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ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN INDIA

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ABSTRACT

In international exchange, arbitration, as opposed to suit, is the favored strategy for debate determination, since it is simpler to uphold an arbitral award than a court choice, in an outside State. From a down to earth perspective, this is on the grounds that there are more multilateral traditions and reciprocal bargains encouraging requirement of remote arbitral awards than there are for implementation of court choices. From a hypothetical perspective, implementation of arbitral awards is less demanding, as a result of the authoritative idea of arbitration. An arbitral award is the result of a private debate settlement technique, while a court administering speaks to the sway of the State where they are issued. It is simpler for a national court to uphold the result of a legally binding assent between two private gatherings, than a choice speaking to the power of a remote State. In this manner, the propensity in international tradition and metropolitan laws is to encourage authorization of arbitral awards.

KEYWORDS: *international tradition, Foreign Awards, international norms*

INTRODUCTION

Directions on authorization of outside awards have altogether enhanced as of late. Past Indian Law did not make any refinement amongst residential and remote awards, and no meaning of an outside arbitral award was made. Hence, it was expected that outside awards were liable to retrial and challenge and that the same lawful method and investigation were connected to remote awards as those connected to residential awards. Show Indian Law, in any case, in a few viewpoints, goes past the New York Convention, 1958 (the NYC, 1958) to encourage requirement of outside awards. In this Paper, after a short survey of the foundation to the issue of

authorizing outside arbitral awards in India, and lawful improvements in such manner, those parts of the Arbitration Act, 1996 that address implementation of remote arbitral awards are analyzed. These parts of Indian Law apply to outside arbitral awards that can be implemented under international traditions or two-sided arrangements to which India is a gathering. Following an examination of general arrangements of Indian Law with respect to requirement of remote awards, justification for non-authorization of such awards are considered. At that point, the skill of the court with respect to remote awards is examined.

BACKGROUND OF ENFORCING FOREIGN ARBITRAL AWARDS IN INDIA

The international business exercises were in presence to the present time also. Obviously, its volume and taking an interest units were constrained. The coming of modern upset specialized and mechanical use and data innovation blast have influenced the world little in its compass and exchanges to have developed massively between the distinctive countries. Where there are voluminous and various exchanges (both at international and local level), it is nevertheless characteristic that there will be question also. The settle these international business question expedient and taste fully, as per international norms, in India there were two separate Acts, namely:

- a) The Arbitration (Protocol & Convention) Act, 1937: It was enacted as a result of Geneva Protocol (1923) & Geneva Convention, 1927 (the GC, 1927) under the auspices of League of Nations.
- b) The Foreign Awards (Recognition & Enforcement) Act, 1961: It was enacted as a result of the NYC (1958), under the auspices of United Nations Organization.

After the enactment of the Arbitration Act, 1996, the two aforesaid Act stand repealed, and with certain modifications, their close relevant provisions have been incorporated in Chapter I with heading 'Enforcement of Certain Foreign Awards' and 'New York Convention Awards' and Chapter II with heading "Geneva Convention Awards" respectively of Part II of the present Act, 1996.

However, the Supreme Court (SC) in *Thyssen Sthlunion GMBH v. Steel Authority of India* has held that there is not much difference in the provisions of the Foreign Awards (Recognition & Enforcement) Act, 1961 and the Arbitration Act, 1996 regarding enforcement of the foreign award. The definition of 'foreign award' is also same in both the enactments. The only difference appears to be that while under the Foreign Awards (Recognition & Enforcement) Act, 1961 a decree follows, whereas under the present Arbitration Act, 1996, a foreign award is already stamped as the decree.

