

The Bombay HC analyzed past precedents and concluded that such a forum for execution is available in addition to the court in whose jurisdiction the assets are located. The reason for this significant departure from the procedure applicable to regular civil proceedings under the Code of Civil Procedure, 1908, as per the Bombay HC, was because the Arbitration and Conciliation Act, 1996 *transcends all territorial barriers*² and is a *standalone statute*³.

Factual Background

Three execution applications, placed before the Bombay HC in three different cases⁴, involved a common group of facts running through them: in each case, (i) the seat of the arbitration was in Mumbai; (ii) the applicant had obtained an arbitral award against the respondent; (iii) the respondents and their assets were located outside the territorial jurisdiction of the Bombay HC; and yet (iv) the applicant had sought to enforce the award through the Bombay HC.

Issues and Findings

The Respondents contended that the Bombay HC did not possess jurisdiction over execution proceedings as the assets, against which execution was sought, were located outside its territorial jurisdiction. Instead, they argued, Section 39(4) of the Code of Civil Procedure, 1908 (**CPC**) would be applicable, and the execution proceedings could only be brought before the court within whose territory the assets were located (such a court is henceforth referred to as the '**Territorial Court**'). This argument was based on the fact that under Section 36 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), an arbitral award is to be "*enforced in accordance with the provisions of the [CPC], in the same manner as if it were a decree of the court.*"

The Applicants, on the other hand, placed reliance on the Supreme Court's seminal judgment in *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*⁵ (**BALCO**). There, the Supreme Court unequivocally recognised that a 'Court' under Section 2(1)(e) of the Arbitration Act – which is the court exercising supervisory jurisdiction over arbitration proceedings – as well as the court within whose jurisdiction the cause of action arose, would both exercise jurisdiction over arbitration proceedings.

In each of the present cases, the "2(1)(e) Court" would be the Bombay HC, as Mumbai had been chosen as the seat of arbitration. Thus, it was argued that merely because the arbitration had reached the stage of execution, the 2(1)(e) Court could not be divested of its jurisdiction, which had been clearly recognised in *BALCO* as arising from the Arbitration Act, and not from the CPC.

Interestingly, both parties sought to rely on the Supreme Court's judgment in *Sundaram Finance Ltd. v. Abdul Samad and Anr.*⁶ (**Sundaram Finance**). In that case, it was held that the holder of a foreign award *could* directly approach the Territorial Court, without having to apply to the 2(1)(e) Court for transferring the award for execution. The Respondents argued that, based on this ratio, the Applicants must necessarily approach the Territorial Court, the Applicants argued that this would constitute a misreading of *Sundaram Finance*. However, the Applicants contended that the Supreme Court had not, therein, placed any bar on the jurisdiction of the 2(1)(e) Court, but had merely permitted a foreign-award-holder to approach a different court directly.

² See paragraphs 16 and 17.

³ See paragraph 15.

⁴ *Global Asia Venture Company v. Arup Parimal Deb and Ors.*, COMEX No. 58 of 2017; *Matrix Partners India Investment Holdings v. Shailendra Bhadauria and Ors.*, COMEX No. 2113 of 2018; *Reliance Nippon Life Asset Managements Ltd. v. BV Satya Sai Prasad and Anr.*, COMEX (L) No. 2195 of 2019.

⁵ (2012) 9 SCC 552.

⁶ (2018) 3 SCC 622.

Further reliance was placed by the Applicants on the Full Bench judgment of the Bombay HC in *Gemini Bay Transcription Pvt. Ltd., Nagpur v. Integrated Sales Service Ltd. and Ors.*⁷ (**Gemini Bay**), wherein a similar conclusion as *Sundaram Finance* was reached in the context of a domestic award.

Ultimately, the Bombay HC agreed with the Applicants' submissions, and adopting a harmonious reading of *BALCO*, *Sundaram Finance* and *Gemini Bay*, opined that the Bombay HC – in its capacity as a 2(1)(e) Court – would have jurisdiction to consider the execution application for a domestic award, even though the assets of the Respondents were located beyond its territorial jurisdiction.

ELP Comments

Through the Order, the Bombay HC appears to reiterate the fact that such a conclusion is necessary in order to respect party autonomy. The court also seems to have alluded to the fact that if it proceeds with execution over assets which are not located within its jurisdiction, it may nevertheless appoint a Receiver for such assets.⁸

It must be noted that such a course of action is not available to courts when proceeding in respect of a decree, in accordance with Section 39 of the CPC. Therefore, it is apparent that Indian courts have now accorded far greater liberties to parties in arbitration proceedings, than are available in regular civil proceedings. This is yet another example of the high regard in which arbitration is held as an alternative dispute resolution mechanism, and the respect afforded to its underlying purpose, which is the speedy resolution of disputes.

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⁷ 2018 (2) Mh LJ 329.

⁸ At paragraph 24, the judgment refers to a previous judgment in *Vistra ITCL India Ltd. v. Sanjay Dattatraya Kakade and Ors.*, Order dated 24 August 2018 in Chamber Summons (L) No. 911 of 2018, where such a Receiver was appointed, although the arguments preferred in that case had been substantially different.