellant without their being any material evidence that Appellant was responsible for conduct of business of Company at the time of commission of offence and without recording any specific findings to that effect?

Decision of the Court

- SC held that when Respondent decided to hold adjudication proceedings under Section 51, reply given to the same by Appellant was statutorily required to be considered, which reply could not have been ignored on basis of an erroneous assumption that it was an afterthought. The representation dated October 29, 2003 was first representation submitted by Appellant before adjudicating officer during the course of personal hearing which was required to be considered, therefore HC erred in discarding it as an afterthought.
- It was held that Company Secretary's Affidavit dated July 04, 2003 stating that appellant was only a part time Director of MXL and was never in charge of the day to day business of said company was very much on the record of Respondent and HC erred in holding that said material was not filed before the Appellate Tribunal. Accordingly, HC erred in refusing to consider aforesaid material brought on record by Appellant.

Our View

The directors, who are basically figurative heads/ independent directors, on various occasions have been roped in for the contraventions committed by other office-bearers of the company who are involved in the day-to-day management of the company. This judgment provides relief to many such directors, who have got into legal trouble and been prosecuted only because of their position in the company for similar issues despite not having knowledge of the same. More importantly, the Supreme Court has rightly held that an opportunity must be given to a director for him to vigorously defend himself, lack of which would be against the principles of natural justice. It is to be noted that an independent director can be held liable, only in respect of such acts of omission or commission by the company or any officer of the company which constitutes a breach or violation of any provisions of Act, which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance and where he had not acted diligently.

- It was observed that Respondent had committed an error to have not considered material brought on record with respect to Appellant being a non-executive director. SC further noted that in absence of finding Appellant being guilty under Section 8(3) and Sections 8(4) of FERA, penalty imposed by Respondent was baseless.
- Further SC took note of Section 141 of Negotiable Instruments Act, 1981 (**NI Act**), which is *pari materia* to provisions of Section 68 of FERA. Relying upon its decision in matter of *S.M.S Pharmaceuticals Ltd*[4] that criminal liability arises on those person/s, who, at the time of contravention, were in-charge of and responsible for the conduct of company. Therefore, only such persons who can be said to be connected with commission of a crime at relevant time of its commission can be subjected to any action.
- It was observed that Section 68 of FERA and Section 141 of NI Act deal with contraventions committed by companies in a similar manner. SC remarked that the liability to be proceeded with for an offence under Section 68 of FERA, 1973 depends on the role one plays in the affairs of company and not on mere designation or status.
- Having held thus, SC set aside the Orders passed by Respondent and HC.

CIT v. M/s. Nalwa Investments Ltd

ITA/ 822/2005

Background facts

- Nalwa Investments Ltd (**Respondent Assessee**) belongs to Jindal group of companies and holds shares of Jindal Ferro Alloy Ltd (**JFAL**). Vide an amalgamation scheme sanctioned under Section 391-394 of Companies Act, 1956, JFAL got amalgamated with Jindal Strips Ltd (**JSL**). Subsequently, Nalwa transferred its shareholding in JFAL in lieu of receipt of shares of JSL and claimed that the transaction was exempt from payment of capital gains tax under Section 47(vii) of Income Tax Act, 1961 (**ITA**).
- Assessing Officer (**AO**) adopted value of shares of JSL at rate of INR 218 per share and calculated the profit on receipts of shares of JSL under scheme of amalgamation at INR 5,31,28,579 and taxed the same as 'business income' for AY 1997-98. AO's action was upheld by CIT.
- In second appeal, filed by Revenue against the order of ITAT, before ITAT, it was contended that the Tribunal without recording a categorical finding as to whether shares qualified as 'capital asset' or 'stock- in- trade', passed an Order dated February 17, 2005 (**Impugned Order**), in favor of Nalwa, holding that no profit accrues when shares of amalgamated company are received in lieu of shares of amalgamating company.
- Challenging aforesaid impugned Order, Revenue filed present Income Tax Appeal before Delhi High Court (**HC**) under Section 260A of ITA.

Issue at hand?

- Whether ITAT was correct in holding that where Nalwa gets shares of Amalgamated Company in lieu of shares of amalgamating company, no transfer takes place?