DEFINITION OF FOREIGN AWARD

A foreign award has been characterized in Section 44 of the present Arbitration Act, 1996. It gives a comprehension about the term of foreign awards as likewise the term Commercial in setting of foreign award. Under this Section, the term 'Foreign Award' implies an arbitral award made on or after the eleventh day of October, 1960 on contrasts between people emerging out of legitimate connections, regardless of whether legally binding or not, considered as business under the law in compel in India. The primary Act as to foreign awards was the Foreign Awards (Recognition and Enforcement) Act,

¹ AIR 1999 SC 3923

1961 and on the grounds that the Arbitration Act, 1996 assumes control over the arrangements of the Act, 1961, the Section gives that is essential that foreign award was made on or after the eleventh day of October, 1960.

It is undoubtedly true that the origin of foreign awards comes from foreign arbitration. In the other word, the term 'Foreign Award' means the arbitral award made as a result of foreign arbitration which is not a domestic arbitration. It becomes necessary to understand the term 'foreign arbitration'. The Calcutta High Court in Case *Serajuddin v. Michael Golodetz*² laid down the necessary conditions relations relating to term 'foreign arbitration' or essential elements of a foreign arbitration, resulting into the foreign arbitral award - these are as following points:-

- a. Arbitration should have been held in foreign lands;
- b. by foreign arbiter(s);
- c. Arbitration by applying foreign laws;&
- d. As a party foreign national is involved. In the instant case since the case was decided on the basis of American Arbitration Law, on foreign land involving a foreign party under a foreign arbitration, it was held to be a foreign arbitration.

To interpret the term 'Foreign Award', the SC in *N.T.P.C. v. Singer Co*³ observed that where in London an interim award was made which arose out of an arbitration agreement governed by the laws of India. It was held that such an arbitral award cannot be treated as a foreign award and it is purely a 'Domestic Award' because it was governed by the Indian laws both in respect of agreement and arbitration.

In 1994, just a year had passed since the SC ruling in aforesaid case, the Delhi High Court in *Gas Authority of India Ltd. v. Spie Capage S.A*⁴ examined in depth the historical developments which led to the NYC (1958) and GC (1927) and their result implementation under the two enactments i.e., The Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961 which now repealed by the Arbitration Act, 1996.

GENERAL PROVISIONS

Indian Law recognizes applying foreign laws in arbitration, whether in procedural or substantive issues. Under the Arbitration Act, 1996, the disputant parties to an arbitration agreement are allowed to choose the law applicable to the issue of their disputes. They can subject their legal relationships to any monetary rule of law, including foreign laws, international convention, bilateral treaties or model-format contracts.⁵

² AIR 1960 Cal.49,

³ AIR 1993 SC 998,

⁴ AIR 1994 Del.75

⁵ Section 7 of the Arbitration Act, 1996.

The most vital arrangements of Indian Law in regards to requirement of foreign arbitral awards are Sections 44 and 49 of the Arbitration Act, 1996 taken in conjunction with each other. Under Section 49, foreign arbitral awards are implemented similarly that foreign sentences and requests are upheld in India. This focuses to the adherence of the Indian administrator to the central state of mind that does not think about international arbitral awards as unmistakable from international judgments, and is, hence, not especially great to international arbitration, regarding implementation. In such manner, as well, Indian Law takes after the English lawful example.

Sections 44 of the Act of 1996 gives that requests and awards made in a foreign State might be conceded leave to implement in India on similar conditions that the concerned State authorizes the requests and awards issued in India. The above arrangements demonstrate that there must be a shared approach to the enforceability of foreign awards amongst India and the pertinent foreign State.

The arbitral award ought to have been given in that region were based on correspondence the NYC (1958) is pertinent. For regions to which the NYC (1958) is pertinent, the legislature of India, in its official Gazette will proclaim the names of States and regions where proportionally the NYC (1958) will apply. The Foreign Awards (Recognition and Enforcement) Act, 1961 was passed which almost 44 State domains were announced which had equal worthiness of NYC (1958).he list so declared in 1961⁶ still remains valid due to Section 85(2) (b) of the Arbitration Act, 1996.⁷ If an award is made in a

