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Delhi High Court allows Devas to seek orders to secure USD 562.5m award

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Arbitration analysis: Vyapak Desai and Siddharth Ratho of Nishith Desai consider the latest decision in the ongoing Antrix-Devas saga in which the Delhi High Court has allowed a petition seeking attachment of Antrix's assets to secure Devas' ICC award.

Original news

Devas Multimedia Pvt Ltd v Antrix Corporation Ltd OMP (I) 558/2015, in the High Court of Delhi at New Delhi (not reported by Lexis®PSL)

Practical implications

The present case is yet another demonstration of Indian courts increasingly giving effect to the legislative intent behind statutory provisions and adopting a purposive interpretation, while avoiding wastage of time on technicalities. In this case, the court recognised the futility of a court's time in deciding mere academic questions, and chose to adopt an approach which would uphold the spirit of the Arbitration and Conciliation Act 1996 (Act) rather than defeat its purpose. Such a judgment should discourage parties from indulging in mere forum shopping and filing petitions which have no validity, only for the purpose of delaying proceedings.

The Delhi High Court (Court) in *Devas Multimedia Pvt. Ltd. (Devas) vs Antrix Corporation Ltd. (Antrix)*:

- allowed Devas to seek interim measures for the purposes of securing the arbitral award despite Antrix having previously filed an arbitration petition in another court of concurrent jurisdiction
- adopted a purposive interpretation to give effect to the legislative intent behind section 42 of the Arbitration and Conciliation Act 1996
- held that petitions must be 'valid' and the court which is approached in the first instance must be 'competent' to entertain and grant the reliefs prayed for in order to become the 'one stop' court for all subsequent proceedings

Brief background

An agreement was entered into in 2005 between Devas, a Bangalore based media company, and Antrix, the commercial arm of the Indian Space Research Organisation (ISRO), both having their registered offices in Bangalore, for the lease of certain space segment capacity (Agreement). Article 20. in the Agreement contained an arbitration clause providing for, inter alia, New Delhi as the 'seat' and the rules of the International Chamber of Commerce (ICC) as the procedural law. Disputes arose in 2011 leading to invocation of arbitration and subsequent award in favor of Devas of USD 562.5m (Award) in September of 2015 (for further details on the Antrix-Devas saga, access Nishith Desai's hotline [here](#)).

The present case deals with the decision of the Delhi High Court in allowing a petition brought before it by Devas (the Devas Petition), inter alia, seeking attachment of Antrix's assets to secure the Award. The present petition is one among a few others emanating from the same arbitration, filed both prior and subsequent to the passage of the Award, as set out below

Petitions filed prior to the passing of the Award:

- 5 August, 2011—Antrix filed a section 11 petition seeking a direction to constitute the arbitral tribunal along with an application seeking a stay on the arbitral proceedings and invocation of ICC rules. The Supreme Court of India dismissed on 10. May, 2013 (invocation of the ICC rules by Devas upheld)
- 5 December, 2011—Antrix filed a section 9 petition before Bangalore City Civil Court seeking, *inter alia*, a direction to restrain Devas from proceeding with the ICC arbitration and restraining the constitution of the Tribunal as per the ICC rules (Antrix Petition). The petition is pending without any decision made on jurisdiction

Petitions filed subsequent to the Award

- 9 October, 2015—Devas filed the present section 9 petition seeking directions to secure the Award in its favor. The Delhi High Court had to decide whether it had jurisdiction to entertain the present petition given Antrix's previously pending petition in Bangalore
- 19 November 2015—Antrix filed a petition at the Bangalore City Civil Court under section 34 of the Act challenging the Award. This petition is pending

Issue before the court

The present court thus had to decide whether it was barred from entertaining the Devas Petition as provided for under section 42 of the Act given that Antrix's had a previously pending petition before the Bangalore City Civil Court.

