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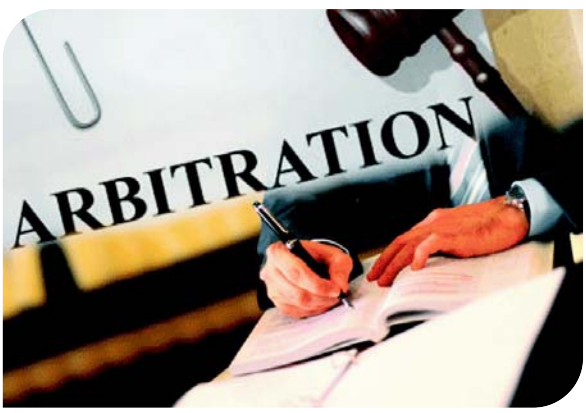

EDITORIAL

Manoj K. Singh
Founding Partner

It gives us immense pleasure to present the March, 2017 edition of our monthly Newsletter Indian Legal Impetus. As the name suggests this Newsletter is our sincere effort to bring forth the latest developments and accomplishments in the Legal world and their applicability and effect on various fields. The entire Singh and Associates team would like to extend our sincere and earnest gratitude to all the readers who have continuously uplifted our morale and motivated us by the awe inspiring response to every edition of Indian Legal Impetus.

For this month's edition, we are pleased to present to our readers a variety of legal write ups ranging from Uniform Code of Pharmaceuticals Marketing Practices, 2014 to the initiatives taken by the Ministry of Labour towards improving the ease of business in India and also extending to the concept of IP Auditing. This edition further elaborately deals with the emerging trends and jurisprudence in the field of Arbitration.

The first article brings to you an overview of the "Uniform Code of Pharmaceuticals Marketing Practices, 2014" which prohibits Pharmaceutical companies or its agents from giving gifts, and extending pecuniary advantages or benefits in kind to persons qualified to prescribe or supply drugs, amongst its other salient features. This Act is expected to be made mandatory soon. Next, we present for our readers an article being "Section 29A of the amended Indian Arbitration And Conciliation Act, 1996" which deals with the interpretation and impact of the newly added Section 29A by the Arbitration and Conciliation (Amendment) Act, 2015 which lays down the time frame to conclude the arbitration proceedings. Next, for the intellectual enlightenment of our readers we are bringing an article titled as "Ministry of Labour and Employments' Initiatives on Ease of Doing Business in India" which talks about the recent initiatives undertaken by the Ministry of Labour and Unemployment covering the scope of development with respect to technology and including various changes in the prominent legislations with a basic aim to bring out more clarity and alleviation in conducting businesses. Then, the next legal write-up covers a very recent judgment of the Supreme Court which has clarified that in presence of an exclusive jurisdiction clause, jurisdiction of all the other Courts shall be ousted irrespective of the fact that no part of the cause of action arose in the jurisdiction of such Court and is titled as "Supreme Court clarifies the ouster of Jurisdiction of all other Courts when parties to an Arbitration Agreement exclusively agree on the jurisdiction of one Court". Our next presentation for our readers is titled as "Intellectual Property Audit" which is a relatively new concept in our Country. This article covers the evolving scenario of Intellectual Property in India and the need to look beyond the established grounds. In order to assess the complete power and potential the owner must not only be aware of the IP which they possess but also should be able to protect the same in an efficient manner. Hence, the IP Audit helps the owner to put a check on the misuse and establish an action plan to deal with the challenges relating to IP in form of the assets. Thereafter, we have a co-authored article on "Appointment of Emergency Arbitrator in India" which explains that the parties can appoint an emergency arbitrator before the initiation of the arbitration to seek urgent interim relief in order to protect their rights such from creating any third party interest or by freezing opposite parties' assets in order to secure the amount. Our next legal write-up deals with the varied interpretation given to the terminology "public policy", its interpretation and scope of misuse which should be analyzed in this speeding era of Arbitration titled as "Analyzing the Prospect of Public Policy As A Defense for the Enforcement of Arbitral Award in view of the 2015 Amendment To The Arbitration And Conciliation Act".

Our last legal write-up which is titled as "Validity and Grounds for Challenging an Award" explains the various parameters to establish the validity of an arbitral award and the specific grounds on which the award can be challenged. The parties cannot appeal against an arbitral award as to its merits and the court cannot interfere on its merits. The Supreme Court has observed "an arbitrator is a judge appointed by the parties and as such an award passed by him is not to be lightly interfered with." But this does not mean that there is no check on the arbitrator's conduct. In order to assure proper conduct of proceeding, the law allows certain remedies against an award, which are the certain specific grounds on which the award can be challenged.

In the end, we have quick newsbytes for our readers about the Contract Labour (Regulation & Abolition) Central (Amendment) Rules, 2017, and Amendment to Payment of Wages Act, 1936.

We hope this issue helps us in further achieving our objective of bringing the laws and recent legal developments in India to your doorstep. We welcome all suggestions and comments for our newsletter and hope that the valuable insights provided by our readers would make "Indian Legal Impetus" a valuable reference point and possession for all. You may send your suggestions, opinions, queries or comments to newsletter@singhassociates.in

Thank you.

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UNIFORM CODE OF PHARMACEUTICALS MARKETING PRACTICES, 2014–EXPECTED TO BE MADE MANDATORY SOON

Gunita Pahwa

The Uniform Code of Pharmaceuticals Marketing Practices, 2014 ("***UCPMP Code***") is a voluntary code issued by the Department Of Pharmaceuticals ("***the Department***") relating to marketing practices for Indian Pharmaceutical Companies and as well medical devices industry. Although the UCPMP Code was initially implemented for a period of 6 months; however, after being extended by the Department 5 times, the Department vide its notification bearing no. 5/3/2009-PJ-J/PJ-II (Vol.III) dated 30 August 2016 has extended the UCPMP Code, 2014 till further orders.

In addition to the above, as per recent news reports, the Department is in the final stages of issuing an executive order making the UCPMP Code mandatory for the drug manufacturing industry. It is expected that the order will cover doctors, chemists, hospitals, and states. Further, it is also expected that there could be inclusion of the stringent penalty provisions in the UCPMP Code.

At present, the UCPMP Code is applicable on Pharmaceutical Companies, Medical Representatives, Agents of Pharmaceutical Companies such as Distributors, Wholesalers, Retailers, and Pharmaceutical Manufacturer's Associations. Interestingly, the UCPMP Code under the head of "Relationship with Health Care Professionals" also provides that where there is any item missing the Code of MCI as per "Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ("***MCI Regulations***") as amended from time to time, will prevail.