⁶ As per C.A. arbitration quarterly, Vol. XVIII, No.3 October-December 1993 the following countries have reciprocal provisions in context to New York Convention, 1958:- Austria, Belgium, Botswana, Bulgaria, Cuba, Czechoslovak Socialist Republic, Chile, Denmark, Ecuador, Arab Republic of Egypt, Finland, France, Germany, Ghana, Greece, Hungary, Italy, Japan, Republic of Korea, Malagasy Republic, Mexico, Morocco, Nigeria, Netherlands, Norway, Philipines, Poland, Romania, Spain, Sweden, Switzerland, Syria Arab Republic, Thailand, Trinidad And Tobago, Tunisia, U.S.S.P., U.K., United Republic of Tanzania, U.S.A., Central African Republic, Kuwait, San Mario.

⁷ Section 85 of the Arbitration Act, 1996 reads as; "Repeal and savings.- (1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (45 of 1961) are hereby repealed. (2) Notwithstanding such repeal,-- (a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings

country which is not a signatory of NYC (1958), then the provisions of the Section shall not be applicable to that award and that award shall not be treated as a foreign award under the present Act, 1996. The SC in *Bhatia International v. Bulk Trading S.A.*⁸, observed that awards in arbitration proceedings which take place in a non-convention country are not considered to be 'foreign award' under the arbitration Act, 1996. they would thus not be covered by Part II. It is an acceptable approach for all members of the NYC(1958). For instance, under English Arbitration Act, 1996, if an arbitral award is signed in a State which is a party to the NYC (1958), English Court can hear an appeal from the award if it was made under English law. In case *Hiscox v. Outhwaite*⁹ the English Court has held that the disputants referred dispute arbitration in England on the basis of an agreement made under English law. The arbitration concluded in an award which was signed by the arbiter in Paris (France). The claimant appealed against the award for remission and for statement of further reasons.

But as against this, the GC (1927) requires that the parties to the award must belong two different signatory States, and then only the award may be recognized and enforced. In other word, if the award has been made in a country which is not signatory to the GC (1927) or if it is between persons who are not subject of jurisdiction of signatory State, it may not be recognized and enforced. The principle of reciprocity in enforcing foreign awards is a reflection of Section I (3) of the NYC (1958), where such a principle is emphasized. The principle is adopted by most countries but not all.

Consequently, when seized of a foreign award, with a specific end goal to uphold it, it must be built up that the rendering nation permits authorization of awards made in India, and apply similar conditions that are connected to the requirement of Indian awards in that State. As it were, it must be demonstrated that not any more prohibitive condition than those of Indian Law applies to the implementation of an Indian award in the said State. A refusal of requirement of Indian awards in that State prompts the foreswearing of authorization of awards rendered there in India. Likewise, stricter conditions for requirement of Indian awards in a State than those connected in India triggers comparative confinements for implementation of awards made in that State, on the off chance that they are to be upheld in India. There are two genuine troubles, nonetheless, with this

which commenced on or after this Act comes into force; (b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act."

⁸ AIR 2002 SC 1432

⁹ 1991(3)WLR 297 (HL)

necessity. To begin with, the Indian arrangement does not indicate what the conditions alluded to are. Second, there is no specify of on that the weight of confirmation for the presence of the correspondence condition is: the asking for party or the Court. Such dubiousness in the dialect of the Section can offer ascent to arguments about its understanding. It has been contended that if Section 49 implies that the Indian judge needs to mull over the very same conditions for authorizing a foreign award in India that are connected by the courts at the seat of arbitration when they implement awards made in India, this forces a troublesome errand on the judge. This is on account of it is troublesome for a judge to know the conditions for upholding a foreign award in another State. Moreover, except if there is a point of reference or particular arrangement of law in the other State, it is so hard to demonstrate that there is such a shared strategy. Forcing such a condition may bring about non implementation of an arbitral award. In general, under Indian law, if enforcement of a foreign award is sought in India, it is Indian Law that determines the enforcement procedure. This is in line with the general rule in has to international conventions on enforcement of awards, according to which the law of the enforcing country is applicable to enforcement procedure.¹⁰ If no multilateral or bilateral treaty governs enforcement of a foreign award, its enforcement in India requires a court decision.

