

India—Bombay High Court refuses to grant anti-arbitration injunction (Ravi Arya v Palmview Overseas)

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Arbitration analysis: In a case relating to a domestic commercial arbitration, the Bombay High Court ruled that when remedies are available to the party seeking an injunction under the Arbitration and Conciliation Act, 1996 (ACA 1996), an anti-arbitration injunction cannot be obtained to circumvent provisions of the Act. The application had been prompted by a dispute over the constitution of the tribunal. Vyapak Desai, partner and head of international litigation and dispute resolution at Nishith Desai Associates, and Bhavana Sunder and Kshama A Loya, members of the team, discuss this decision.

Ravi Arya & Ors v Palmview Overseas Ltd. & Ors, Notice of Motion (L) No 3046 of 2018 in Suit (L) No 1676 of 2018 (not reported by Lexis®Nexis UK)

What are the practical implications of this decision?

The Bombay High Court has reiterated the limits on granting anti-arbitration injunctions by courts in its judgment.

It is settled law that courts in India have inherent jurisdiction to pass anti-suit and anti-arbitration injunction to a party over whom it has personal jurisdiction, in certain limited circumstances (see *Modi Entertainment v WSG Cricket Pte*, (2003) 4 SCC 341; *Union of India vs. Vodafone Plc. and Anr*, C.S. (S) 383 / 2017, High Court of Delhi, News Analysis: [Delhi High Court takes a bite off Vodafone's BIT claim \(India v Vodafone\)](#)). In the present case, the Bombay High Court ruled that when remedies are available to the party seeking an injunction under the ACA 1996, an anti-arbitration injunction cannot be obtained to circumvent provisions of the Act.

The case centres on difficulties which can arise in relation to the appointment of an arbitrator on behalf of multiple parties having a conflict of interest inter se. The court held that solutions could be found in ACA 1996, without recourse to injunctions, but the practical course of action to avoid such a situation must be to have clear language in the dispute resolution clause as to how multiple respondents having conflicting interest will nominate one arbitrator on behalf of all.

What was the background to the decision?

The Plaintiffs, Ravi Arya & Others (Ravi Arya Group) and the defendants Palmview Overseas Ltd. (Palmview) and Pawan Arya & Orthers (Pawan Arya Group) were promoters of a company, Arya Iron and Steel Co. Pvt. Ltd. (Company). Palmview held 51% equity shareholding in the Company, while the Ravi Arya Group and the Pawan Arya Group each held 25.5% equity shareholding.

As disputes arose between Palmview, the Company, Ravi Arya Group and the Pawan Arya Group, arbitration was invoked by Palmview pursuant to a shareholders agreement between the parties ('Shareholders Agreement'). The company secretary of the Company nominated an arbitrator. Palmview appointed a second arbitrator and the two arbitrators nominated a presiding arbitrator.

The Ravi Arya Group argued that the arbitrator on behalf of the Company was appointed in collusion with Palmview, and without consulting the Ravi Arya Group. Further, the Ravi Arya Group argued that there was a special leave petition (an SLP) pending before the Supreme Court in relation to consent terms entered between the parties, and the arbitral proceedings were staged to deny the Ravi Arya Group its benefits under the consent terms.

Further, the company secretary allegedly appointed the arbitrator on behalf of the Company without the authority to do so. It was argued that a board resolution authorised the company secretary to carry out ministerial acts, and such power could not have been exercised to take unilateral decisions in appointing an arbitrator without consulting the promoter group.

These objections were raised before the arbitral tribunal. However, the tribunal held that the objections were not well founded and that the arbitral tribunal was constituted in pursuance with the procedure laid down by law and the Shareholders Agreement. The Ravi Arya Group subsequently approached the Bombay High Court seeking an injunction restraining Palmview and the Pawan Arya Group from continuing with the arbitration proceedings

What did the court decide?

The issue before the court was whether an anti-arbitration injunction should be granted to restrain the arbitral proceedings when an allegation is made regarding improper constitution of the arbitral tribunal. The Bombay High Court held that the Ravi Arya Group had recourse under ACA 1996 itself to raise a challenge with respect to appointment of the arbitrator. Under ACA 1996, s 12, a party may challenge the appointment of an arbitrator. If such challenge fails, ACA 1996, s 13 provides that the arbitral tribunal may continue with the proceedings and make an award. However, it is open to the party to apply for setting aside such an arbitral award under ACA 1996, s 34. ACA 1996, s 34(2)(v) provides that an arbitral award may be set aside if 'the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.'

Further, the Bombay High Court added that under ACA 1996, s 16(2), a party can raise a plea that the arbitral tribunal does not have jurisdiction. ACA 1996, s 16(6) provides that if such plea fails, the party may make an application for setting aside the arbitral award in accordance with ACA 1996, s 34.

The court further relied on ACA 1996, s 5 to state that judicial authorities must not intervene in arbitral proceedings except as provided under the ACA 1996. The Bombay High Court added that there was no provision under the ACA 1996 for the court to intervene in the present case.

The Bombay High Court concluded that the Ravi Arya Group could not obtain a relief to circumvent the provisions of the Act, and it was always open to them to raise their grievance under ACA 1996, s 34 after the arbitral award was rendered.

What are your comments on the decision?

The present case raises a critical issue of appointment of a single arbitrator by multiple parties having a conflict of interest inter se. In the instant case, the Company Secretary of Defendant No 2 Company exercised

powers under a clear resolution authorising him to appoint an arbitrator on behalf of the Company. In such a scenario, the allegation of one of the promoter groups that it was not consulted while making a decision on nomination, falls foul of agreement between inter se groups of a Company in vesting powers on the Company Secretary to make a nomination on behalf of the entire Company.

However, graver issues would have arisen where such authorisation would not have been clear. The rival promoter groups would then have a conflict inter se on nominating a single arbitrator. The remedy in such a scenario would not be found as easily as was found in the instant case.

Unlike as suggested in the present case, a remedy under ACA 1996, s 12 or s 13 would be misplaced. These provisions deal with challenge to the arbitrator on the ground of lack of independence or impartiality of the arbitrator. Sections 12 and 13 are triggered only when there is challenge to the arbitrator on account of bias. They will not be attracted when conflicting parties fail to be *ad idem* on nominating a single arbitrator on behalf of the Company in absence of clear authorisation.

ACA 1996, s 16 might be a useful remedy. However, in the event the arbitral tribunal accepts jurisdiction, the conflicting parties would have to proceed with arbitration, although onerous, and wait till an award is rendered. In such cases, the Claimant would also run the risk of a challenge to the award at the culmination of the arbitral proceedings.

Perhaps, ACA 1996, s 11 would come to the rescue of the conflicting groups. An application could be made jointly by the promoter groups to seek court assistance in nominating a single arbitrator on behalf of the Company. This would be a plausible remedy with a win-win solution for all. This would also remove the risk of challenge to the award at a later stage on the ground of improper constitution of the tribunal. In the instant case, the language of the arbitration clause and that of the board resolution (appointing the Company Secretary as a constituted attorney to appoint an arbitrator) is not available to the public. However, what appears to have weighed with the Court was the presence of an express authorisation by the Company in favour of the Company Secretary to appoint an arbitrator.

Going forward, a procedure vesting clear authority on an individual for appointment of arbitrator on behalf of a company would be a preventive course of action better than the cure of challenge to the award. It is therefore important to have clear language in the dispute resolution clause as to how multiple respondents having conflicting interest will nominate one arbitrator on behalf of all.

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