Decision of the Court

- HC analyzed effect of Section 45 which deals with Capital Gains and any exception thereto under Section 47(vii) of ITA. It was held that transfers enumerated in sub-clauses (i) to (xix) of Section 47 are exempt from applicability of Section 45.Thus, if Nalwa were to contend that shares in question were held as 'capital assets' to take benefit of exemption, receipt of shares in amalgamated company would have to be regarded as a transfer.
- The Court examined the definition of transfer enumerated in Section 2(47) of ITA and stated that the concept of transfer in relation to capital asset is quite wide. As per Section 2(47)(iv) even if an asset is converted by the owner thereof into or treated by him as stock-in-trade of a business carried on by him, such conversion or treatment would amount to transfer in relation to capital asset. This shows that transfer of a capital asset is not confined only to sale or exchange but is a concept that would cover several other situations which may not be understood as transfer in common parlance.
- It was held that receipt of shares of JSL in exchange for shares of JFAL constituted a transfer. The ratio under *Rasiklal Maneklal HUF*[5] dealt with applicability of capital gains under the provisions of

Our View

Even though the principle of no income arising by mere holding of inventory on account of notional gains is well established, however, extinguishment of shares and receipt of new shares in lieu thereof would be a case of actual realization of income and not notional income as clarified by the Court. Further, the Revenue cannot try and tax a transaction under any head even if such transaction is considered as a transfer under Section 2(47) of the ITA but is not taxable under Section 45 or is covered under Section 47.

[4] (2005) 8 SCC 89
[5] [1989] 177 ITR 198 (SC)

Section 12B of the Income Tax Act, 1922 which did not include extinguishment of shares as transfer and therefore was not relevant to the present scenario. Instead the ratio laid down in *Mrs. Grace Collis and Ors*[6] is applicable to the matter at hand, wherein it was held that even when exchange is happening by operation of law, the same should constitute as a transfer on the basis that such exchange results in extinguishment of shares which form a part of the definition of transfer under Section 2(47) of ITA.

- Court further stated that if a transfer does not come under the ambit of Section 47(vii), it's taxability would be governed by Section 28 of ITA where there is no exemption akin to one provided in Section 47. Therefore, if shares are held as stock-in- trade, income shall be chargeable to income-tax under head 'profits and gain of business or profession'.
- HC remarked that a gain may be income from business if it has arisen from a transaction undertaken with the intent of business or making profit or in nature of trade. Income is recognized when it is earned or realized irrespective of whether it is in cash or kind.
- HC relied upon SC's decision in matter of *Orient Trading Co Ltd*[7], in which it was held that surrendering of shares in first company in lieu of shares in transferee company constituted 'transfer' and profits realized so were to be taxed as business income. In present case receipt of shares of a higher value was in exchange for shares of a lower value resulting in constitution of real income. Therefore, exchange resulted in profits accruing to Nalwa.
- In view of aforesaid, vide order dated August 07, 2020, captioned matter was remanded back to ITAT since factual dispute between parties had not been decided, even though questions of law had been answered by way of this appeal.

Bhandari Engineers & Builders Pvt Ltd v. Maharia Raj JV & Ors and Bhandari Engineers & Builders Pvt Ltd v. You One Maharia Raj JV & Ors

EX.P. 275/2012 and EX.P. 276/2012

Background facts

- In an Execution Petition filed by Bhandari Engineers & Builders Pvt Ltd (**Decree Holder**), Delhi High Court (**HC**) had passed an Order dated September 03, 2015 directing Maharia Raj JV and You One Maharia Raj JV (**Judgment Debtors** (**JDs**)) to file an Affidavit of their assets as per Form 16A, Appendix E under Order XXI Rule 41(2) of CPC (**Form 16A**) along with their bank account statements for past 3 years within 30 days.
- Thereafter, on November 16, 2015 the Court, upon request of JDs, granted them one more week to file aforesaid Affidavit, failing which managing partners/directors of JDs would be detained for 3 months upon deposit of subsistence allowance by the Decree Holder.
- On January 11, 2016, HC Court was apprised of the fact that neither have the JDs filed the aforesaid Affidavit in the prescribed format nor have they filed the statement of all their bank accounts. Accordingly, the Court granted the JD a week's time to file the said Affidavit in Form 16A along with their bank account statement for last 3 years. Once the affidavit was filed, the Court noticed that Form 16A is not exhaustive to ascertain all the assets, income, expenditure and liabilities of the JD and that in execution proceedings, ascertaining the assets and income of a JD is the key to successfully satisfying a money decree.
- In view of the above, vide its Order dated December 05, 2019, while exercising its powers under Section 151 of CPC and Article 227 of the Constitution of India and after considering the best international practices with respect to mandatory filing of an affidavit of assets, income, expenditure and liabilities by a JD, the Court formulated the formats of affidavits to be filed by a JD at the very threshold of the execution proceedings. HC also laid down guidelines for expeditious hearing and disposal of execution cases.
- Further, vide Order dated December 05, 2019, HC sought the response and suggestions of various Courts as well as Delhi HC Bar Association on working of aforesaid guidelines. The response of the trial courts and bar association was considered. In view thereof, Court deemed it imperative to modify its directions contained in its Order dated December 05, 2019 vide its present Order dated August 5, 2020 which we attempt to capture and summarize hereunder.

[6] [2001] 248 ITR 323 (SC)
[7] (1997) 224 ITR 371 (SC)

Issue at hand?

- How to make the process of executing a decree passed by a Court seamless and expeditious?