GROUND FOR NON-ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

The Arbitration Act, 1996 accommodates certain justification for declining requirement of foreign arbitral awards. In this regard, Indian Law by and large takes after the NYC (1958). By the by, there are some critical contrasts that are examined in the accompanying Sections. The fundamental distinction is that while, under the Convention these grounds may, however not must, result in non-authorization of a foreign award, under Indian law, they will have such a lawful effect. At the end of the day, if there exists such a ground, the Convention furnishes judges with the attentiveness to or not to implement the award, but rather Indian Law obviously precludes them from upholding such an arbitral award.

The Section 34 of Arbitration Act, 1996¹¹ covered some of the grounds for said aside which are

¹⁰ For instance, Section III, the New York Convention, 1958.

¹¹ Section 34 of the Arbitration Act, 1996 reads as; "Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3). (2) An arbitral award may be set aside by the Court only if-- (a) the party making the

same with Section 48. This Section has been enacted on the basis of Section V of the NYC (1958) and also Section 7 of the Foreign Awards (Recognition & Enforcement) Act, 1961. The Section 48 of the

application furnishes proof that- ---- (i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that----- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India. Explanation. ---Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81. (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months if may entertain the application within a further period of thirty days, but not thereafter. (4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

Arbitration Act, 1996 had an occasion to elaborate and lay down proof grounds for setting aside of award which are available in foreign awards. Briefly stated, these grounds are; -

- a) If the arbitral agreement is not valid.
- b) Due process of law has been violated.
- c) Arbitrator has exceeded his authority.
- d) Irregularity in the composition of Arbitral Tribunal or arbitral proceedings.
- e) Award being set aside or suspended in the country in which, or under the law which, that award was made.
- f) Non-arbitrability of dispute.
- g) Award being contrary to public policy.

Rest of the grounds which are same with Section 34 of the Arbitration Act, 1996 (which explained previous Chapter), new grounds of Section 48 of the Arbitration Act, 1996 have covered by researcher as follow:

NOT BEING ISSUED BY A COMPETENT BODY

Section 48(1) of the Arbitration Act, 1996 gives that a foreign award can't be authorized, in the event that it has not been issued by a skilled legal expert, as indicated by the international purview principles of the nation where it has been made. As we definitely know, under Section 49 of the Arbitration Act, 1996, the guidelines applying to foreign Court choices additionally apply to foreign awards. It can be contended that the augmentation of the above run to foreign arbitral awards implies that such an award can't be upheld in India, on the off chance that it isn't issued by a skilled arbitration court as indicated by the law of the nation where it is made. On the off chance that this translation is conceivable, Indian Law is more prohibitive of the NYC (1958) and most other internationally settled guidelines, which don't unequivocally allude to such a condition.

NON-COMPLIANCE WITH INDIAN LAW OR A COURT DECISION

Section 48(1) (d) of Arbitration Act, 1996 provides that a foreign orders and award that entails a breach of a rule of the laws practiced in India shall not be enforced. The problem with this provision is that it does not specify which types of rules cannot be breached by the award. It can be interpreted that they must not be against the ordinary law of India. This, however, goes beyond the internationally established rules and particularly the NYC (1958), which requires a foreign award not to be against the mandatory rules of law in the enforcing State. Indian Law even goes further, and requires that a foreign orders and award the enforcement of which is sought in India must not contradict orders and award already issued in India. This implies the priority of an Indian court decision over a foreign judgment or award, in term of their execution in India. Such a situation arises in the case of joint jurisdiction, when both the Indian and foreign courts have jurisdiction to hear a dispute. As seen before, the exclusive jurisdiction of a domestic court leads to non enforcement of a

foreign award, even if no domestic decision has yet been made. On the other hand, it can be said that, if the judgment is made by the Indian court lacking jurisdiction to hear the case, and the defendant did not made any objection to the competence of the court, the judgment is considered as if it were made by the court having jurisdiction. Such a judgment consequently has priority of enforcement over foreign sentences and awards regarding the same dispute. Nevertheless, in other cases of lack of jurisdiction or joint jurisdiction, there is no reason for the priority of a decision made by the Indian court over a foreign arbitration award.