The UCPMP Code provides that no gifts, pecuniary advantages or benefits in kind may be supplied, offered or promised, to persons qualified to prescribe or supply drugs, by a pharmaceutical company or any of its agents. In view of the judgment of the ITAT, Mumbai, in the matter titled "*The Assistant Commissioner of Income Tax Circle 6 (3) vs. Liva Healthcare Limited*"[1], the definition of gifts under the UCPMP Code includes gifts for the personal benefit of HCPs and family members (such as tickets to entertainment events, etc.).

Further, as regards travel facilities, the UCPMP Code prohibits extending travel facility inside the country or outside, including rail, air, ship, cruise tickets, paid vacations, etc., to HealthCare Professionals and their family members for vacation or for attending conference, seminars, workshops, CME programme etc. as a delegate. Interestingly, the UCPMP Code does not provide any restrictions for extending travel facilities attending seminars, workshops, CME programs, as other than delegates, for instance attending as a lecturer, speaker, faculty member, etc.

Additionally, the UCPMP Code's regulations regarding Hospitality and Cash or Monetary Grant are same as the MCI Regulations. However, the UCPMP Code does not quantify any allowable limits or any penalty/ punishment based on the quantification of grants.

The UCPMP Code also provides that free samples of drugs shall not be supplied to any person who is not qualified to prescribe such product. Meaning thereby that free samples can only be supplied to persons qualified to prescribe such product. In addition to the above, the UCPMP Code also prescribes additional conditions that are to be observed while providing samples. Interestingly, the UCPMP Code provides limitations on the distribution of free samples, whereas the MCI Regulations do not provide for the same, namely that the sample packs shall be limited to prescribed dosages for three patients for required course of treatment, the sample pack shall not be larger than the smallest pack present in the market, etc.

Further, as per the UCPMP Code, in order to appoint Medical Practitioners/HCPs as Affiliates there should be written contract, legitimate need for the services must be documented, and criteria for selecting affiliates must be directly related to the identified need. Furthermore, the Affiliates must have the expertise necessary to provide the service and should not provide services /attend meets unrelated to the

1 (I.T.A. Nos. 904 and 945/Mum/2013) Decided on 12.09.2016

services agreed under the said agreement. The UCPMP Code also provides that the number of affiliates retained must not be greater than the number reasonably necessary to achieve the identified need and that the compensation must be reasonable and reflect the fair market value of the services provided.

Presently, the UCPMP Code suggests that the committee can propose one of the following decisions against the alleged company to the Head of the Association: (i) suspend or expel the company from the Association, (ii) reprimand the company and publish details of that reprimand, (iii) require the company to issue a corrective statement in the media (covering all media), or (iv) ask the company to recover items from the concerned persons, given in violation of the UCPMP Code, 2014. However, as per recent news reports, the penalties under the UCPMP Code are expected to be revised by the Department and that the Department is planning to bring more stringent penalties clauses under this Code such as suspension of product marketing in case of violation.

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SECTION 29A OF THE AMENDED INDIAN ARBITRATION AND CONCILIATION ACT, 1996

Ruchika Darira

The Arbitration and Conciliation (Amendment) Act, 2015 was notified on 1st January 2016 and is deemed to have come into force on 23rd October 2015. The (amendment) Act, 2015 has introduced a new provision of concluding the arbitration proceeding within a specified time limit by adding Section 29A.

The said provision requires that an arbitral award has to be passed within a period of 12 months from the date the arbitral tribunal enters upon the reference[1]. The said period can be extended further by another six months with the consent of both the parties. [2] Therefore, Section 29A provides a total time frame of 18 months (12+6 months) to complete the arbitral proceedings and to pass an award. If the arbitral award is not passed by the arbitrator within the time frame of 18 months, the provision stipulates that the mandate of the arbitrators shall be terminated, unless a court of competent jurisdiction grants a further extension.[3]

This said provision stipulated under Section 29A is only applicable to arbitral proceedings (both domestic and international arbitrations) commenced on or after 23rd October, 2015 wherein the place of arbitration is in India.

COMPARISON WITH THE ARBITRATION ACT, 1940:

That even under the Arbitration Act, 1940, there was a provision which specified the time frame to conclude the Arbitration proceedings. Rule 3 of the First Schedule of the 1940 Act provided that the arbitrator shall pass the arbitral award within a time limit of four months after entering upon reference. Rule 3 of the First Schedule of the 1940 reads as under:

"Rule 3: The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."

Further, Section 28(1) of the 1940 Act provided the Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time, the time for making the award.

However, the said provisions of the 1940 Act were not retained in the Arbitration and Conciliation Act, 1996 which inter alia repealed the 1940 Act.

INTERPRETATION OF SECTION 29A

First and Foremost, the scheme of the Arbitration and Conciliation Act is to minimize judicial intervention as much as possible. Section 5 of the 1996 Act reads as under:

"Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."[4]

However, section 29(4) forces the parties to the arbitration proceedings to approach the Competent Court in order to extend the time limit beyond the time frame of 18 months, even if the parties mutually agree to such an extension. Such a conduct by the parties foists judicial intervention upon them which is complete contradiction to the scheme and purpose of arbitration specified under the 1996 Act. In fact such a judicial intervention is likely to cause more delay in the resolution of the dispute. The Amendment Act, 2015 provides that an application for extension shall be disposed of as expeditiously as possible and endeavour shall be made by the Court to dispose of the said

1 *Section 29A(1) of the Arbitration and Conciliation (Amendment) Act, 2015*
2 *Section 29A(3) of the Arbitration and Conciliation (Amendment) Act, 2015*
3 *Section 29A(4) of the Arbitration and Conciliation (Amendment) Act, 2015*
4 *Section 5 of the Arbitration and Conciliation Act, 1996*

application within a period of sixty days from the date of service of notice on the opposite party[5]. Given the overburdened state of the Indian judiciary however, this solution may be overly simplistic and optimistic.

Secondly, Section 29A of the 1996 Act provides that an arbitral award must be passed within a time limit of 12 months from the date of entering upon the reference (which is the effective day on which the tribunal is constituted). It is pertinent to mention that Section 29A(3) grants the parties to the arbitration, by consent/ agreement, to extend this period of 12 months by another 6 months. The UNCITRAL Model Law provides that the parties to an arbitration agreement are free to agree on the procedure to be followed by the arbitral tribunal in conducting the arbitral proceedings[6]. The purpose of the said provision under the UNCITRAL Model Law is to provide freedom and party autonomy and to allow the parties to the arbitration to structure composition of the tribunal, proceedings and procedure keeping in mind the magnitude and complexity of the nature of the dispute. Section 29A of the 1996 Act indirectly forces the parties to the arbitration to approach the court in the event that a dispute could not be resolved by arbitration within a time frame of 18 months. By adding the said provision, the parties have been restricted from deciding between themselves the nature of the arbitration, as per their needs and more importantly per the dispute.