Arguments objecting to Delhi High Court's jurisdiction

Antrix argued that the subject matter of the dispute viz. termination of the agreement having been conveyed in Bangalore, made it clear that a substantial part of the cause of action arose in Bangalore. Also, since both parties had their registered offices in Bangalore, and with Devas having failed to raise any jurisdictional objections, the Bangalore City Civil Court would have subject matter, territorial and pecuniary jurisdiction.

In light of the above, and since it had filed its petition much prior to the filing of the Devas Petition, Antrix argued that the Devas Petition as well as the Delhi High Court's jurisdiction to entertain the same ought to be barred under section 42 of the Act, as a consequence of which, any further petitions should be instituted by Devas only before the Bangalore City Civil Court.

Arguments supporting Delhi High Court's jurisdiction

Devas on the other hand, argued that the Antrix Petition is not maintainable in law and was ex-facie incompetent as it sought a stay of the ICC arbitration proceedings. Even assuming that the Bangalore City Civil Court assumes jurisdiction that it doesn't have, any order passed by it would be a nullity as the proceedings before it are *coram non jndice*, given that the arbitral proceedings whose stay was sought had already achieved completion. Also, the principle of comity of jurisdiction had no application in the present case since the Bangalore Court had not even assumed jurisdiction or upheld that it had jurisdiction.

Devas further argued that the 'seat' was analogous to an exclusive jurisdiction clause. Since parties had chosen Delhi, the Delhi High Court would have exclusive jurisdiction to entertain all matters arising from the arbitration proceedings, and not the Bangalore City Civil Court, irrespective of whether it was approached in the first instance.

Judgment

The Delhi High Court noted that in cases where the other court had already assumed jurisdiction, the principle of comity would normally entail acceptance of such a determination. However, if the other court was yet to decide on its jurisdiction, a subsequent court could not shirk its duty to decide on the objections raised under section 42 of the Act. Therefore, since the Bangalore City Civil Court was yet to decide on its jurisdiction, the Delhi High Court decided to look into the merits of the objections raised under section 42, starting off by analyzing the language of the said section, reproduced herein below:

'42. Jurisdiction—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.'

On a plain reading of the above language, it observed that the word 'Court' isn't qualified by the word 'competent' and that the word 'application' isn't qualified by the word 'valid'. However, the court wasn't inclined to accept such a simplistic reading, choosing to adopt a purposive interpretation instead. In doing so, it first laid out three possible scenarios to be considered:

- where the court is 'competent' and the petition is 'valid' since the reliefs prayed for are capable of being granted. In such a scenario, it is clear that the requirement of section 42 stands satisfied
- where the court is 'competent', however the petition is 'invalid' as the prayers sought are incapable of being entertained or granted
- where the petition itself is 'valid', however it is filed in an 'incompetent' court that has no jurisdiction to entertain such a petition

The court then went on to analyse the object and purpose of section 42 of the Act, which is to avoid multiplicity of proceedings and to ensure that the first court which is approached by either party to the agreement, becomes the 'one stop' court for all subsequent proceedings. It therefore considered it essential that such a petition must satisfy both criterion i.e. of being a 'valid' petition capable of being entertained and granted, and also filed in a court of 'competent' jurisdiction.

In the present case, the Delhi High Court found that the Bangalore Civil Court's did indeed have territorial jurisdiction thereby disagreeing with Devas' argument that the 'seat' conferred exclusive jurisdiction to the Delhi High Court. It however found that the prayers sought for under Antrix's petition were incapable of being granted since seeking a stay of arbitration had become purely academic with the passage of time and that section 9 of the Act did not permit 'any or all applications' and only interim measures specifically provided for therein. It therefore held that waiting for the decision of the Bangalore City Civil Court, which in all likely would be that it does not have jurisdiction, would be a mission in futility and defeat the purpose behind section 42 of the Act.

In light of the above determinations, and having held that the Antrix Petition was an 'invalid' one, albeit filed in a 'competent' court, it overruled the objections raised by Antrix and upheld the maintainability of the present petition. As a sequitur, the court held that even the section 34 filed by Antrix in Bangalore would no longer be maintainable by virtue of section 42, and that therefore the same would have to be accordingly withdrawn and filed in Delhi.

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