

## India—Delhi High Court revisits the law on granting interim relief to non-signatories in arbitration (*Blue Coast Infrastructure Development v Blue Coast Hotels*)

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**Arbitration analysis:** The Delhi High Court refused to grant interim relief under section 9 of the Arbitration and Conciliation Act, 1996 (ACA 1996) against a non-signatory to the arbitration agreement on the facts and circumstances of the case. However, the Delhi High Court held that it was possible to award interim relief against a non-signatory in certain circumstances. For instance, the property of a third party holding property on behalf of a party to the arbitration may be attached pursuant to ACA 1996, s 9. Vyapak Desai, partner and head of the International Dispute Resolution and Investigations Team at Nishith Desai and Bhavana Sunder, member of the team, discuss this decision.

*Blue Coast Infrastructure Development Pvt Ltd v Blue Coast Hotels Ltd and others* OMP (I) (COMM) No 35/2020 and IA 3251/2020 (not reported by LexisNexis® UK)

*Note: other Indian judgments not reported by LexisNexis® UK*

### What are the practical implications of this decision?

The Delhi High Court interpreted ACA 1996, s 9, which provides courts the power to award interim measures to parties before, during or after the arbitral proceedings and prior to the enforcement of an arbitral award. The court contrasted these powers against the powers of the arbitral tribunal under ACA 1996, s 17 to award interim measures during arbitral proceedings. The court held that while under ACA 1996, s 17, the arbitral tribunal can award interim measures only to the parties to the arbitration agreement, this limitation is not applicable to a court under ACA 1996, s 9.

Thus, the court held that in certain situations, interim measures can be awarded by the court against even non-parties to an arbitration agreement. Particularly, the court observed that it is possible to pass an order to attach a property held by a third party if it is being held on behalf of a party to the arbitration.

However, on the facts of the present case, the court held that the third party, the second respondent, ie, IFCI Ltd. (IFCI), cannot be said to be holding the property on behalf of the first respondent, ie Blue Coast Hotels Ltd. (Blue Coast Hotels), thereby, the question of awarding interim relief to the applicant against IFCI did not arise.

### What was the background to this decision?

The applicant, Blue Coast Infrastructure Development Pvt. Ltd. (the Applicant) had entered a Joint Development Agreement (JDA) with Silver Resort Hotel India Private Limited (Silver Resort). Silver Resort was a special purpose vehicle floated by Blue Coast Hotels to develop a commercial space in the New Delhi International Airport (Aerocity Project). An Infrastructure Development and Service agreement had been executed between Delhi International Airport Limited (DIAL) and Silver Resort.

Pursuant to the JDA, the Applicant had been authorised by Silver Resort to raise and collect funds from investors for allotting commercial shops to the investors in the Aerocity Project. The JDA between the Applicant and Silver Resort contained an arbitration clause. It is pertinent to note that Blue Coast Hotels and IFCI were not party to the JDA. However, the Applicant filed the present application before the court pursuant

to the arbitration clause contained in the JDA. Further, Silver Resort was not joined as a respondent in the present proceedings.

The Applicant filed a petition under ACA 1996, s 9 against Blue Coast Hotels and IFCI seeking interim orders from the Delhi High Court. The Applicant requested the court to order IFCI to deposit certain amounts with the registry of the court or alternatively, not to release these amounts to Blue Coast Hotels or otherwise without the permission of the court.

Blue Coast Hotels had issued letters of comfort to the Applicant that, *inter alia*, the monies collected by the Applicant for the Aerocity Project would not be used for any other purpose. Further, Blue Coast Hotels assured the Applicant that in the event the Aerocity Project was not completed a stipulated time, Blue Coast Hotels would refund the monies collected by the Applicant and indemnify the Applicant to the extent of refunding the funds collected by the Applicant.

Due to certain disputes between Silver Resort and DIAL, the Aerocity Project could not be completed. Subsequently, there were multiple proceedings that were initiated in various fora:

- Blue Coast Hotels and IFCI had executed a corporate loan agreement which was secured by the property of Blue Coast Hotels in Goa. A Debenture Subscription Agreement was also executed between PACL Limited (PACL) and Blue Coast Hotels to subscribe to non-convertible debentures which was secured by a second charge on the property of Blue Coast Hotels in Goa. As Blue Coast Hotels defaulted in its obligations, IFCI and PACL issued loan recall notices and initiated proceedings under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. Pursuant to these proceedings, Blue Coast Hotel's property in Goa was sold through auction. Being the first charge holder, IFCI received approximately INR 3,11,71,85,424
- meanwhile, commercial space holders in the Aerocity Project instituted a representative suit before the Delhi High Court against the Applicant, Blue Coast Hotels, IFCI, Silver Resort and DIAL seeking a refund of booking consideration. The court directed IFCI not to disburse an amount of INR 85 crores out of the amounts received from the sale of Blue Coast Hotel's property in Goa
- subsequently, the Securities Exchange Board of India (SEBI) filed an application with the court to have IFCI release the INR 85 crores out of the surplus available with it in favour of SEBI towards the second charge of PACL. The court had ordered that INR 85 crores should be released in favour of SEBI/PACL. Subsequently, the court recalled its earlier order and directed IFCI and SEBI not to disburse any amounts for a period of six weeks, and provided liberty to the parties to file legal proceedings for their claims. This suit is pending
- further, Blue Coast Hotels filed a writ petition before the High Court of Bombay at Goa to exercise its right of redemption of the Goa property under pursuant to the Transfer of Property Act, 1882
- There are also several execution petitions, contempt petitions and complaints against the Applicant initiated by the investors

In the present proceedings, the Applicant prayed for interim measures to protect the amount of INR 85 crores which was allegedly in the custody of IFCI on behalf of Blue Coast Hotels. IFCI, *inter alia*, raised an objection that the court cannot grant any relief against it as it was not a signatory to the arbitration agreement under the JDA.

### **What did the court decide?**

Relying on various case law, the Delhi High Court noted that the scope of ACA 1996, s 9 is not limited to parties to an arbitration agreement, and that it is possible to extend it to third parties as well. Thus, the court dismissed IFCI's objection, and held that the court can pass interim directions against a non-party to the arbitration agreement under ACA 1996, s 9. Relying on the case of *Value Advisory Services v ZTE Corporation and Ors*, OMP No. 65/2008, the court indicated that a party would have the right to seek attachment against a third party if the third party holds the property in its possession *on behalf of* a party to the arbitration agreement.

After considering the law, the court noted that the representative suit filed by investors was still pending before the Delhi High Court, to which the Applicant is a party. In those proceedings, SEBI/PACL had acquired a right to claim the sum of INR 85 crores and their charge is yet to be satisfied. Thus, any direction by the court in the present proceedings would be in conflict with the court's earlier orders in the representative suit.

Considering this, the court held that it is not correct to state that IFCI is holding the sum of INR 85 crores as a custodian of, or on behalf of, Blue Coast Hotels. Therefore, the reliefs sought by the Applicant cannot be granted. In light of these facts, the Court held that the objection by IFCI that it was not a signatory to the arbitration agreement was irrelevant. Consequently, the Court dismissed the petition for interim relief.

### **Commentary on the decision**

The Delhi High Court considered various judgments which have held that courts have the power to award interim relief against a non-signatory to an arbitration agreement in certain situations. Particularly, in the case of *Gatx India Pvt Ltd v Arshiya Rail Infrastructure Ltd*, 2015 VAD (Delhi), which relies upon *Value Advisory Services v ZTE Corporation and others*, OMP No 65/2008, the Court held that, 'the court may issue interim orders against the third parties to arbitration only in exceptional circumstances which are such that denial thereof might frustrate the petitioner's rights in arbitration; defeat the very object of arbitration between the parties thereto; render the arbitration proceedings infructuous; lead to gross injustice; and/or, leave the petitioner remediless, depending on facts of each case.'

Thus, it is clear that interim relief against a non-signatory can be awarded on a case-by-case basis. In the present case, the court held that if IFCI was holding property on behalf of Blue Coast Hotels, the Court would have had the jurisdiction to award interim relief under ACA 1996, s 9, and the objection that IFCI is not a party to the arbitration agreement would not be sustained.

However, it is surprising that the court arrived at this conclusion prior to analysing how interim relief could be awarded against Blue Coast Hotel's property (as allegedly held by IFCI) in the first place, considering that even Blue Coast Hotels was also not a party to the arbitration agreement contained in the JDA. From the facts, it is clear that it was only the Applicant and Silver Resort who were parties to the JDA which contained the arbitration clause. While Silver Resort is a special purpose vehicle floated by Blue Coast Hotels, it would have been beneficial if the Court had undertaken an analysis to clarify that Silver Resort was possibly an alter ego of Blue Coast Hotels, and thereby suggest that relief could be awarded against Blue Coast Hotels, despite it not being a signatory to the arbitration agreement. Parties and practitioners would have benefited from further clarity from the court on this aspect in order to understand the various circumstances wherein interim relief can be granted by courts against non-signatories.