Decision of the Court

- HC rightly observed that there is an urgent need for formulating rules and a format of an affidavit to expedite the execution of decrees and held that to expedite execution, it is necessary for a JD to file disclosure of income, assets, and expenditure at the threshold of execution proceedings. HC, using its wide powers under Section 151 and Order XXI Rule 41 of the CPC read with Section 106 and Section 165 of Indian Evidence Act and Article 227 of Constitution of India, formulated and revised existing formats of disclosure affidavits and has made it mandatory for every Judgment Debtor to submit this in execution cases.
- Three Affidavits formulated by HC need to be mandatorily filed by JDs, in order to provide complete information of entire assets, income, occupation, litigations, borrowings, lending's, expenditure as well as standard of living and frequent flyer card details of JDs. On filing of affidavit, it will be duty of decree holder to verify details. In case of any false information found, decree holder can serve interrogatories on JD.
- if found necessary for extracting the truth, Executing Court can conduct personal examination of JD or any other person on oath under Order XXI Rule 41(1) read with Section 165 of Indian Evidence Act.
- Modified Guidelines for Executing Court are as follows:
  - Shall direct JD, at first instance, to file an affidavit of assets on date of cause of action, date of decree/award as well as on date of swearing of affidavit; oral application of decree-holder for issuance of such direction shall be sufficient
  - Restrain JD from discharging any financial liability, other than liabilities of banks/financial institutions, without permission of Executing Court
  - Ensure presence of JD before Court initially by issuing bailable warrants and thereafter, by issuing non-bailable warrants as per law
  - Consider detention of JD in civil prison, in case latter defaults to file affidavit within stipulated time
  - Can direct Directors/Promoters (other than independent/non-executive and nominee directors) of JD company to disclose their personal assets and income, in case any ground for lifting of corporate veil of a JD company is made out as per law
  - Grant reasonable time to JD to remove defects/deficiencies and simultaneously act on information available in deficient affidavit as per law
  - May order investigation by a government agency including a forensic audit, cost of which shall be borne by the decree-holder
  - Ensure compliance of Section 60 to 64 and Order XXI Rules 41 to 57 of CPC with respect to attachment of properties in execution of decrees
  - Pass appropriate order of restitution to reimburse loss suffered by decree-holder on account of delay and obstruction in execution proceedings caused by JD
  - May impose costs equal to the deprivation suffered by rightful person and order prosecution
- Delhi HC further held that directions/guidelines will apply to all execution proceedings with immediate effect, including pending execution cases.
- The format of disclosure affidavits suggested by HC has been circulated to different district courts, HCs, National Judicial Academy and Law Ministry for their views and inputs. Accordingly, matter is adjourned to November 06, 2020.

Our View

There was a dire need in revamping and overhauling the execution process and rules in India. In absence of which the JDs keep delaying the process by adopting one or other tactics in order to avoid disclosing their assets. As rightly observed by the Court the main journey for a litigant/plaintiff starts after winning a case and getting a decree. We hope the affidavits and guidelines suggested by the High Court are made law of the land at the earliest, in order to facilitate a swift and seamless execution process These guidelines & affidavits, if adopted and implemented, will speed up the process and bring Execution Proceedings framework at par with the International standards & practices followed in nations such as the UK, Ireland, Canada, Australia & USA.

The Chairman, Board of Trustees, Cochin Port Trust v. Arebee Star Maritime Agencies Pvt Ltd & Ors

Civil Appeal No. 2525 of 2018

Background facts

- This present appeal arises out of a reference made to a three-judge bench of Supreme Court (**SC**) pertaining to discrepancies in interpretation of various provisions of Major Port Trusts Act, 1963 (**Act**). The reference to larger bench was made by division bench of SC, whilst considering a batch of appeals against an Order passed by a division bench of Kerala High Court.

- The issue that arose in this case was whether the liability to pay ground rent on containers unloaded at Port of Cochin, but not cleared by consignees/importers and refused to be de-stuffed by port on ground that there was inadequate storage space, can be imposed on owners of 3 vessel agents beyond period of seventy-five days, fixed by Tariff Authority of Major Ports, a statutory body constituted under provisions of the Act.

Issues at hand?

- Whether in the interpretation of provision of Section 2(o) of the Act, question of title of goods and point of time at which title passes to consignee are relevant to determine liability of consignee or steamer agent in respect of charges to be paid to Port Trust?
- Whether a consignor/steamer agent is absolved of responsibility to pay charges due to a Port Trust for its services in respect of goods which are not cleared by consignee, once bill of lading is endorsed or delivery order is issued?
- Whether a steamer agent can be made liable for payment of storage charges/demurrage, etc. in respect of goods which are not cleared by consignee, where the steamer agent has not issued a delivery order and if so, to what extent?
- What are the principles which determine whether a Port Trust is entitled to recover its dues from the steamer agent or the consignee?
- While the Port Trust does have certain statutory obligations with regard to the goods entrusted to it, whether there is any obligation, either statutory or contractual, that obliges the Port Trust to destuff every container that is entrusted to it and return the empty containers to the shipping agent?