Thirdly, there is a substantial possibility that in many disputes the fact that arbitration proceedings are ongoing may be protected by an agreement of confidentiality between the parties. In situations wherein the parties to the arbitration agreement are forced to appear before a Competent Court and place on record the state of the arbitration, they might have to violate their own confidentiality agreements.

Fourth, Section 29A(4) provides that, if the Court finds that the reason of the delay is attributable to the arbitral tribunal, it may order a reduction in the fees of the arbitrators. As per the principles of natural justice and audi alterm paterm it is important that the relevant party be heard, which in present scenario would be the arbitral tribunal itself. In the event that the application is decided in favour of the arbitral tribunal and against a party wherein the party had urged for costs to be imposed on the Arbitral tribunal, then such a party might even seek the arbitral tribunal's recusal based on the perception of bias on the tribunal's part.

Thus, Section 29A has been introduced to fix the issue of lengthy arbitral proceedings but the said provision can give rise to more problems than it seeks to solve. One of the solution to resolve the said problem which has been created by adding Section 29A would be to ensure that party autonomy is still maintained and that parties to the arbitration have the freedom to decide to extend the arbitration proceedings till whenever is required (i.e. not just for the six months allowed by the Section) keeping in mind the nature and complexity of the matter. The Court should interfere only in the event when the parties to the arbitration cannot come to a common consensus agree on whether the time frame should be extended or not.

Moreover, the courts must take into account due care while dealing with the issue of imposition of costs on the Arbitral Tribunal. The Courts must take into consideration certain amount of finesse and with great care so as not to disrupt the arbitration proceedings unnecessarily.

In its present form, the Section 29A is only likely to further lengthen proceedings and allow parties to prolong the arbitration proceedings which are ongoing when they believe that the arbitral tribunal is unlikely to rule in their favor.

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5 *Section 29A(9)) of the Arbitration and Conciliation (Amendment) Act, 2015*

6 *Article 19 of the UNCITRAL Model Law*

MINISTRY OF LABOR & EMPLOYMENT'S INITIATIVES ON EASE OF DOING BUSINESS IN INDIA

Harsimran Singh

As the Government of India strives at making India one the most favorable destinations to do business and to improve the business environment in the country, each and every of its ministries are doing their best to make this a reality so as to meet the benchmarks set by the Doing Business Project of the World Bank.

The present write up briefly discusses the initiatives undertaken by the Ministry of Labor & Employment (the 'Ministry') in recent past which not only includes developments on the technology front but also many changes in the prominent legislations with the sole aim to bring in more clarity and alleviation in conducting businesses. Notably, through transformative reforms both legislative as well as governance, the Ministry has taken various steps to endorse and uphold the scheme of 'Ease of Doing Business in India'.

The Ministry is one of the oldest and important Ministries of the Government of India. The main responsibility of the Ministry is to protect and safeguard the interests of workers in general and those who constitute the poor, deprived and disadvantage sections of the society, in particular, with due regard to creating a healthy work environment for higher production and productivity and to develop and coordinate vocational skill training and employment services. Government's attention is also focused on promotion of welfare and providing social security to the labor force both in organized and unorganized sectors, in tandem with the process of liberalization. These objectives are sought to be achieved through enactment and implementation of various labor laws, which regulate the terms and conditions of service and employment of workers. The State Governments are also competent to enact legislations, as labor is a subject in the concurrent list under the Constitution of India. At present, there are 44 labor related statutes enacted by the Central Government dealing with minimum wages, accidental and social security benefits, occupational safety and health, conditions of employment, disciplinary action, formation of trade unions, industrial relations, etc.[1]

EASE OF REGISTRATIONS

ONLINE REGISTRATION FOR EMPLOYEE PROVIDENT FUND (EPFO) AND EMPLOYEE STATE INSURANCE (ESIC)

- Employer can now undertake apply allotment of Registration Number for EPFO and ESIC online with no manual intervention on real time basis and the registration number allotted is displayed immediately once online form is satisfactorily y / successfully submitted.
- This eradicates visits of officials from concerned authorities for collection of any documents.
- Independent portals for registration: EPFO at https://unifiedportal.epfindia.gov.in and ESIC at www.esic.in/ESICInsurance1/ESICInsuranceportal.
- Also, if the employer needs to register for both EPFO and ESIC, a common registration form is available at the eBiz Portal of Department Of Industrial Policy & Promotion (DIPP).
- Further, earlier mandatory requirement of furnishing details of Bank account at the time of registration has now been made optional for EPFO, and there is no such requirement at all in case of ESIC.

COMMON REGISTRATION SERVICE ON THE E-BIZ PORTAL OF DIPP:

The Ministry has launched the Common Registration on-line Service on the e-biz Portal of DIPP, for registration under 5 Central Labor Laws namely the

1 *http://www.labour.nic.in/about-ministry*

Employees Provident Fund & Miscellaneous Provisions Act, 1952, the Employees State Insurance Act, 1948, the Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996, the Contract Labor (Regulation & Abolition) Act, 1970, and the Inter-State Migrant Workmen(Regulation of Employment & Conditions of Service) Act, 1979.

COMPLIANCE OF LABOR LAWS - SHRAM SUVIDHA PORTAL

(HTTPS://SHRAMSUVIDHA.GOV.IN/HOME):

An integrated portal has been launched to bring transparency and accountability in enforcement of labor laws and ease complexity of compliance.

THIS PORTAL RELATES TO FOUR MAJOR LIMBS / ORGANIZATIONS OF THE MINISTRY, NAMELY:

- Office of Chief Labor Commissioner (Central),
- Directorate General of Mines Safety,
- Employees' Provident Fund Organization; and
- Employees' State Insurance Corporation

The portal also introduces two key factors; a) introduction of inspection services, b) discontinuance of discretion of the Inspector in selection of unit.

