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India—Delhi High Court enforces SIAC award and directs deposit of payment (Glencore International v Indian Potash)

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Arbitration analysis: While fostering its pro-enforcement regime, the Delhi High Court in *Glencore International AG v. Indian Potash Limited & Anr. (Ex P 99/2015)* recognised a foreign award by its judgment dated 9 August 2019. While upholding the legislative intent, the Delhi High Court also directed Indian Potash Limited (‘Judgment Debtor’) to deposit the sum underlying the final award and cost award within four weeks. Shweta Sahu and Moazzam Khan, head of the International Dispute Resolution Practice at Nishith Desai Associates (NDA) consider the decision.

[Glencore International AG v Indian Potash Limited & Anr \(Ex P 99/2015\)](#)

What was the background?

NDA represented Glencore International AG (‘Decree Holder’) before the Delhi High Court, seeking enforcement of a foreign award made under the Singapore International Arbitration Centre (SIAC) Rules.

However, the Judgment Debtor resisted the enforcement, setting out the following objections:

- the awards which include the final award and the costs award were not stamped
- the parties had not agreed to the arbitration proceedings being conducted under the SIAC Rules
- the arbitrator failed to preliminarily decide its jurisdictional objections, thereby depriving the Judgment Debtor of the opportunity to file an appeal
- that the awards were vitiated for breach of principles of natural justice, since the Decree Holder was permitted to amend its pleadings during the final hearing without allowing the Judgment Debtor to contest the amendments

What did the court decide?

Honourable Mr Justice Rajiv Shakhder, the Single Judge who heard the submissions advanced by both the parties, was of the unmoved view that the objections raised against the enforcement lacked merit, and observed as below:

- foreign awards are not required to be stamped under the Stamp Act. Apart from relying on the decision of the Honourable Supreme Court in *M/s Shriram EPC Limited v. Rioglass Solar SA* (Civil Appeal No. 9515/2018), the court held that it could not be the legislative intent to insist on the stamping of a foreign award under the Indian stamp laws, as States in India have different rates of stamp duty, and it would be impossible for the enforcer to pay stamp duty in every state before seeking enforcement of a foreign award

- the arbitration agreement referred to the rules of a non-existent arbitral institution. Therefore, the arbitrator correctly adopted the interpretative route and construed the applicable rules as SIAC Rules. Further, the procedure followed under the SIAC Rules had not caused any prejudice to the Judgment Debtor. Nonetheless, procedural defects, which do not lead to failure of justice, would not render the award unenforceable
- there is no such fundamental policy in Indian law that adjudicating authorities should mandatorily render a decision on jurisdictional issues before hearing the matter on merits. The discretion in this behalf lies with the adjudicating authority, as is the case under the International Arbitration Act
- the arbitrator exercised his discretion to allow amendment of pleadings under the SIAC Rules after granting an opportunity to the Judgment Debtor
- while rejecting all opposition to the enforcement of the award, the Delhi High Court directed the Judgment Debtor to (i) deposit the final award and costs award amounts in court (ii) give detailed disclosures with respect to its assets – including its bank accounts and (iii) be restrained from alienating its assets

Directions for deposit of the award amount:

The Delhi High Court directed the Judgment Debtor to deposit the awarded amounts with the Registry of the Delhi High Court.

Vide the deposit directions, the High Court has given the Judgment Debtor an opportunity to make the payments under the award, without the High Court having to proceed with the attachment and sale of the Judgment Debtor's assets to recover the said moneys.

The court recognising and enforcing such foreign awards may direct for the deposits to be made directly to the award-holder or the court itself. Deposits made with the court are also aimed at defusing potential opposition which a direction to pay directly to the award-holder may face, especially in a situation where the judgment debtor intends to appeal against the court's decision to enforce the award.

A foreign award (such as the SIAC award in the instant case) cannot be challenged in India (see *Bharat Aluminium Company v. Kaiser Aluminium Technical Services*, (2012) 9 SCC 552 (para 88, 89)). However, a judgment debtor may resist enforcement of such an award if the award does not satisfy the conditions under section 48 of the Arbitration and Conciliation Act 1996. In the event of dismissal of such objections to enforcement, the judgment debtor may prefer a special leave against such an order of the enforcing court (see *Fuerst Day Lawson v Jindal Exports* (2011) 8 SCC 333).

The NDA team was led by Moazzam Khan and Shweta Sahu, along with Nakul Dewan, Senior Advocate representing the Decree Holder.

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Further information can be found [here](#)