Under the above situation of Indian Law, filing a lawsuit with the Indian court does not bar the enforcement of a foreign award, because enforcement of such an award may be barred only if a contradicting Indian court sentence has already been made. The provision does not also require denying enforcement of an award if court proceedings on the same or a related subject pending in India have begun before the foreign arbitral proceedings. Under many legal systems, such as the English law, the losing party may request a stay of the order for enforcement, pending determination of any application to set aside the award before the competent foreign authority.¹² It may also be asked whether the Indian court would enforce the foreign award, if a court judgment has already been rendered, or court proceedings are pending in a third country. India may or may not have a contract with the latter country for enforcing Court judgments. India is under obligation to enforce court judgments rendered in countries with which it has a bilateral or multilateral treaty. India is a party to several international conventions for enforcement of foreign award.

IMPROPER SUMMONS AND LEGAL REPRESENTATION

The Orissa High Court in *Orient Paper Mills v. Civil Judge*,¹³ did not allow the summoning the chairman of arbitral tribunal as a witness. The application was made under Sections 226 and 227 of the (Indian) Constitution for a bearing to the Civil Judge for issuing summons. The award was presented by the court. It dismissed the claim with a full articulation of reasons. The ground on which the Chairman was tried to be summoned was that the council considered certain report behind the back of the gathering. The Court said that this ground, if built up, would host empowered the get-together to get the

¹² Section 103(2), English Arbitration Act, 1996, and David Altaras, "Enforcement of Foreign Award: *Dardana Ltd v. Yukos OIL Co.*", *Arbitration*, vol. 68, no. 3 (2002), 316. If the losing party seeks the adjournment of the enforcement proceedings pending the settlement of a foreign court decision, an order for security may be made by the enforcing court (*Ibid.*, 317).

¹³ AIR 2003 (4) RAJ 479(Ori)

cure of putting aside. Within the sight of such a precious stone cure, there was not really any requirement for summoning the referee as a witness.

The Orissa High Court held that a foreign award can be authorized, just if both disputant parties have been summoned to show up and lawfully spoke to. This choice is an impression of Section V (1) (b) of the NYC (1958).

NON-ARBITRABILITY OF THE DISPUTE

Almost all subject-matters in dispute, not being of a criminal nature, may be referred to arbitration. Where the law has given jurisdiction to determine a particular matter to specified tribunals only, determination of that matter by other tribunals is excluded.

The SC in *Union of India v. Popular Builders*,¹⁴ held that the existence of arbitrable dispute is a condition precedent for exercise of power by an arbiter. The SC in *U.P.Rajkiya Nirman Nigam Ltd. v. Indure(P) Ltd*¹⁵ has also emphasized that the arbitrability of a claim depends on the construction of the clause in the contract and on this point the finding of the arbiter is not conclusive and that ultimately it is the court that decides the controversy. That was the position under the repealed Arbitration Act, 1940. Section 16 of the Arbitration Act, 1996 empowers the arbiters to decide such question. The decision of the arbiter in this respect being appealable, ultimately the matter goes for the decision of the court. The same effect was the decision of the SC in *Union of India v. G.S.Atwal &Co.*¹⁶

NON-ENFORCEABILITY OF THE FOREIGN AWARD IN THE COUNTRY WHERE IT IS MADE

The SC in *Centro trade Mineral & Metals Inc v. Hindustan Copper Ltd.*¹⁷ has explained the phrase “the country... under the law of which, it has been made” in Section 48(1) (e) of Arbitration Act, 1996, refers to the law of the State in which the arbitration has its seat rather than the state whose law governs the substantive contracts.

