

Court Corner

August 28, 2019

DELHI HIGH COURT ENFORCES SIAC AWARD AND DIRECTS DEPOSIT OF PAYMENT

While fostering its pro-enforcement regime, the Delhi High Court in *Glencore International AG v. Indian Potash Limited & Anr.* (Ex. P. 99/2015) recognized a foreign award by its judgement 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.

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

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

- i. The awards which include the final award and the cost award are not stamped.
- ii. The parties had not agreed to the arbitration proceedings being conducted under the SIAC Rules.
- iii. The arbitrator failed to preliminarily decide its jurisdictional objections, thereby depriving the Judgment Debtor of the opportunity to file an appeal.
- iv. 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.

Hon'ble Mr. Justice Rajiv Shakhder, the Single Judge who heard the submissions advanced by both the parties, was of the unmovable view that the objections raised against the enforcement lack merit, and observed as below:

- i. Foreign awards are not required to be stamped under the Stamp Act. Apart from relying on the decision of the Hon'ble 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 for stamp duty, and it would be impossible for the enforcer to pay stamp duty in every state before seeking enforcement of a foreign award.
- ii. 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.
- iii. 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.
- iv. The arbitrator exercised his discretion to allow amendment of pleadings under the SIAC Rules after granting an opportunity to the Judgment Debtor.

NDA team led by Mr. Mbazzam Khan and Ms. Shweta Sahu, along with Mr. Nakul Dewan, Senior Advocate represented the Decree Holder.

To access the judgment, please click [here](#).

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