EASE OF PREPARING & FILING RETURNS UNDER LABOR LAWS:

Introduction of Single Online Common Annual Return under nine Central Labor Acts[2] on Shram Suvidha Portal facilitating filing of simplified Single Online Return by the establishments instead of filing separate Returns, under the relevant Acts

Independent generation of online Electronic-cum-Challan Receipt (ECR) for both EPFO and ESIC along with online filing and payment of contribution

EASE THROUGH SIMPLIFICATION OF REGISTERS AND FORMS:

The Ministry replaced the 56 Registers/Forms under 9 Central Labor Laws and Rules made thereunder in to 5 common Registers/Forms in furtherance to its "Ease of Compliance to maintain Registers under various Labor Laws Rules, 2017" Notification dated 21.02.17.[3]

The replaced Registers / Forms will not only save efforts & costs but also reduce the compliance encumbrance for establishments / employers.

A software for the said 5 common Registers/Forms is also being developed by the Ministry for facilitating maintenance of those registers in a digitized form in accordance with the provisions made in the above said notification/Rules. The software will be put on the Shram Suvidha Portal of the Ministry for free download.

Without a doubt the above discussed initiatives are solely aimed to (apart from digitalization of records) assist the establishments / employers to be duly compliant with the statutory requirements of good-record keeping.

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2 *Payment of Wages Act, 1936, Minimum Wages Act, 1948, Contract Labor (Regulation and Abolition) Act, 1970, Maternity Benefit Act, 1961, Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996, Payment of Bonus Act, 1965, Inter-State Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1979, Industrial Disputes Act, 1947, and the Mines Act 1952.*

3 http://labour.gov.in/whatsnew/ease-compliance-maintain-registers-under-various-labour-laws-rules-2017

SUPREME COURT CLARIFIES THE OUSTER OF JURISDICTION OF ALL OTHER COURTS WHEN PARTIES TO AN ARBITRATION AGREEMENT EXCLUSIVELY AGREE ON THE JURISDICTION OF ONE COURT.

Arunima Singh

There has been much controversy around the jurisdiction of the Courts in absence of a specific jurisdiction clause but a specific "seat" of Arbitration. The Hon'ble Supreme Court of India has recently held in the case of *Indus Mobile Distribution Private Limited vs Datawind Innovations Private Limited and Ors*. being *Civil Appeal No. 5370-5371 of 2017* cleared the clouds of doubt and categorically held that when the parties agree on a "seat" of Arbitration in their arbitration agreement, then that Court alone shall have jurisdiction to the exclusion of all the other Courts in the Country.

FACTUAL MATRIX:

Datawind Innovations Pvt. Ltd. (hereinafter referred to as "the Respondent") was engaged in the manufacture, marketing and distribution of Mobile Phones, Tablets and their accessories. On an interest expressed by the Indus Mobile Distribution Private Limited (hereinafter referred to as "the Petitioner"), the parties entered into an Arbitration Agreement on 25.10.2014, Clause 18 of which agreement provided for Dispute Resolution through Arbitration. Further clause 19 of the said agreement prescribed jurisdiction to the Courts in Mumbai exclusively.

When Respondent filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the High Court of Delhi seeking various interim reliefs, the High Court of Delhi was pleased to issued notice on the said section 9 application also thereby restraining the Petitioner from transferring, alienating or creating any third party interest in respect of a property situated in Chennai. Respondent also filed an application under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator before the High Court of Delhi. Respondent's both applications under section 9 and 11 came to be disposed off by the order dated 03.06.2016 which was impugned in the special leave petition.

The High Court of Delhi held that territorial jurisdiction would be prescribed only to the Courts of Delhi, Amritsar and Chennai since no part of the cause of action arose in Mumbai. It was clarified by the High Court that goods were supplied from Delhi to Chennai and the registered office of the Appellant Company was in Amritsar and by that explanation, jurisdiction shall lie before the aforesaid three Courts. The High Court therefore held that the exclusive jurisdiction clause would not apply on facts, as the courts in Mumbai would have no jurisdiction at all. The High Court further determined that Delhi being the first Court that was approached would have jurisdiction in the matter and proceeded to confirm interim order dated 22.09.2015 and also proceeded to dispose of the Section 11 petition by appointing a sole Arbitrator in the proceedings. The High Court also recorded that the conduct of the arbitration or the "seat" of arbitration would be in Mumbai.

VIEW EXPRESSED BY THE SUPREME COURT:

In Reliance Industries Ltd. Vs Union of India[1] it was made clear that "juridical seat" is the "legal place" of arbitration. In the case of Union of India vs Reliance Industries Limited and Ors.[2], the seat of Arbitration was London and therefore, the Hon'ble Supreme Court held therein that Part I of the Arbitration and Conciliation Act, 1996 is excluded as the supervisory jurisdiction of Indian Courts evaporates with the placing of the "seat" in London. The Law Commission Report pursuant to which the Arbitration and Conciliation Act, 1996 has been amended in 2015 also specifically differentiates between "seat" and "venue" and even proposed to amend section 20 of the Act to substitute the word "place" and add "seat and venue" in sub-section (1) of section 20 and in place of word "place" substitute the word "venue" in sub-section (3) of

1 *Reported as (2014) 7 SCC 603*
2 *Reported as (2015) 10 SCC 213*

section 20. However, these amendments were never enacted with the 2015 amendment.

The Hon'ble Apex Court, while relying on all the above judgments amongst others and the Law Commission's report, has held that once the parties designate and decide a seat, it becomes similar to an exclusive jurisdiction clause. The Court held that in the present case the seat of Arbitration was Mumbai and clause19 of the contract renders exclusive jurisdiction over the Courts in Mumbai. It has been further clarified that unlike Code of Civil Procedure, reference to "seat" may also be towards a neutral venue which is chosen by the parties to an arbitration agreement. But as soon as a "seat" is selected and agreed to by the parties, it renders jurisdiction to the Courts of that "seat" thereby excluding the jurisdiction of all other Courts irrespective of section 16 – 21 of the Code of Civil Procedure, 1908. The Hon'ble Court while setting aside the order of the High Court came to the conclusion that because the parties had decided Mumbai to hold the seat of arbitration, therefore, the Courts in Mumbai alone shall have jurisdiction to entertain any litigation arising from the said arbitration. The relevant paragraph of the judgment is being produced herein below:

"21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32. This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited, (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly."

Therefore, it is now clear that when there is an exclusive jurisdiction clause in the Agreement, then irrespective of where the cause of action arises, that Court shall hold jurisdiction to entertain proceedings arising out of such Arbitration. The present judgment of the Apex Court has cleared the confusion about jurisdiction in the litigation arising out of Arbitration Proceedings because ideally, for jurisdiction, guidance is sought from sections 16 – 21 of the Code of Civil Procedure, 1908. However, Arbitration being a separate and independent code, jurisdiction of Court is decided by the selection of seat of Arbitration to the ouster of jurisdiction of all the other Courts for the purpose of the proceedings arising out of that Arbitration.

