

SC: Foreign Arbitration Awards Can't be Challenged in India

In a judgment that has far reaching implications for foreign arbitration awards, the Supreme Court on Thursday ruled that Indian courts have no jurisdiction to grant any relief or enforce an international arbitration award arrived at in a foreign country.

Putting at rest an important issue, the apex court ruled only the courts of the country in which the seat of arbitration is located have the jurisdiction to entertain any matter relating to such arbitration. And it is only in the absence of choice of seat of arbitration that the country whose law is chosen by the parties has jurisdiction to entertain the matter.

Setting aside its 2002 judgment in the case of Bhatia International vs Bulk Trading S A (Bhatia International case) that held otherwise, a five-judge constitutional bench headed by Chief Justice SH Kapadia said: "In a foreign seated international commercial arbitration, no application for interim relief would be maintainable under Section 9 or any other provision, as applicability of Part I of the Arbitration Act 1996 is limited to all arbitrations which take place in India."

"Similarly, no suit for interim injunction simplicitor would be maintainable in India, on the basis of an international commercial arbitration with a seat outside India," it said.

However, it clarified that the new law shall apply prospectively to all the arbitration agreements executed hereafter so that already settled cases are not disturbed.

"Once the parties have chosen voluntarily that the seat of the arbitration shall be outside India, they are impliedly also understood to have chosen the necessary incidents and consequences of such choice...", the bench will also include justices DK Jain, Surinder Singh Nijjar, Ranjana Prakash Desai, and Jagdish Singh Khehar said.

So far as India is concerned, the 1996 Act does not confer any such jurisdiction on the Indian courts to annul an international commercial award made outside India. Such provision exists in Section 34, which is placed in Part I. Therefore, the applicability of that provision is limited to the awards made in India.

Welcoming the judgment, Ajay Bhargava, partner of law firm Khaitan & Co said that this is "a welcome step in the direction of restoring confidence in arbitration as a preferred and reliable mechanism to resolve international commercial disputes."

He said that for a long time, interference by the Indian courts in foreign arbitrations, being conducted outside India, had resulted in a loss of confidence of the investors. "The judgment delivered today, I am sure, will go a long way in restoring that lost confidence", he added.

According to lawyers, foreign companies find it extremely difficult to get foreign arbitration awards against their Indian partners enforced through courts in the country as the courts here invariably stay the arbitration award on the ground that they have jurisdiction to do so. This can not only give the biggest-ever push for foreign investment in the country but will also ensure that the foreign companies could do business with minimum judicial interference.

However, various legal experts feel that such law will leave many Indian parties remediless. "Indian parties are executing large contracts with foreign parties and several involve performance in India. Some remedy should have been provided to the Indian companies to approach domestic courts for, at least, urgent interim reliefs," said Supreme Court corporate lawyer Mahesh Agarwal.

It will be highly impractical to compel Indian parties to approach foreign courts for any immediate relief, he added.

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