AWARDS BEING AGAINST PUBLIC POLICY

Section 48 (2) (b) of the Act, 1996 empowers the Court to set aside the arbitral award made outside India if it violates Public Policy. Similar provision is contained in Section 34(2) (b) where the arbitral award is made in India. Under above Section, a foreign orders or award the enforcement of which is sought in India must not contain anything against Public Policy.

The legislature of India used of the words “if the Court finds that” in the Section makes it

crystal that it is not necessary for the party to plead that the arbitral award violates Public Policy but the duty is cast on the court itself to see that the arbitral award is not in violation of Public Policy.

In *Renusagar Power Co. Ltd. v. General Electric Co. Ltd.*¹⁸ which arose under the Foreign Awards (Recognition & Enforcement) Act, 1961 which implemented the NYC (1958) of 1958 relating to recognition and enforcement of foreign arbitral awards, the SC inter-alia observed: “In order to attract the bar of Public Policy, the enforcement or the award must involve something more than mere violation of the law of India. The enforcement of a foreign award would be contrary to Public Policy if it is contrary to:

- a) Fundamental policy of Indian Law;
- b) The interests of India;&
- c) Justice and morality.”

The SC in *Oil & National Gas Corporation Ltd. v. SAW Pipes Ltd.*¹⁹ has observed that the term “Public Policy” does not admit a precise definition. For the purpose of Sections 34 & 48, the phrase “Public Policy” has to be given a wider connotation and the award could be set aside if it is;

- a) Fundamental policy of Indian Law;
- b) The interests of India;
- c) Justice and morality;
- d) Is patently illegal; or
- e) It is so unfair and unreasonable that it shocks the conscience of the Court

RECENT JUDICIAL TRENDS

In the case of, "*Shri Lal Mahal Ltd. v. Progetto Grano Spa*"²⁰, the Hon'ble Supreme Court passed a landmark ruling on its own decision and significantly curtailed the scope of the expression, "public policy" as present under Section 48(2) (b) of the Arbitration Act and thereby limited the scope of the challenge to enforcement of the foreign arbitral awards in the country. It is important to note that previously the national courts were giving a very wide import to the word "public policy" to interfere with the foreign arbitral awards. The court had observed that Section 48 of the Arbitration Act does not in any way offer an opportunity to have a second look at the foreign award at the enforcement stage. The court affirmed that section 48 does not permit review of the award on merits and that the procedural defects in course of foreign arbitration do not necessarily imply that foreign award would be unenforceable.

Further in the case of, "*Cruz City 1 Mauritius Holdings v. Unitech Limited*"²¹ the Delhi High Court refused to intervene in the award wherein one of the challenge to enforcement of foreign

¹⁴ AIR 2000 SC 1

¹⁵ AIR 1996 (2) SC 667

¹⁶ AIR 1996 (3) SC 568

¹⁷ AIR 2006(11) SCC 245

¹⁸ AIR 1994 SC 860

¹⁹ AIR 2003 SC 2629

²⁰ *Civil Appeal No. 5085 of 2013 arising from SLP(c) No. 13721 of 2012*

²¹ *J 2017 SCC OnLine Del 7810*

arbitral award was that the same is in violation of the foreign exchange laws of India, and it held that "122. Even if it is accepted that the Keepwell Agreement was designed to induce Cruz City to make investments by offering assured returns, Unitech cannot escape its liability to Cruz City. Cruz City had invested in Kerrush on the assurances held out by Unitech and notwithstanding that Unitech may be liable to be proceeded against for violation of provisions of FEMA, the enforcement of the Award cannot be declined." And thirdly, if Cruz City has been induced to make an investment on a false assurance of the Keepwell Agreement being legal and valid, Unitech must bear the consequences of violating the provisions of Law, but cannot be permitted to escape their liability under the Award "

In another recent case of "*Zee Sports Ltd. v. Nimbus Media Pvt. Ltd.*"²², the Bombay High Court refused to interfere with the arbitral award on merits and relied on the judgement in "*McDermott International Inc. v. Burn Standard Co. Ltd.*"²³, where in the Supreme Court had observed that as under: "The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

The Hon'ble Kerala High Court in the case of, "*Emmanuel Cashew Industries v. CHI Commodities Handlers Inc.*"²⁴, while dealing with challenge to an arbitral award, observed that the mere filing of objections to the foreign award under Section 48 was not enough and the objector has to furnish "proof" of circumstances to satisfy any of the conditions mentioned in Section 48 of the Arbitration Act to refuse enforcement of the foreign award.

