



ELP ARBITRATION: UPDATE



SUPREME COURT TRANSFERS PETITION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 FROM COURTS AT BANGALORE TO THE DELHI HIGH COURT. SUPREME COURT DIRECTS THAT THE AWARD SHALL BE KEPT IN ABEYANCE TILL THE DELHI HIGH COURT DECIDES THE APPLICATION FOR STAY IN THE APPLICATION UNDER SECTION 34.

Devas Multimedia Private Limited v. Antrix Corporation Limited. (November 04, 2020)

FACTS

- In arbitration proceedings between Antrix Corporation Limited (**Respondent**) and Devas Multimedia Private Limited (**Petitioner**), an Award dated September 14, 2015 (**Award**) was rendered, by which the Respondent was awarded certain damages along with interest. The Respondent preferred an application under section 9 of the Arbitration and Conciliation Act, 1996 (**the Act**) before the City Civil Court, Bangalore (**Civil Court**).
- The Petitioner filed an application dated September 25, 2015 under section 9 of the Act for securing the sum in the Award before the Delhi High Court.
- The Respondent amended the application under section 9 of the Act pending before the Civil Court to restrain the Petitioner from implementing or enforcing the award. The Respondent also filed an application for setting aside the Award under section 34 of the Act before the Civil Court. The Respondent submitted that since the application under section 9 of the Act was first filed before the Civil Court, Bangalore, the Respondent was entitled to file a petition under section 34 of the Act before the Civil Court, Bangalore.
- On February 28, 2017, the Delhi High Court upheld the maintainability of the application filed by the Petitioner under section 9 of the Act before it. However, on May 30, 2018, the Division Bench of the Delhi High Court set aside the judgment of the Ld. Single Judge. Thereafter, the Petitioner filed the present Special Leave Petition before the Supreme Court.
- On November 19, 2018, the Supreme Court stayed the proceedings that were filed by the Respondent under section 9 and section 34 of the Act before the Civil Court, Bangalore. The present interlocutory application for direction was filed thereafter

FINDINGS

- The Supreme Court observed that execution proceedings were filed in various parts of the world including the United States and the US Court stayed the execution proceedings before it for a period of about one year to enable the parties to settle the matter. Thereafter, on September 17, 2020, the US Court lifted the stay and confirmed the award in favor of the Petitioner, together with pre-award and post-award and post-judgment interest.
- While the Supreme Court suggested to the parties to explore the possibility of mediation, the Respondent denied mediation on the ground that the Union of India has discovered a serious fraud in the entire series of transactions leading up to the disputes including the arbitration agreement. The Petitioner denied the said allegation.
- The Supreme Court observed that in view of the facts, pending decision in the present special leave petition, it would be iniquitous to allow the Petitioner to obtain the fruits of the Award by execution under any law or convention, after obtaining a stay restraining the Respondent from pursuing its objections under section 34 of the Act against the Award.

CONCLUSION

- The Supreme Court directed that:
 - Application filed by the Respondent under Section 34 of the Act stands transferred to the Delhi High Court;
 - That the Award shall be kept in abeyance till the Delhi High Court decides the application for stay in the application under Section 34; and
 - That the application for stay shall be decided on its own merits in accordance with law. The Supreme Court observed that the Petitioner is entitled to seek a deposit of the sum awarded or a part thereof before the Delhi High Court.
- The decision is welcome inasmuch as the Supreme Court endorsed mediation, even after the Award was rendered and parties were advised to explore the option of mediation. However, it remains to be seen whether the allegations of fraud raised by the Respondent in these proceedings will impact the enforcement of the Award. As can be recalled, the Arbitration and Conciliation (Amendment) Ordinance 2020 was promulgated by the Hon'ble President on November 04, 2020 which amends Section 36 of the Act. It allows for an 'unconditional stay' on the enforcement of the award pending disposal of proceedings under Section 34, if, either the arbitration agreement, contract or the award was induced by fraud or corruption under the Act. Though the decision of the Supreme Court does not rely or mention the Ordinance dated November 04, 2020, it will be interestingly to see the impact of the ordinance in the proceedings before the Delhi High Court; particularly when the arbitration proceedings don't appear to have been seated in India and a competent court in the US has already confirmed execution of the award.

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