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INTELLECTUAL PROPERTY AUDIT

Martand Nemana

INTODUCTION

The behest of the changing time has made the consumers evolve and modulate as per the changing standards of the market. From what was once a consumer driven society has now turned into a capital driven society, thus making the business houses control the way the consumers delve into the commodities of the relevant sectors. The world in the past few decades has also witnessed a comprehensive shift and the outlook with which people look upon Intellectual Property (referred to as IP hereafter) as a whole. Though most world leaders of business pastures have realized that their revenues to be directly proportional to their intangible assets which they already hold, the need to further secure, acquire and effectively utilize the principles have called for new reforms in the legal sectors.

Intellectual Property or IP as they know it has evolved as one of the highest revenue earning sources for the companies. With the changing times, companies apart from the physical infrastructure are now seen to emphasize upon the stringent needs to harness a proper intellectual infrastructure. The companies have started realizing the original potential of the their intellectual property in the post 1990 era, where the advent and insurgence of the internet made the companies and their consumers well versed with each other, providing them with ample opportunity and scope to establish themselves as a prominent entity in the relevant sector of the business.

Given the present day scenario where the world seems to be living a dual phased physical and digital life the companies have started to assimilate the value of the IP more than ever before and the IP is now a part of all the major transactions such as business decisions and transactions, and that recognition has increased the demand for IP audits in order to assess the potential and to create a level playing field for the competitors in the relevant market sector.

WHAT IS AN IP AUDIT?

IP audit has been defined as a systematic review of the IP owned, used or acquired by a business so as to assess and manage risk, remedy problems and implement best practices in IP asset management.

IP Audit is a tool which is mostly used by the companies to take into account the intangible assets which they have generated / developed in the certain span of time. Thought the IP is intangible in nature, but it contributes to a very crucial core value of the company, i.e. the goodwill which they brand has in the market. Tentatively speaking the goodwill of the IP is one of the crucial reasons for which the industries acquire protection. This goodwill thus generated is then represented as the consumer preference and the acceptability of the brand in the market which is now a major reason for generating revenue.

Keeping in mind the changing times and given the digital society we live in, the companies have never been more aggressive regarding their promotion, advertisements and collaborations regarding their products. This has thus resulted them to start delving into the wilderness of the market which makes them susceptible to damage / threats and other legal challenges. The scenario thus has presented an alarming need, which needs the IP owners to be more aggressive and well prepared before an actual impact is caused.

HOW DOES THE AUDIT FUNCTION?

The IP Audit follows the SWOT analysis process as below:

1. **S** – *Strength*: To assess the strongest and safest points of the IP of the owner. This could range from the goodwill of the product to the well framed legal and comprehensive protection which would be the best asset of the owner.

2. **W** – *Weakness*: One of the major aims of the IP Audit is to identify the weak spots and loose ends which would be the possible breeding grounds to future legal disputes. The Audit would help the owner, to prepare well in advance and also help them to device a full proof

mechanism to overcome such abnormalities.

3. **O** – *Opportunities*: IP audit can also be seen as preparation which the owner carries out to assess the present situation before proceeding to take any further actions. The owner of an IP could also undertake such preparatory measures before proceedings to use their IP to generate revenues, like licensing, tech – transfer and leasing.

4. **T** – *Threats*: The intangible rights being vulnerable and frail are always defenseless without proper protection and legal enforcements. Given the highly digital and technologically advanced competitive market threats to the IP have been imminent and thus the IP Audit serves at timely interval serves the owner to entail and trace the source of possible conflict and take adequate measure to avert it.

MEATHOD OF IP AUDIT:

'Audit' in normal parlance, refers to a detailed, formal examination and verification of the accounts and processes of an enterprise, which is undertaken to understand the overall picture of its financial position and good standing in the market. An audit is followed by a report on the findings of the diligence, which can be used by the enterprise for planning the future growth of business.

In order to conduct an IP Audit, it is most important to identify and determine in advance to the desired objective of the audit. The major scope of preparing an action plan would depend upon the following grounds:

1. Duration of the company in the market,
2. Geographical presence and jurisdictions which the company operates in.
3. Size of the company and the amount of subsidiaries involved
4. Creating a target plan to achieve the milestones and meet crucial deadlines in order to harness the complete potential of the IP of the company.

Once, the aforesaid guidelines have been set, it is then important to procure the relevant information relating to the IP of the company, which can be briefly devised into the following criterions:

1. Collating information about the global IP presence of the company in forms of various filings and existing registrations;
2. Various contractual, licensing and R&D contracts which the company might have taken in relation its existing IP;
3. The classification of the existing IP and to understand the future prospects of developing the same;
4. Legal encumbrances, involvements and responsibilities of the company as a whole which may affect the profile of the company and its intellectual property.

Through various embodiments the IP audit affective provides an assessment over the following concerns:

1. To identify the scope of the present and to create a future profile for the tangible assets of the company.
2. To reinforce the IP protection mechanism and device secure portfolio to avoid legal conflicts.
3. To identify the idle IP and to set them in process and to harness them as a potential.
4. To assess the financial equivalent of the assets and to be able to use them as leverage or guarantee with other financial institutions.
5. To foresee and steer clear of any risks or unwanted litigation which may evolve or affect the functioning and profile of the applicant in the market.
6. To reduce unnecessary cost and legal expenses.

TYPES OF IP AUDIT:

An audit can be classified on the scope and reason for which the audit has been carried out. It is broadly classified into the following types:

1. General: Mostly carried out as a part of the

general audit which the company should undertake time to time, to assess and evaluate the value of their assets.

2. Specific: Mostly carried out in order to pin point and identify the crucial area which might be either about an existing right or a right which may be procured in the near future.

CONCLUSION

The changing times have made us realize that the intangible assets have slowly become a significant part of the economic value of the knowledge economy. The most important factor for a long standing market presence in to recognize the scope for IP and to capitalize on its real value.

Though IP protection is available in across the globe in various methods like registrations, filings, licensing, restraining from misuse, however mostly the owners fail to realize the value and to safeguard to asset at hand. For every market entities being caught off the guard to could lead to turmoil, both financially and goodwill wise, which would prove highly detrimental to the organizations future.

Given the concept of global village, and aided with the information technology the world has really become a very small place and hence the rise in the need of protection. It is equally important to create an IP asset and also to safeguard to its ownership and efficient management. It's time that the companies should realize the importance of these rights and put them to right exercise.