Decision of the Court

- **Issue No 1:** It was held that 'the point of time at which title to goods passes to the consignee is not relevant to determine the liability of the consignee or steamer agent in respect of charges to be paid to the Port Trust.
- **Issue No 2 and 3:** SC held that bill of lading being endorsed by steamer agent is different from bill of lading being endorsed by owner of goods. In first case, endorsement leads to delivery while in second case, endorsement leads to passing of title. Both stages are irrelevant in determining who is to pay storage charges. It was held that up to the point that Port Trust takes charge of goods and gives receipt, steamer agent may be held liable for Port Trust dues in connection with services rendered qua unloading of goods. Thereafter, importer, owner, consignee or their agent is liable to pay demurrage charges for storage of goods.
- **Issue No 4:** SC held that until the stage of landing and removal to a place of storage, steamer's agent or vessel itself may be made liable for rates payable by vessel for services performed to the vessel. Post landing and removal to a place of storage, detention charges for goods that are stored, and demurrage payable thereon from when Port Trust takes charge of the goods from the vessel, or from any other person who can be said to be owner as defined under Section 2(o), it is only the owner of the goods or other persons entitled to the goods that the Port Trust has to look to for payment of storage or demurrage charges.
- **Issue No 5:**
  - The SC held that a container which has to be returned is only a receptacle by which goods that are imported into India are transported. Considering that the container may belong either to the consignor, shipping agent, ship-owner, or to some person who has leased out the same, it would be duty of Port Trust to destuff every container that is entrusted to it, and return destuffed containers to any such person within as short a period as is feasible in cases where owner/person entitled to goods does not come forward to take delivery of goods and destuff such containers. What should be this period is to be determined on facts of each case, given activities of port, number of vessels which berth at it, together with volume of goods that are imported. While Port Trust cannot state that it has no place in which to keep goods after they are destuffed, as in facts in present case, yet a court may, in facts of an individual case, look into practical difficulties faced by Port Trust. This may lead to 'short period' in facts of a particular case being slightly longer than in a case where a port is less frequented and goods that are stored are lesser in number, given the amount of space in which the goods can be stored.
  - SC stated that the expression 'may' in Sections 61 and 62 of the Act cannot be read as 'shall', subject to the caveat that as 'State' under Article 12 of Constitution, a Port Trust must act reasonably, and attempt to sell goods within a reasonable period from date on which it has assumed custody of them.
- Accordingly appeals filed against Kerala HC's judgment were disposed off and same was set aside.

Our View

Due to the varied interpretations of the provisions of the Act, judgments like the one passed by the Kerala HC came about. This judgment has put to rest any ambiguity the manner in which the aforesaid provisions are to be interpreted. Sadly, the case of lack of clarity in interpreting an Indian statute is not uncommon. Drafting is an art and drafting the laws of the land is a privilege as much as it is a heavy burden. In our view, misinterpretation of a provision/s of a statute can be avoided if they are worded in a crisp and clear manner.

Nuziveedu Seeds Ltd v. Mahyco Monsanto Biotech (India) Pvt Ltd

2020 SCC Online Bom 816

Background facts

- Petitioner and Respondent signed a Sub-License Agreement (**SLA**) on January 20, 2004. The agreement was extended until March 10, 2015 with the name of Bollgard Technology License Agreement and both the parties agreed to continue the rights under SLA.
- Since 2016, trait value was regulated by Central Government under Cotton Seeds Price (Control) Order 2015 (**CSP Order**). Petitioner and other seed producing companies issued letters to the Respondent for charging the trait value as per CSP Order and unlike trait value under SLA 2015, along with refund of excess trait value that was paid from 2010 to 2014.
- Petitioner issued a letter dated October 16, 2015 for refund of excess trait value that was paid from 2010 to 2014. On November 14, 2015, Respondent issued a Notice to discontinue SLA, 2015. The Government of India filed a reference before Competition Commission of India (**CCI**) for investigating and taking appropriate action against the Respondent for defying provisions of Competition Act. The CCI held that the provisions of Section 3(4) and Section 4 of Competition Act were violated and ordered Director General to investigate in this regard.
- Respondent filed a petition under Section 9 of Arbitration Act (**Act**) for depositing the amount payable by Petitioner, as per the terms of SLA, 2015. Respondent also invoked Arbitration Agreement for settling issue by way of Arbitration and Arbitral Tribunal was constituted. Petitioner filed an application under Section 16 of the Act praying for dismissal of claims made by Respondent. Arbitral Tribunal dismissed the application filed by Petitioner by order dated December 5, 2016.
- An Arbitral Award was made against the Petitioner by Arbitral Tribunal. The Petitioner being aggrieved by the award dated January 16, 2019, filed the present petition.

