

Dispute Resolution Hotline

July 17, 2009

SINGAPORE JURISDICTION CLAUSE UPHELD, INDIAN COURTS' JURISDICTION EXCLUDED

As India's business needs grow global, an increasing number of commercial contracts select arbitration as their preferred mechanism for dispute resolution. Given the high stakes involved and the international nature of these commercial contracts, parties often prefer to refer such disputes to established institutional arbitration centers such as the International Chamber of Commerce, the London Court of International Arbitration or the Singapore International Arbitration Centre ("SIAC"). In such contracts, parties often agree to confer jurisdiction upon a particular court.

In a recent case filed before the Hon'ble Delhi High Court ("Court") being *Max India Limited v. General Binding Corporation*¹, the Court has held² that where the parties have agreed to confer jurisdiction upon another court, the same would amount to exclusion of the jurisdiction of the Court and the exclusion of the application of Part I of the Arbitration & Conciliation Act, 1996 ("the Act").

FACTS

Max India Limited ("MIL") filed an application for interim relief under Section 9 of the Act before the Court wherein, MIL sought to restrain General Binding Corporation ("GBC") from implementing the terms and conditions of a contract entered into by it directly or through its holding company.

GBC filed a reply before the Court wherein they raised an objection on the jurisdiction of the Court to entertain and try such an application under Section 9 of the Act.

Interestingly, the governing law and dispute resolution provisions under this contract read as follows:

"19.1 This Agreement shall be governed and construed in accordance with the laws of Singapore and subject to Article 19.2, the courts of Singapore shall have jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

19.2 Any dispute between the Parties arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the Singapore International Arbitration Center Rules (SIAC Rules) as in force at the time of the dispute, which SIAC Rules shall be deemed to be a part of this Agreement by reference. The arbitration shall be conducted before one (1) arbitrator mutually appointed by the Parties, failing which Max India shall be entitled to appoint one (1) arbitrator and GBC shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators so appointed shall jointly appoint a third arbitrator who shall preside as the chairman. Such arbitrations shall be conducted in the English language. The venue of the arbitration shall be Singapore."

Citing various precedents³, MIL argued that notwithstanding the contents of clause 19 (as reproduced hereinabove), where it was agreed between the parties that the Court of Singapore would have jurisdiction to settle disputes in connection with the contract, MIL had a right to invoke Section 9 of the Act and file an application before the Court.

JUDGMENT & ANALYSIS

Relying upon the full bench judgment of the Hon'ble Supreme Court of India in *Bhatia International Vs. Bulk Trading S.A. & Anr.*⁴, the Court observed that parties in an international commercial arbitration were permitted to deviate from the provisions of Part I of the Act in certain cases. The Court thereafter referred to the case of *ABC Lombard Private Limited*⁵ where it was held that in the event that the jurisdiction determined by the parties to a contract is also the proper jurisdiction for a dispute arising out of the contract, no specific ouster of the jurisdiction of courts was necessary and the same may be inferred in certain cases. In other words, the express mention of one jurisdiction may imply the exclusion of another.

In the instant matter, it was clear from the relevant clauses being 19.1 and 19.2 of the contract between the parties that disputes under the contract were to be referred for arbitration to the SIAC to be resolved under the law of Singapore and as per SIAC Rules and jurisdiction was granted to the courts in Singapore. The Court thus held that the contract between the parties clearly implied the exclusion of the jurisdiction of Indian Courts and excluded the applicability of Part I of the Act and therefore dismissed the petition as not-maintainable.

This judgment serves to further the position held in *Bhatia International*⁶. Thus, an arbitration clause which (i) specifies a foreign law as the governing law of the contract, (ii) specifies the jurisdiction of a foreign court and (iii) specifies a foreign location as the place of arbitration, will be construed by the courts as excluding the jurisdiction of Indian Courts as well as excluding the applicability of Part I of the Act.

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1 OMP 136/2009

2 By its order dated May 14, 2009

3 AIR 2008 SC 685 and AIR 2008 SC 1061

4 (2002) 4 SCC 105

5 (1989) 2 SCC 163

6 (2002) 4 SCC 105

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