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APPOINTMENT OF EMERGENCY ARBITRATOR IN INDIA

Kunal Kumar, Associate

Anshuman Ray, Associate

Appointment of Emergency Arbitrator: It is the procedure by which parties seeking for an urgent interim relief may appoint an arbitrator even before the constitution of the tribunal. In any arbitration there are instances where parties may want to protect their rights such as by freezing opposite parties assets in order to secure the amount claimed or any other relief similar in nature. The person seeking such appointment has to satisfy two elements:

1. The loss by the way of damages are irreparable by nature if the relief is not granted i.e. ***Periculum in mora***

2. That the person seeking such relief is likely to succeed on merits i.e. ***Fumus boni luris***

The emergency arbitration was first introduced in year 2006 by International Centre for Dispute Resolution (ICDR). Many other major arbitral such as LCIA (London Court for International Arbitration), SIAC (Singapore International Arbitration Centre), HKIAC (Honk kong International Arbitration Centre) and ICC (International Chamber of Commerce) thereafter have followed by inserting the provisions for appointing the emergency arbitrators. Very recently, SIAC has amended their rules, accordingly by which the President shall seek to appoint the arbitration within one day of the receipt by the Registrar of such application requested.[1] Likewise, even Mumbai Centre for International Arbitration [2](MCIA) has adopted provision for the appointment of emergency arbitrator[3] and the Delhi International Arbitrator Centre has also included the provision for the 'Emergency Arbitrator' and the appointment, procedure and time period for the same.

Further, most of the institutions have also put a time limit date within which the interim award is to be delivered. For example, under SIAC Rules 2016 [4]and under MCIA Rules 2016[5], the award is to be made within 14 day from the date of appointment of the emergency arbitrator.

However, the concept of 'Emergency Arbitration' has not been so popular in India. Most of the Indian parties have chosen SIAC as the arbitral institutions and reportedly 9 out of 34 applications for the appointment of emergency arbitrator were in fact made by the Indian parties.[6] Previously, the Indian arbitration rules and the laws were not so arbitration friendly but after the amendment of Arbitration & Conciliation Act, 1996 and the MCIA Rules 2016 India is gradually moving forward and adapting the international standards in commercial arbitration.

The first issue relating to the emergency arbitration was discussed in the case of HSBC PI Holding (Mauritius) Limited v. Avitel Post Studiouz Limited [7]dated 22.01.2014 by the Bombay High Court. In the present case, the locus loci arbitri i.e. the seat of arbitration was Singapore i.e. outside India. The Petitioner had moved an application for the appointment of emergency arbitrator to seek interim measures. The emergency arbitrator had granted the interim measures and passed the award in favor of the Petitioner by freezing the accounts of the Respondents and required them to disclose their assets to HSBC Mauritius information. The Petitioner later moved an application under Section 9 before Bombay high Court to seek the same reliefs which was also granted by the Arbitral Tribunal. The Honorable High Court of Bombay held that since the party had moved an application under Section 9 of the Act and was not seeking to enforce the emergency award passed, the same could be granted by the Court. It is pertinent note that the judgment was delivered prior to the BALCO decision where it was held that the Indian Courts cannot entertain interim relief where the seat of arbitration is outside India.

1 *Schedule 1, Rule 3 of the SIAC Rules 2016*
2 *Established in 2016*
3 *Under Rule 14, MCIA Rules 2016*
4 *Schedule 1, Rule 9 of the SIAC Rules 2016*
5 *Under Rule 14.6, MCIA Rules 2016*
6 *From July 2010 – 1 April, 2014: http://hsfnotes.com/arbitration/2014/04/01/siac-emergency-arbitrator-awards-a-speedier-route-to-interim-relief-before-the-indian-courts/*
7 *MANU/MH/0050/2014*

On 07.10.2016, in the case of Raffles Design International India Private Limited & Ors. v. Educomp Professional Education Limited & Ors.,[8] held by the Delhi High Court the issue of emergency arbitrator was again discussed. The seat of arbitration was Singapore. The interim relief was granted by the emergency arbitrator restraining the Respondent from taking any action that would deprive the rights of the Claimants in the agreement in respect of (a) Hiring and dismissal of employees in the society and (2) functioning and management of the society. Additionally, the Respondent was restrained from instigating the terminated employees of the Society. The same was also enforced by the High Court of the Republic of Singapore. Later, the party for whom the order was passed in favor sought interim relief under Section 9 of the new amended Arbitration & Conciliation Act, 2015 stating that the opposite party had been acting in contravention to the emergency award passed. It was held that:

"99. In the circumstances, the emergency award passed by the Arbitral Tribunal cannot be enforced under the Act and the only method for enforcing the same would be for the petitioner to file a suit.

100. However, in my view, a party seeking interim measures cannot be precluded from doing so only for the reason that it had obtained a similar order from an arbitral tribunal. Needless to state that the question whether the interim orders should be granted under section 9 of the Act or not would have to be considered by the Courts independent of the orders passed by the arbitral tribunal. Recourse to Section 9 of the Act is not available for the purpose of enforcing the orders of the arbitral tribunal; but that does not mean that the Court cannot independently apply its mind and grant interim relief in cases where it is warranted."

In above ratio decendi, it may be inferred that after the amendment of the Arbitration & Conciliation Act, 1996 the Court has the power to entertain and also interim relief even if the seat of arbitration is outside India.

The concept of 'Appointment of Emergency Arbitrator' in India is not new. Arbitral Centres such as Madras High Court Arbitration Centre and Delhi International Arbitration Centre had introduced appointment of emergency arbitration in their rules long back. However, not many parties are aware that their interests can be protected even before the tribunal is constituted and such applications are not just limited to the courts

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8 MANU/DE/2754/2016

ANALYZING THE PROSPECT OF PUBLIC POLICY AS A DEFENSE FOR THE ENFORCEMENT OF ARBITRAL AWARD IN VIEW OF THE 2015 AMENDMENT TO THE ARBITRATION AND CONCILIATION ACT

Surbhi Darad

The prominent role of national courts in international arbitration has been recognized in almost every country, as because arbitrations are regulated pursuant to national laws and, accordingly, have a close relationship with the national courts where arbitral awards are to be enforced in accordance with the governing laws.

According to the new amendment, a cap has been introduced limiting the arena of Public policy as a defense in the attribute enforcement of award in International arbitration. This defense is incapable of being precisely determined and is entirely dependent upon the laws of individual states for its application. As a result, it varies from one state to another. An award passed in an international arbitration, can be put aside on the ground that it is against the public policy of India if, and only if, – (i) the award is vitiated by misrepresentation or corruption; (ii) it is in repudiation with the fundamental policy of Indian law; (iii) it is in conflict with basic notions of profound quality, equity and justice. The present amendment has illuminated that the extra ground of "patently illegality" to challenge an award must be taken for domestic arbitrations and not international arbitrations.