Issue at hand?

- Whether the Arbitral tribunal has the jurisdiction to adjudicate the matter, when CCI was examining if the SLA was anti-competitive?

Decision of the Court

- HC held that Section 61 of Competition Act was not applicable here as nature of disputes is different in relation to Arbitration Tribunal and CCI. The jurisdiction of CCI and Arbitral Tribunal is different in nature and since CCI had no power to grant monetary claim under SLA 2015, the Civil Court or the Arbitral Tribunal have the jurisdiction to entertain claim of Respondent. Arbitral tribunal cannot decide the issue whether said SLA 2015 was anti-competitive or was in violation of Section 3 of Competition Act or deserves to be declared as void or required modification, but it has the power to decide on contractual disputes and monetary claim under such agreement.
- HC held that Arbitral Tribunal permitted monetary claims made by Respondent. It was stated that the tribunal rightly held that the adjudication by tribunal shall be in nature of right and liability of parties to the agreement and would relate to right *in personam* and not right *in rem*. In proceedings before CCI, whatever may be the outcome, Respondent would not be able to get any effective relief or decree or award directing Petitioner herein to pay the amount to Respondent. It was rightly held by Arbitral Tribunal that Respondent had certain rights under SLA 2015 and thus it must also have a remedy for enforcement of such rights. Further HC observed that jurisdiction of Arbitration Tribunal and CCI were not overlapping with respect to claims raised
- HC held that Arbitrator has considered the evidence and arguments properly and has rightly allowed the monetary claims of Respondent. The interpretation of SLA 2015 was appropriately analyzed and thus HC upheld the award passed.

Our View

HC has minutely and very effectively bifurcated and observed the jurisdiction of two different fora and has rightly upheld the Arbitral award. This Judgement draws out the distinction between the Jurisdiction of the CCI qua that of the Arbitral Tribunal and the subject matters that can be adjudicated upon as well as the enforceability of Orders of the said forums.

Dr. Bina Modi v. Lalit Modi & Ors. and Charu Modi & Anr v. Lalit Modi & Anr

CS (OS) 84 of 2020 and CS (OS) 85 of 2020

Background facts

- A Trust Deed was executed at London by KK Modi as Managing Trustee, while Bina, Lalit, Charu and Samir were Trustees of KK Modi Family Trust (**Trust**).
- KK Modi passed away, leaving behind his family. Upon KK Modi's demise, a dispute arose amongst the Trustees – while Lalit contended that due to lack of unanimity amongst them, a sale of all Trust assets has been triggered, the rest contended that on a true construction of the deed, no such sale has been triggered.
- It was alleged by Lalit that Bina, Charu and Samir had breached the provisions of the Trust Deed. Lalit later filed an Application for Emergency Measures before the ICA of the ICC impleading the other three as respondents thereto and seeking to restrain Bina from holding herself as Managing Trustee, for appointment of an administrator of the Trust Fund, to restrain the other three from acting in relation to the Trust and transferring, alienating, or creating any encumbrance in relation to the assets and for suspension of Titus & Co as the Secretary of the Trust.
- Pursuant to the Application filed before the ICC, an Emergency Arbitrator was appointed who organized a meeting of the Emergency Arbitration proceedings. In the said meeting, a date for physical hearing was set.
- In view of the aforesaid, in the present case before the Delhi High Court, the enforceability of the arbitration agreement was challenged, and an anti-arbitration injunction was sought.

Issue at hand?

- Whether the objection to the very arbitrability of the dispute be permitted to be decided by the Arbitral Tribunal or is it open for the Court to injunct the arbitration commenced in Singapore?

Decision of the Court

- The Court held that suits to declare the invalidity of an arbitration clause/agreement and to injunct arbitration proceedings whether falling in Part I or II, are not maintainable in view of the precedence set by the decisions of the Supreme Court. While dealing with the issue of arbitrability, the Court noted that in the case of *Mc Donald's India Pvt Ltd v. Vikram Bakshi*[8], it was stated that a case involving anti-arbitration injunction is different from that of an anti-suit injunction due to the principle of autonomy of arbitration and competence-competence. Further, the reasoning in *Kvaerner Cementation India Ltd v. Banjranglal Aggarwal*[9] relating to Section 16 of the Arbitration and Conciliation Act, 1996 (**Act**) conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, was upheld while holding that anti-arbitration injunction suits are not maintainable.
- It was observed by the Court that the Act empowered the Arbitral Tribunal to rule on its own jurisdiction. Further, if the statute has granted the mode of obtaining the same relief before Tribunal, the Court under Section 41(h) of Special Relief Act would not grant the same relief, i.e. of anti-arbitration injunction. The Court emphasized that the Act is a complete code and Courts cannot interfere with the code pertaining to arbitration laid down in the statue, by exercising jurisdiction, for which equally efficacious relief can be obtained before the Arbitral Tribunal.
- It was also held that once it has been decided that the Court does not have jurisdiction of the proceedings, it cannot decide on the arbitrability of the objection raised. The Court also agreed with the Respondent that Section 8 of the Act has no application as there is a bar on jurisdiction of the High Court via Section 5.
- The Court thus reached the conclusion that the anti-arbitration injunction suit does not lie and hence, the two suits were non-maintainable.

