

Dispute Resolution Hotline

September 29, 2014

'SEISING' OF THE COURT: RULES ENUNCIATED BY SC

- Supreme Court lays down principles governing jurisdiction of courts in arbitration matters
- All applications under Part I of the Act made to a 'court' whether before or during arbitral proceedings or after an Award is passed fall within the purview by **Section 42** of the Arbitration and Conciliation Act, 1996

INTRODUCTION

The Supreme Court in its recent judgment of *State of West Bengal & Ors. ("Petitioner") vs. Associated Contractors ("Respondent") ("Ruling")*¹ has analysed the scope and applicability of **Section 2(1) (e)** and **Section 42** of the Arbitration and Conciliation Act, 1996 (**"the Act"**) and has laid down principles determining which 'court' would have the jurisdiction to entertain and decide applications under Part I of the Act.

Section 42 of the Act provides for scope of jurisdiction of a court over arbitral proceedings. It provides that where with respect to an arbitration agreement *any* application under Part I of the Act has been made in a court, that court alone has the jurisdiction over the arbitration proceedings and that all subsequent applications arising out of that agreement and the arbitration proceedings must be made in that court alone. For the purposes of the Act, 'Court' has been defined under **Section 2(1) (e)**.

FACTS

The Respondent was awarded a contract for excavation and lining of the Teesta-Jaldhaka Main Canal. The contract contained an arbitration clause. Dispute arose between the parties, following which the High Court of Calcutta, upon being approached by the Respondent in a petition filed under **Section 9** of the Act exercised its jurisdiction under Clause 12 of the Letters Patent and passed an ad-interim ex-parte injunction. The High Court had separately also passed various orders regarding appointment of arbitrator and remuneration of the arbitrator.

Eventually, an award was passed by the arbitrator and the same was challenged by the Petitioner in an application filed under **Section 34** of the Act before the Principal Civil Court of the District Judge. The Respondent challenged the jurisdiction of the District Judge by way of an application under **Article 226** of the Constitution of India before a Single Judge at the High Court of Calcutta who allowed it. The order passed by the Single Judge at the High Court was then challenged before the Supreme Court of India by the Petitioner.

ISSUES

The main issue before the Supreme Court was to determine which court would have the jurisdiction to entertain and decide an application for setting aside the award under **Section 34** read with **Section 2(1) (e)** of the Act and other provisions, including **Section 42** of the Act.

DECISION

Upon examining the provisions contained under **Section 2(1) (e)** and **Section 42**, the Supreme Court enunciated the following principles governing jurisdiction of 'courts' in various applications filed under Part I of the Act, including ones filed under **Section 34**:-

- The definition of 'court' contained in **Section 2(1) (e)** is exhaustive in nature and categorically fixes 'court' as the Principal Civil Court of original jurisdiction in a district or the High Court in exercise of its original civil jurisdiction in the State, and no other court as 'court' for the purpose of the Part I. Further for the purpose of 'court' under the Act, where a High Court exercises ordinary original civil jurisdiction over a district, the High Court would have preference to the Principal Civil Court of original jurisdiction in that district.²
- **Section 42** applies to all applications made in a 'court' whether *before* or *during* arbitral proceedings or *after* an Award is passed under **Part I of the Act**. The scope of **Section 42** extends to all the matters directly or indirectly pertaining to an arbitration agreement.
- Applications preferred to courts outside the exclusive court as agreed to by parties would be without jurisdiction.
- Applications made under **Section 8** and **Section 11** are not hit by **Section 42** since these applications are not made to a court as prescribed under **Section 2(1) (e)**.³
- Applications made under **Section 9** and **Section 34** to a 'court' are well within the purview of **Section 42**.
- The Supreme Court is not a court within the meaning of **Section 2(1) (e)**. Therefore, the Supreme Court does not retain seisin over the proceedings after appointing an arbitrator in international commercial arbitrations pursuant to an application under **Section 11** of the Act.

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- If the first application is made to a court which is neither a Principal Court of original jurisdiction in a district nor a High Court exercising original jurisdiction in a State, then such an application not being made to a 'court', as defined, is outside the purview of **Section 42**.
- An application made to a court without subject matter jurisdiction would be outside the scope of **Section 42**.

In light of the factual background and principles set out above, the Supreme Court dismissed the petition and ruled that the High Court of Calcutta had the jurisdiction to entertain and decide the application for setting aside the award under **Section 34** since the parties had already submitted to the jurisdiction of the High Court of Calcutta in its Ordinary Original Civil jurisdiction in connection with earlier proceedings arising out of this particular arbitration agreement.

ANALYSIS

While this judgment clarifies and crystallises various principles regarding the jurisdiction of courts under the Part I of the Act, it also brings to fore a critical aspect of determination of supervisory court for a domestic arbitration.

It would now be critical for the parties to consider the time and stage at which they chose to move to a court in relation to a domestic arbitration. The Party which decides to approach a court first would then be able to determine which court would singly retain jurisdiction over the whole course of arbitration.

The aforesaid issue may however be neutralised by making a choice of court with the arbitration agreement.

— **Tanya Pahwa, Ashish Kabra & Vyapak Desai**

You can direct your queries or comments to the authors

¹ Civil Appeal No. 4808 of 2013

² As held in the case of Executive Engineer, Road Development Division No. III Panvel and Anr. Vs. Atlanta Limited, AIR 2014 SC 1093, NDA Hotline available on this link:

³ Applications under Section 8 of the Act are made to 'judicial authorities' and applications under Section 11 of the Act are made to the Chief Justice or his designate.

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