

Dispute Resolution Hotline

June 04, 2013

INDIAN COURTS HELD TO LACK JURISDICTION FOR SETTING ASIDE OF INTERIM AWARDS PASSED UNDER SIAC RULES

In this decision dated May 9, 2013, the High Court of Madhya Pradesh ("**Court**") set out to decide the jurisdictional authority of Indian Courts to set aside an interim award passed under arbitration proceedings governed by the Singapore International Arbitration Centre Rules, 2007 ("**SIAC Rules**"). It was held that the Indian Courts had no power to do so when the parties have submitted to the curial law of Singapore since a conjoined reading of the SIAC Rules and the International Arbitration Act ("**IA Act**") makes specific provisions for setting aside an interim award which excludes the jurisdiction of Indian Courts.

FACTS

Yograj Infrastructure Limited ("**Appellant**") and Ssangyong Engineering and Construction Co Limited ("**Respondent**") are companies engaged in the business of construction, development and execution of projects like road, civil works etc. and the Respondents had sub-contracted a project from the National Highways Authority of India to them but subsequently terminated it on various grounds relating to performance of the agreement.

Both the parties applied for interim reliefs before the District Judge, Narsinghpur and the matter eventually reached the Supreme Court in 2011 which dismissed the appeal and held that the rule laid down Bhatia International v Bulk Trading ("**Bhatia International**") regarding the applicability of Part - I of the Arbitration and Conciliation Act, 1996 ("**Act**") did not hold since the parties had agreed to the arbitration proceedings to be referred to arbitration in Singapore under the SIAC Rules ("**2011 Case**").¹

Meanwhile, in the proceedings in Singapore, the arbitrator passed an interim award in favour of the Respondent while dismissing the Appellants application for the same. The Appellants then challenged the award of the arbitrator before the District Judge, Narsinghpur who dismissed the application and this is how the appeal against the District Judges order came to be filed in the Court.

ISSUES

The main issue to be considered by the Court was whether Indian courts had the jurisdiction to set aside an interim award of an arbitrator in proceedings where the seat of arbitration was outside India and following from that, whether the District Judge was correct in dismissing the application of the Appellants to set aside the award.

JUDGMENT

1. Procedure laid down by the SIAC Rules

Since the agreement between the parties clearly stated that the arbitration proceedings were to be held in Singapore in according with the SIAC Rules in force at the signing of the agreement, the Court delved into the procedure laid down by the Rules. Rule 32 of the SIAC Rules specifies that when the arbitration is conducted in Singapore under the SIAC Rules then the law applicable will be the IA Act. Thus the provisions applicable to set aside an award of any proceedings under the SIAC Rules should be derived from the same act, article 34(2) of the First Schedule of which lays down that an award can only be set aside by courts under article 6 of Chapter I of the same schedule. Following from that, article 6 specifically provides that the functions under article 34(2) of setting aside an award can only be performed by states which have enacted the UNCITRAL Model law (The IA Act has been enacted to give force to the model law on international commercial arbitration adopted by UNCITRAL) and in the courts which are specified by these states. The Court held that since India has not enacted Model Law, the Indian courts have no jurisdiction to set aside an interim award passed by an arbitrator under the SIAC Rules and the only recourse that the Appellants would have would be to follow the procedure under article 34 and 6 as mentioned above and challenge the award in the specified Singapore courts. The reasoning is also that once the parties had submitted to the SIAC Rules then the procedure related to setting aside an award must also be derived from and conform to those rules and there can be no partial selection of a forum.

2. Applicability of Bhatia International

The rule laid down in Bhatia International was that Part - I of the Act would apply even in the case of international commercial arbitrations where the seat was outside India unless the parties specifically excluded its application. This view was ultimately overruled on September 6, 2012 in the case of Bharat Aluminium Company v Kaiser Aluminium Technical Services which held that part - I would apply only to arbitrations which take place in India but that this law would apply only prospectively.

The Court relied on the reasoning of the Supreme Court given in the 2011 case between the same parties and

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held that the Bhatia International judgment did not apply because the parties vide their agreement had specifically submitted to the proceedings being held in accordance with the SIAC Rules under which the abovementioned procedure had to be followed for setting aside an award. It therefore held that the Bhatia International judgment was inapplicable and therefore the appeal was dismissed.

ANALYSIS

The judgment re-iterated the lack of jurisdiction of the Indian Courts in relation to the setting aside of foreign awards.

A key point to be noted is that in the subsequent SIAC Rules, Rule 32 which provides for the governing law being the International Arbitration Act has been deleted. The new rules provide for the tribunal to apply the law as designated by the parties failing which it has the discretion to apply any law that it deems appropriate.

- Prateek Bagaria , Ashish Kabra and Vyapak Desai

You can direct your queries or comments to the authors

(**special thanks to Aanchal Rohira - paralegal with Mumbai office for her immense contribution)

¹ <https://nishithdesai.com/SectionCategory/33/Dispute-Resolution-Hotline/12/57/DisputeResolutionHotline/5544/7.html>

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