Our View

This judgment of Delhi HC is an encouraging step towards making arbitrations less intrusive while upholding a basic feature of arbitrations – party autonomy. However, the issue of anti-arbitration injunction is far from settled and needs to be finally decided by the Apex Court once again, since various High Courts have been taking divergent views by relying upon the judgment of *SBP & Co v. Patel Engineering* (Appeal (civil) 4168 of 2003) which widened the jurisdiction of the Courts and not *Kvaerner Cementation India* which categorically held that in view of Section 5 read with Section 16 of the Act, anti-arbitration suits are not maintainable.

Nonetheless, it must be noted that the Apex Court in a more recent case of *Duro Felgura v. Gangavaram* (Arbitration Petition No.30 of 2016) has held that at such an initial stage of the case, the Court just needs to see whether an arbitration agreement exists – nothing more, nothing less - and that the legislative policy and purpose is to minimize Court's intervention. A challenge to the present judgment before the Supreme Court should settle this debate.

[8] FAO (OS) 9/2015 and CM No. 326/2015
[9] (2012) 5 SCC 214

Ramanand & Ors v. Dr. Girish Soni & Anr

RC. Rev. 447/2017

Background facts

- Pursuant to the outbreak of Covid-19, the tenants of a shoe store located in Khan Market, New Delhi filed an application before the High Court of Delhi seeking suspension of rent during the period of lockdown in the country as the lockdown had caused disruption of all business activities hampering the ability of the tenants to generate sufficient revenue. The tenants pleaded that the lockdown was a Force Majeure event, beyond the control of the tenants. Therefore, the tenants prayed for a waiver of monthly rent, or alternatively, partial reliefs in terms of suspension, postponement, or part-payment of the rent amount.

Issue at hand?

- The tenants filed the application for waiver of monthly rent fixed, or a partial relief in terms of suspension, postponement, or part-payment of the rent on account of Covid-19.

Decision of the Court

- HC categorically opined that the relationship between a landlord and tenant (lessor and lessee and licensor and licensee) is governed solely by terms of their respective contracts. HC further clarified that question of waiver, suspension or any remission in rental payments would operate basis terms and conditions stipulate in each contract. However, HC thought it necessary to discuss the scope and applicability of Section 32 and Section 56 of Indian Contact Act, 1872 (**ICA**) and Section 108 (B)(e) of Transfer of property Act, 1882 (**TPA**) to contracts of tenancy.
  - It was held that in circumstances such as the outbreak of a pandemic like Covid-19, grounds on which the tenants could seek waiver or non-payment of monthly rent, under contract containing a Force Majeure clause would be governed by Section 32 of ICA. It was observed that a Force Majeure clause could be differently worded in different contracts as there is no standard draft, application or even interpretation. The fundamental principle would be that if the contract contains a clause providing for some kind of waiver or suspension of the rent, only then could the tenant claim the same.
  - It was also observed that Force Majeure clause could also be a contingency contract in terms of Section 32 of ICA which may allow the tenant to claim that the contract has become void and surrender the premises. However, the High Court clarified that if the tenant wishes to retain the premises and there was no clause giving respite to the tenant, rent would be payable.
  - In the absence of a Force Majeure clause or a remission clause, a tenant may attempt to invoke the doctrine of frustration of contract or the impossibility of performance, as encapsulated in Section 56 of ICA. HC, however, held, that such invocation would not be applicable in view of the settled legal position.
  - Reference was made to the decision of Supreme Court (**SC**) in *Raja Dhruv Dev Chand v. Raja Harmohinder Singh & Anr*,[10] wherein the tenant had rented agricultural lands in Punjab however they could not be utilized due to partition in the year 1947. Accordingly, the tenant sought refund of the rent paid by him. SC, after considering the law on impossibility of performance from various jurisdictions, held that Section 56 of ICA does not apply to cases in which there is a completed transfer. SC laid down the law in this regard by categorizing a lease as a completed conveyance and therefore holding that Section 56 of ICA cannot be invoked to claim waiver, suspension, or exemption from payment of rent.
  - The High Court placed further reliance on the decision in *Hotel Leela Venture Ltd v. Airports Authority of India*[11] wherein a division bench of HC held that a contract for lease whereunder the lessee obtains possession from the lessor is an executed contract. It was held that since periodical payment of rent is a term of the agreement, the agreed consideration has to be paid and such rent will not be discharged merely because it turns out to be difficult for the party to perform its payment obligations. No party can be allowed to resile from its obligations under a contract for the said reason.
  - It was observed that in the absence of contracts or contractual stipulations, the provisions of the Property Act govern tenancies and leases. According to Section 108(B)(e), on the occurrence of any of the stipulations stated such as fire, tempest or flood or violence of an army or of a mob,

