

Dispute Resolution Hotline

April 29, 2010

TIME BOUND ARBITRATION - NOT BINDING ON TRIBUNAL

Bombay High Court refuses to intervene in a writ petition where international commercial arbitration runs over agreed time limit.

INTRODUCTION:

The Hon'ble Bombay High Court ("Court") has, in the case of *Rashtriya Chemical Fertilizers Ltd. & Anr. ("Petitioner") Vs. J.S. Ocean Line Pte. Ltd. ("Respondent") & Ors.*¹, *inter alia*, held that where parties to an international commercial arbitration refer their dispute to arbitration where the rules provide for an award within a specific time period, subject to the facts and circumstances of a case, any time-overrun would not be fatal to the said arbitration.

FACTS:

The Petitioner and the Respondent entered into a charter party agreement on November 06, 2006 ("Agreement"). The said Agreement contained an arbitration clause whereunder, all disputes under the Agreement would be referred to the Indian Council of Arbitration ("Institution") for resolution under the Maritime Arbitration Rules ("Rules"). Further, the said clause provided for the arbitrators to be commercial men appointed from the Maritime Panel of Arbitrators of the Institution.

The Respondent invoked arbitration and thereafter, the arbitral panel was duly constituted. The Respondent filed their Statement of Claim whilst the Petitioner filed their Statement of Defense as well as a Counter Claim before the arbitral tribunal.

Rule 20(1) of the Rules provided as under.

"The arbitral tribunal shall make the award as expeditiously as possible, preferably within six months from the date of the reference subject to the maximum limit of two years from the date of commencement of the arbitral proceedings. If necessary, the maximum limit of two years for making the award be extended by agreement between the parties to the dispute or by the Maritime Arbitration Committee."

(emphasis supplied)

Thereafter, as the time limit was approaching, the arbitral tribunal invited the attention of the parties to the abovementioned Rule 20(1). The Respondent No. 1 agreed to the time extension. However, the Petitioner did not agree to the said extension and, *inter alia*, moved an application calling upon the arbitral tribunal to declare itself as 'functus officio' and terminate the arbitral proceedings. The said application was rejected by the arbitral tribunal ("Order").

Against the said Order, the Petitioner moved the Court by way of a writ petition.

DECISION:

Holding that the said Rule 20(1) was not a hard and fast rule and could not be read in isolation, the Court stated that the entire procedure as laid down under the Rules would need to be considered. Where a party to the proceedings had filed numerous applications which caused a delay in the arbitral proceedings (as was contended by the Respondent), such party could not plead that the arbitration proceedings are required to be completed within the said time period.

Further, the Court held that if the writ petition was entertained, the very object and policy of the Act, namely to provide speedier justice through arbitration would stand frustrated and defeated. Significantly, the Court also upheld that judicial review must be kept to a bare minimum and reserved to very exceptional and deserving cases.

The Court noted that the Arbitration & Conciliation Act, 1996 ("the Act") specifically provided for

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situations whereunder any controversy in respect of the inability of the arbitrator to perform his functions or act expeditiously and any party could apply to the court and seek termination of the mandate of the arbitrator. Appreciating that whilst it was necessary to provide expeditious and speedier justice to parties, the role of the courts in their writ jurisdiction remained of a supervisory nature and judicial intervention would need to be as minimal as possible.

ANALYSIS:

By this judgment, the Court has, *inter alia*, noted that any time period set forth for arbitration proceedings would not be a hard and fast rule and Court would look at various factors including the entire arbitration procedure as well as the conduct of the parties to such proceedings. The Court has also upheld the power of the arbitral tribunal to decide on its own jurisdiction (the doctrine of competence-competence).

There have been a spate of recent judgments where there has been judicial intervention by the courts in India in international commercial arbitration. These remain as discussion points at various international forums. Significantly, the Court has refused to intervene in ongoing international commercial arbitration proceedings in the instant case.

The Court has also appreciated that an arbitration clause in a contract is an extremely important collateral clause capable of meeting the needs of the parties concerned.

Having said that, one has often seen that parties to an arbitration attempt to frustrate the proceedings at each stage by adopting delaying tactics. Where such time limits have been agreed to by the parties, the courts may, going forward, adopt a view to ensure that a speedy and efficacious remedy is guaranteed to the parties and any party found attempting to needlessly frustrate proceedings should be penalized.

- **Sahil Kanuga & Vyapak Desai**

1 Writ Petition No. 184 of 2010

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