The Delhi High Court in the very recent judgment passed on 31 January 2018, in the case of "*Daiichi Sankyo vs. Malvinder Mohan Singh*" has refused to intervene in the foreign arbitral award passed in the favour of Daiichi Sankyo and it observed that under Section 48(2)(b) of the Act, the enforcement could be refused only if the award was contrary to the (i) fundamental policy of India (ii) interest of India and (iii) justice or morality. Further, the Delhi High Court affirmed that an award could not be said to be against the fundamental policy of Indian law in case there was violation of provisions

of a statute but only if there was a breach of a substantial principle on which is Indian law is based upon.

Lastly in a very recent judgment, passed in the case of, "*Kandla Export vs. Oci Export Corporation*"²⁵ the Hon'ble Supreme Court had the opportunity to interpret the scope of Section 13 of the Commercial Courts Act and Section 50 of the Arbitration Act in light of the challenge to the execution of the foreign award under Section 13 of the Commercial Courts Act. The Hon'ble Supreme Court took a very pro-arbitration stand and refused to intervene by holding that appeals in respect of the arbitration proceedings are exclusively governed by the Arbitration Act and thereby the appeal provision of the Commercial Courts Act cannot be used to circumvent the provisions of the Arbitration Act if no appeal is provided under the provisions of the Arbitration Act. In Line with the "*Fuerst Lawson Ltd. vs Jindal Exports*"²⁶ judgment, it was observed that the Arbitration Act was a self-contained code and thereby the amended Section 37 would hold precedence over the general provision contained in Section 13(1) of the Commercial Courts Act. The Hon'ble Supreme Court emphasized that interpretation given in the case was in consonance with the objective of the Arbitration Act, which is to ensure the speedy resolution of the disputes.

These judgments affirm the fact that the Indian courts have taken a very strict adherence to the principle of non-interference with foreign arbitral awards and have taken proactive steps to ensure their speedy execution, and thereby bolstering India's credentials as an arbitration friendly regime which is generally characterized by minimal intervention by the national courts and the speedy resolution of the arbitration proceedings.

CONCLUSION

An essential issue with Indian Law, and particularly the Arbitration Act, 1996, is that, in regards to implementation, it treats foreign arbitral awards and foreign court choices comparably. Consequently, a few highlights of foreign sentences, for example, enforceability, are required from foreign awards. The state of enforceability of an arbitral award at the seat of arbitration might be deciphered as the requirement for twofold implementation of an award, what the NYC (1958) is purposely proposed to maintain a strategic distance from. In addition, due to not making a qualification between foreign awards and court choices, issues specific to foreign awards are not appropriately tended to in Indian Law. Subsequently, offices saved for authorizing foreign awards in most exceptional legitimate frameworks are not accommodated under Indian Law.

Basically, it can be contended that Indian legitimate framework has essentially moved towards

²² 2017 SCC OnLine Bom 426

²³ (2006) 11 SCC 181

²⁴ MANU/KE/0329/2017

²⁵ CIVIL APPEAL NO. 1661-1663 OF 2018 @

SLP(CIVIL) No. 28582- 28584 of 2017

²⁶ (2011) 8 SCC 333

making a facilitative domain for authorizing foreign arbitral awards. In any case, a few changes are important to align India with cutting edge lawful administrations on the planet and to accommodate the necessities of international arbitration. The initial phase, in such manner, ought to sanction enactment specifically tending to foreign arbitration as unmistakable from foreign court choices and requests.