Our View

It is clear from the decision of the High Court that suspension or waiver of rent in case of leased properties will depend on the terms and conditions of the contract/agreement between the parties. In the absence of any contractual stipulation regarding the same, the provisions of TPA will be attracted if:

- The conditions thereunder are satisfied; and
- If the lease is sought to be declared void.

From a perusal of the provisions of the TPA it is clear that the TPA does not directly contemplate suspension of rent. Although the decision of the High Court provides certainty and clarity in respect of this issue, it would be advisable for the tenants to negotiate with their landlords for suspension, waiver or part payment of rent in the context of the current scenario in the country, for achieving positive and desirable outcomes.

[10] 1968 AIR 1024, 1968 SCR (3) 339
[11] FAO (OS) (Comm) 64/2016

or other irresistible force, which renders the property substantially and permanently unfit to be used for the purpose for which it was leased, will make such lease void.

- In view of the settled legal position, HC held that, for a lessee to seek protection under Section 108(B)(e), there has to be a complete destruction of the property, which is permanent in nature, due to the Force Majeure event. HC took the view that temporary non-use of the premises due to the period of lockdown, which was announced as a measure against the outbreak of Covid-19, cannot be construed as rendering the lease void under Section 108(B)(e) and therefore the tenant cannot avoid payment of monthly rent.

- The tenants did not urge/plead the tenancy to be considered as void under Section 108(B)(e) due to non-use of the leased premises by the tenants. Instead, the tenants sought suspension of rent on account of the period of lockdown in the country. HC observed that in order to grant suspension of rent, the following factors ought to be considered:
  - Nature of the property
  - Financial and social status of the parties involved
  - Monthly rent
  - Absence of contractual conditions that permitted non-payment or suspension of rent
  - Absence of any orders protecting the Appellant/tenant.

EXL Careers & Anr v. Frankfinn Aviation Services Pvt Ltd

2020 SCC OnLine SC 621

Background facts

- Supreme Court (**SC**) was seized of an appeal on reference by a two judge bench of the Apex Court against order dated March 13, 2018 of High Court (**HC**) wherein it was held that the suit filed in Delhi on return of the plaint by court in Gurgaon (due to lack of territorial jurisdiction of Gurgaon Courts in view of the exclusion clause in the agreement) shall proceed from the stage at which it was pending at Gurgaon before return of plaint and not de novo. On appeal, proceedings were stayed on July 13, 2018 culminating in the order of reference.
- The Appellant submitted that while there was no conflict in judgments of *Joginder Tuli v. S.L. Bhatia*[12] and *Oil and Natural Gas Corporation Ltd v. Modern Construction & Co*[13], HC erred in not appreciating that return of the plaint being under Order VII Rules 10 and 10A of CPC could be at any stage of proceedings in a suit irrespective of completion of pleadings and conclusion of evidence before the transferor court. Further while Order XVIII Rule 15 of the CPC could not be invoked in view of the nature of jurisdiction conferred under Rule 10 for return of the plaint with Rule 10A being only a sequitur with regard to the procedure to be followed for the same, the said provisions cannot be interpreted as providing for continuation of the suit and mere use of the words 'return the file' are irrelevant and cannot be construed as enlarging the scope of jurisdiction under Order VII Rule 10 of the CPC.
- The Appellant further argued that fresh summons had to be issued upon presentation of the plaint before the court of competent jurisdiction under Order VII Rule 10A while referring to Order IV Rule 1 with regard to the institution of the suit by presentation of a plaint and issuance of summons under Order V Rule 1 of the CPC. The Appellant submitted that the institution of suit at Gurgaon being *coram non judice* the suit had necessarily to commence de novo at Delhi.
- The Respondent submitted that the special leave petition filed by the Appellant suffered from suppression of material facts inter alia including that HC did not take any steps for having the plaint retuned to the respondent in view of the revision by the Appellant having been allowed by the High Court on September 05, 2017. It was left for the Respondent to file a fresh application under Order VII Rule 10 of the CPC praying for transfer of the entire judicial file from Gurgaon to Delhi considering the advanced stage of the suit which was allowed by the Civil Judge and affirmed in the impugned order by the HC. The Respondent further argued that the continuation of trial from the stage of transfer or de novo trial was a matter of fact and not to be put in a straight-jacket formula with the present case being one of overlapping jurisdictions of courts in Gurgaon and Delhi but non-suited at Gurgaon only in view of the exclusionary clause at 16B of the franchise agreement.

