

Court Corner

August 28, 2019

DELHI HIGH COURT ENFORCES SIAC AWARD AND DIRECTS DEPOSIT OF PAYMENT

While fostering its pro-enforcement regime, the Delhi High Court in *Glencore International AG v. Indian Potash Limited & Anr.* (Ex. P. 99/2015) recognized a foreign award by its judgement dated 9 August 2019. While upholding the legislative intent, the Delhi High Court also directed Indian Potash Limited (“**Judgment Debtor**”) to deposit the sum underlying the final award and cost award, within four weeks.

NDA represented Glencore International AG (“**Decree Holder**”) before the Delhi High Court, seeking enforcement of a foreign award passed under the Singapore International Arbitration Centre (“**SIAC**”) Rules.

However, the Judgment Debtor resisted the enforcement, culling out the following objections:

- i. The awards which include the final award and the cost award are not stamped.
- ii. The parties had not agreed to the arbitration proceedings being conducted under the SIAC Rules.
- iii. The arbitrator failed to preliminarily decide its jurisdictional objections, thereby depriving the Judgment Debtor of the opportunity to file an appeal.
- iv. That the awards were vitiated for breach of principles of natural justice, since the Decree Holder was permitted to amend its pleadings during the final hearing without allowing the Judgment Debtor to contest the amendments.

Hon’ble Mr. Justice Rajiv Shakhder, the Single Judge who heard the submissions advanced by both the parties, was of the unmovable view that the objections raised against the enforcement lack merit, and observed as below:

- i. Foreign awards are not required to be stamped under the Stamp Act. Apart from relying on the decision of the Hon’ble Supreme Court in *M/s Shriram EPC Limited v. Rioglass Solar SA* (Civil Appeal No. 9515/2018), the Court held that it could not be the legislative intent to insist on the stamping of a foreign award under the Indian stamp laws— as states in India have different rates for stamp duty, and it would be impossible for the enforcer to pay stamp duty in every state before seeking enforcement of a foreign award.
- ii. The arbitration agreement referred to the rules of a non-existent arbitral institution. Therefore, the arbitrator correctly adopted the interpretative route and construed the applicable rules as SIAC Rules. Further, the procedure followed under the SIAC Rules had not caused any prejudice to the Judgment Debtor. Nonetheless, procedural defects, which do not lead to failure of justice, would not render the award unenforceable.
- iii. There is no such fundamental policy in Indian law that adjudicating authorities should mandatorily render a decision on jurisdictional issues before hearing the matter on merits. The discretion in this behalf lies with the adjudicating authority, as is the case under the International Arbitration Act.
- iv. The arbitrator exercised his discretion to allow amendment of pleadings under the SIAC Rules after granting an opportunity to the Judgment Debtor.

NDA team led by Mr. Moazzam Khan and Ms. Shweta Sahu, along with Mr. Nakul Dewan, Senior Advocate represented the Decree Holder.

To access the judgment, please click [here](#).

DISCLAIMER

Proud Moments

Legal500 Asia-Pacific: Tier 1 for Tax, Investment Funds, Labour & Employment and TMT
2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012

Chambers and Partners Asia Pacific: Band 1 for Employment, Lifesciences, Tax and TMT
2020, 2019, 2018, 2017, 2016, 2015

IFLR1000: Tier 1 for Private Equity and Project Development: Telecommunications Networks.
2020, 2019, 2018, 2017, 2014

AsiaLaw Asia-Pacific Guide 2020: Tier 1 (Outstanding) for TMT, Labour & Employment, Private Equity, Regulatory and Tax

FT Innovative Lawyers Asia Pacific 2019 Awards: NDA ranked 2nd in the Most Innovative Law Firm category (Asia-Pacific Headquartered)

RSG-Financial Times: India’s Most Innovative Law Firm
2019, 2017, 2016, 2015, 2014

Benchmark Litigation Asia-Pacific: Tier 1 for Government & Regulatory and Tax
2019, 2018

Research Papers

3D Printing: Ctrl + P the Future
April 02, 2020

Dispute Resolution in India: An Introduction
April 02, 2020

Impact of Covid-19 on Contracts
March 31, 2020

Research Articles

Chambers Global Practice Guide: Gaming Laws
December 19, 2019

The Tips and Traps to Avoid When Investing in India
December 31, 2018

Evolving HR Law: Giving GCs Sleepless Nights?

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

June 01, 2017

Audio

Seminar: Possible Last Window for the Start-Up Community's Say on Proposed Privacy Law

February 19, 2020

Webinar: India Budget 2020: Implications for the International Community

February 05, 2020

Webinar: A New Dawn for Privacy in India: the Personal Data Protection Bill, 2019

December 17, 2019

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

NDA cCep - Program Video

CNBC TV18 Startup Street

Webinar: Re-thinking Indian Private Equity Exits