Further, the amendment provides that the domestic awards can be challenged on the ground of patent illegality on the face of the award but the award shall not be set aside merely on the ground of an erroneous application of law or by re-appreciation of evidence. The source of the unlawfulness could arise by statute or by virtue of the principles of general law, in majority of cases the unlawfulness lies within the object that one or each parties have in mind or within the technique of performance. The intent behind the amendment was mad clear by the Commission[1] as they believes that this will go a long way to assuage the fears of the judiciary as well as the other users of arbitration law who expect, and given the circumstances prevalent in our country, legitimately so, greater redress against purely domestic awards.

Also the concept of public policy connoted matters which concerned public good and public interest. The Supreme Court in the case of *ONGC* v. *SA W Pipes Ltd [*(2003) 5 S.C.C. 705, 727] held that an award which violated the law could not be said to be in the public interest, because it was likely to adversely affect the administration of justice. The Indian Supreme Court held that, in addition to the three heads set forth in the Renusagar case [*Renusagar Power* Co *Ltd* v. *General Electric CO,* 1994 Supp (1) S.C.C. 644], held that an arbitral award may be set aside on grounds of public policy if it is patently illegal. It was pointed out that an award was patently illegal if the award was contrary to the substantive law, the Indian Arbitration Act and/or the terms of the contract. The effect of this was that these included any error of law committed by the arbitrators.

The stand of Indian judiciary in the case of Venture Global Engineering v Satyam Computer Services [(2008) S.C.A.L.E. 214]was a sort fall in accepting the international standards of arbitration concerning set of arbitration outside India and enforce challenged in India on the grounds of public policy.[2] Although there is no provisions in Part 2 of the Indian Arbitration Act providing for challenge to a foreign arbitral award, a petition to set aside the same could lie under Part 1 of the Indian Arbitration Act. Court held that the losing party could bring an independent action in India to set aside a foreign arbitral award on the expanded grounds of public policy as set out in the case of Saw Pipes.

Rules that rest on the foundation of 'Public Policy,' not being rules that belong to the fastened Customary Law, are capable on correct occasion, of enlargement or

1 Law Commission of India, 246th report on Amendments to the Arbitration and Conciliation Act 1996, August 2014.

2 *F Nariman, 'India and International Arbitration', (2010) 41 The Geo. Wash. Int'l L. Rev. 367 at 376*

modification relying upon circumstances. within the broader view, the doctrine of "Public Policy" is reminiscent of the "Policy of Law," no matter ends up in obstruction of justice or violation of a statute or is against the great morals once created the object of contract would be against 'Public Policy of India" and being void, wouldn't be prone to social control.[3]

In international arbitration, the New York Convention and the UNCITRAL Model law have incorporated provisions allowing a state to refuse to recognize or enforce foreign arbitral awards, if such awards are found contrary to the public policy. Article V(2) (b) of the New York convention, 1958 provides that "*Recognition and enforcement of an arbitral award may be refused if the competent authority in the country, where enforcement is sought finds that the recognition and enforcement would be contrary to the public policy of the country*". In India this provision was given legislative recognition in section 7 (1) (b) (ii) of the Foreign Awards (Recognition and Enforcement) Act 1961 which provided that a foreign award may not be enforced if the enforcing country is satisfied that the enforcement of the award will be contrary to the public policy[4]. After Arbitration Act, 1996 being enacted Foreign Awards (Recognition and Enforcement) Act 1961 was repealed. The said defense was incorporated in section 34 (2)(b)(ii) in Part-I of the Act but the stand of public policy was highly being misused by the parties on the ground of procedural or substantive injustice.

Despite the potentially expansive and unruly character of "Public Policy", the courts in most of the developed jurisdictions have been very reluctant to invoke the public policy exception adopting a restrictive interpretation in the context of enforcement of arbitral award.

It's forever within the domain of the judiciary to interpret the general public policy at a given purpose of your time. By leveling "patent illegality" to an "error of law", the Court effectively made up the approach for losing parties within the arbitral method to possess their day in Indian courts on the premise of any alleged contraventions of Indian law, thereby resurrecting the possibly limitless review that the 1996 Act was designed to eliminate.[5] A new and narrower definition of the term public policy is needed within the era of globalization to encourage the foreign investors to hold out healthy commercial relationships in India. A globally compatible definition of 'public policy' ought to be adopted or the court ought to give up the public policy to therefore extent so on ensure the structure of International industrial Arbitration.

Public policy could be used to catch procedural faults which were not covered by the other grounds for set aside. Where parties to the contract are choosing the mode of arbitration for solving the legal tussle, it shows the intention to avoid litigation procedure. A view of arbitral awards having a distinct existence separate from domestic law has a realist slant, as the rights of the parties are not technically determined by the law of the seat but may vary considerably in relation to the same dispute depending on the national system ruling on an award.

Also countries interested to invest in India, will rescue themselves from doing the same seeing the prevailing circumstances of Arbitration as no end result is to be attained with the failure of non enforcement of the award, cautioning an alarming issued for using and interpretation of the new amended law.

It may thus be seen that 'public policy' has had varied interpretations across the globe. Courts have interpreted it keeping in mind their own laws and morals. Almost common to all the courts has been the fact that 'public policy' has been narrowly constructed and very limited options are available for widening its scope.

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3 *Justice D R Dhanuka, "Public Policy" Plea for Consideration by Larger Bench of Supreme Court' (2003) XLVIII Indian Council of Arbitration Quarterly 23.*

4 *O P Malhotra and Indu Malhotra, Law and Practice of Indian Arbitration and Conciliation (LexisNexis, 2006) 1175.*

5 *Challenge to Arbitral Awards on Public Policy: A Comment on ONGC v. Saw Pipes Ltd., 52(3) Arb. LoR. 1 (2003)*

VALIDITY AND GROUNDS FOR CHALLENGING AN AWARD

-Mahip Singh Sikarwar

PREFACE

The parties cannot appeal against an arbitral award as to its merits and the court cannot interfere on its merits. The Supreme Court has observed "an arbitrator is a judge appointed by the parties and as such an award passed by him is not to be lightly interfered with." But this does not mean that there is no check on the arbitrator's conduct. In order to assure proper conduct of proceeding, the law allows certain remedies against an award.