[12] (1997) 1 SCC 502
[13] (2014) 1 SCC 648

Issues at hand?

- Whether a plaint returned under Order VII Rules 10 and 10A of the CPC should be proceeded de novo or should it continue from the stage where it was pending before the court at the time of returning of the plaint?
- Opinion on a perceived conflict between two Division Bench decisions in *Joginder Tuli v. S.L. Bhatia* and *Oil and Natural Gas Corporation Ltd. v. Modern Construction & Co.*

Decision of the Court

- The Apex Court held that mere use of the words 'return the file' in the order dated September 05, 2017 (the order expressly stating that the file be returned under Order VII Rule 10 and 10A of the Code) could not enlarge the scope of jurisdiction under Order VII Rule 10 to mean that the High Court has directed so with the intention for continuance of the suit from the stage it had reached.
- It held that exercise of jurisdiction by a court in contravention to the exclusion clause in the agreement could not be said to be proper presentation before the court having jurisdiction in the matter.
- On the issue of reference, i.e. the stage of trial of the transferred suit, SC held that the attention of Court in that case did not appear to have been invited to *Modern Construction* and the plethora of precedents post the amendment.
- The Apex Court further held that in cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order VII Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo.
- Finally, SC held that jurisdiction of the Apex Court under Article 136 of the Constitution of India was plenary and residuary in nature, unfettered and not confined within definite bounds, subject to only one limitation, i.e. 'wisdom and sense of justice of the Judges'. In view thereof, the Apex Court declined to set aside the impugned order dated March 13, 2018 of HC.

Our View

This judgment of Apex Court categorically lays down the legislative intent of Order 7 RR 10 and 10A of the CPC while at the same time also laying down its discretionary power under Article 136 of the Constitution of India. The judgment lays to rest the conflicting views in the earlier judgments. However, the Apex Court may also have broadly explored the parameters of exercise of its discretionary powers on a factual premises so as to render more clarity in terms of weightage to be given to a party's failure to rely on an "exclusive jurisdiction" clause in an agreement and the stage of trial in a civil proceeding.

State Trading Corporation of India v. Jindal Steel & Power Ltd. & Ors

2020 SCC OnLine Del 931

Background facts

- State Trading Corporation of India challenged the *suo moto* appointment of retired judge of Delhi High Court (**HC**) as the Arbitrator, to adjudicate upon the disputes between the parties (**Impugned Order**) in the matter of *Jindal Steel & Power Ltd v. State Trading Corporation of India & Ors*.[14]
- Challenging the impugned Order, Appellant filed the present appeal before the Supreme Court (**SC**).

Issue at hand?

- Whether HC has the liberty to *suo motu* appoint an Arbitrator despite there being an arbitration clause in the Agreement which mandates the arbitration to be conducted as per the procedure prescribed therein?

Decision of the Court

- At the outset, it was observed that Clause 19 of the Agreement sets out an ironclad mechanism to settle the disputes by way of conducting the arbitral proceedings as and by way of the ICA rules.
- SC, therefore, held that when there is a mechanism/procedure which has been agreed upon by both the parties to the dispute, it was incorrect for the Division Bench of HC to have ignored the same and *suo motu* appoint an Arbitrator.
- Accordingly, the impugned Order was set aside by the SC and the Respondent was granted liberty to approach the ICA for initiation of the Arbitration within seven days from the date of Order. Respondent was also directed to renew PBGs for a further period of two months w.e.f July 22, 2020.

Our View

By this judgement, the Apex Court has made it clear that the procedure as prescribed in the Agreement for appointment of an Arbitrator has to be respected and adhered to and the Courts are not at liberty to travel beyond the same. Such act would be a complete overreach of the courts which is becoming a serious issue in today's time and this judgment is a step towards the right direction in curbing the same and cementing India's position on the expeditious and a judicial adventurism free Institutionalized Arbitration regime.

[14] FAO (OS) (COMM) 61/ 2020

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www.hsalegal.com

mail@hsalegal.com

HSA Advocates

PAN INDIA PRESENCE

New Delhi

81/1 Adchini
Sri Aurobindo Marg
New Delhi – 110 017

Phone: (+91) (11) 6638 7000

Email: newdelhi@hsalegal.com

Mumbai

Construction House, 5th Floor
Ballard Estate
Mumbai – 400 001

Phone: (+91) (22) 4340 0400

Email: mumbai@hsalegal.com

Bengaluru

Aswan, Ground Floor, 15/6
Primrose Road
Bengaluru – 560 001

Phone: (+91) (80) 4631 7000

Email: bengaluru@hsalegal.com

Kolkata

No. 14 S/P, Block C,
Chowringhee Mansions
Kolkata – 700 016

Phone: (+91) (33) 4035 0000

Email: kolkata@hsalegal.com