INDIAN SCENARIO

Under the repealed 1940 Act three remedies were available against an award- modification, remission and setting aside. These remedies have been put under the 1996 Act into two groups. To the extent to which the remedy was for rectification of errors, it has been handed over to the parties and the Tribunal. The remedy for setting aside has been moulded with returning back the award to the Tribunal for removal of defects.

Section 34 provides that an arbitral award may be set aside by a court on certain grounds specified therein. Under Section 34 of the Act, a party can challenge the arbitral award on the following grounds-

- *the parties to the agreement are under some incapacity;*
- *the agreement is void;*
- *the award contains decisions on matters beyond the scope of the arbitration agreement;*
- *the composition of the arbitral authority or the arbitral procedure was not in accordance with the arbitration agreement;*
- *the award has been set aside or suspended by a competent authority of the country in which it was made;*
- *the subject matter of dispute cannot be settled by arbitration under Indian law; or*
- *the enforcement of the award would be contrary to Indian public policy.*

The Amendment Act has added an explanation to Section 34 of the Act. In the explanation, public policy of India has been clarified to mean only if:

- *the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or 81; or*
- *it is in contravention with the fundamental policy of Indian law; or*
- *it is in contravention with the most basic notions of the morality or justice.*

Section 34(2)(b) mentions two more grounds which are left with the Court itself to decide whether to set aside the arbitral award:

1. Dispute is not capable of settlement by arbitral process
2. The award is in conflict with the public policy of India

The Amendment Act clarifies that an award will not be set aside by the court merely on erroneous application of law or by re-appreciation of evidence.[1] A court will not review the merits of the dispute in deciding whether the award is in contravention with the fundamental policy of Indian law.[2] The Amendment Act has also introduced a new section providing that the award may be set aside if the court finds that it is vitiated by patent illegality which appears on the face of the award in case of domestic arbitrations. For ICA seated in India, 'patent illegality' has been keep outside the purview of the arbitral challenge.[3]

A challenge under this section can be filed only after providing prior notice to the opposite party.[4]Section 34 of the Act is based on Article 34 of the UNCITRAL Model Law and the scope of the provisions for setting aside

1 *Proviso to section 34(2A) of the Act*
2 *Explanation 2 to section 48 of the Act*
3 *Section 34(2A) of the Act*
4 *Section 34(5) of the Act*

the award is far less than it was under the Sections 30 or 33 of the 1940 Act. In *Municipal Corp. of Greater Mumbai v. Prestress Products (India)*[5], the court held that the new Act was brought into being with the express Parliamentary objective of curtailing judicial intervention. Section 34 significantly reduces the extent of possible challenge to an award.

In *Sanshin Chemical Industry v. Oriental Carbons & chemical Ltd.*[6], there arose a dispute between the parties regarding the decision of the Joint Arbitration Committee relating to venue of arbitration. The Apex Court held that a decision on the question of venue will not be either an award or an interim award so as to be appealable under Section 34 of the act.

In *Brijendra Nath v. Mayank*,[7] the court held that where the parties have acted upon the arbitral award during the pendency of the application challenging its validity, it would amount to estoppel against attacking the award.

INTERNATIONAL SCENARIO

Generally, the grounds for challenging an award are limited and many countries do not permit appeals from the decision of an arbitral tribunal. In countries that have adopted the UNCITRAL Model Law on International Commercial Arbitration, awards can only be challenged by seeking their 'annulment' at the seat of the arbitration. Awards may also be challenged by resisting their enforcement in a place where the successful party seeks to enforce them. Even if an award is annulled, or if enforcement is refused, this may not necessarily prevent it from being enforced in another country.

The grounds to challenge of awards given in Part I (section 34) of the Indian Arbitration Act are applicable only to Domestic Awards and not to Foreign Awards. On September 6, 2012, Supreme Court in *Bharat Aluminum Co. v. Kaiser Aluminium Technical Service Inc.* reconsidering its previous decisions concluded that the Indian Arbitration Act should be interpreted in a manner to give effect to the intent of Indian Parliament. In this case the Court reversed its earlier rulings in cases of *Bhatia International v. Bulk Trading S.A. & Anr.* and *Venture Global Engg v Satyam Computer Services Ltd & Anr.* stating that findings in these judgments were incorrect. Part I of the Indian Arbitration Act has no application to arbitrations seated outside India irrespective of whether parties chose to apply the Indian Arbitration Act or not. Most importantly, these findings of the Supreme Court are applicable only to arbitration agreements executed after 6 September 2012. Thus all disputes pursuant to arbitration agreement entered into upto 6 September 2012 shall be decided by old precedents irrespective of fact that according to the Supreme Court such rulings were incorrect and have been reversed.

Most challenges will be made before the courts. Although each country which has a law governing arbitration will have its own concept for challenging arbitral awards, there are three general grounds for such challenges.

- An award may be challenged on jurisdictional grounds, i.e. the non-existence of a valid and binding arbitration clause.
- An award may be challenged on what may be broadly described as procedural grounds, such as failure to give proper notice of the appointment of an arbitrator.
- An award may be challenged on substantive grounds, on the basis that the arbitral tribunal made a mistake of law or on the grounds of a mistake of fact.

Some arbitration rules provide for "internal" challenges. The most extensive provision for the challenge of arbitral awards by means of an internal review procedure is to be found in the ICSID arbitration rules. In the case of an application for the annulment of the award, an *ad hoc* committee of three members is constituted by ICSID to determine the application. If the award is annulled, in whole or in part, either party may ask for the dispute to be submitted to a new tribunal, which Tribunal will consider the dispute again and then deliver a new (and final) award.

5 *(2003) 4 RAJ 363 (Bom)*
6 *AIR 2001 SC 1219*
7 *AIR 1994 SC 2562*

CONCLUSION

We see that the law relating to setting aside of arbitral award in India is consonance with the UNCITRAL model law as the national law is based on the same only. However, the interpretation of Supreme Court in several decisions like Bhatia International have raised serious issues which to some extent have been resolved in the BALCo case. The judicial intervention should be minimal and this practice has to be promoted in India so that arbitration may be successful.

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NEWSBYTES

THE CONTRACT LABOUR (REGULATION & ABOLITION) CENTRAL (AMENDMENT) RULES, 2017

The Ministry of Labour and Employment vide its Notification dated 7th March, 2017 being G.S.R. 203(E) notified draft of certain rules further to amend the Contract Labour (Regulation and Abolition) Central Rules, 1971 (the 'Principal Rules'), which the Central Government proposes to make in exercise of the powers conferred by sub-section (2) of section 35 of the Contract Labour (Regulation and Abolition) Act, 1970, is hereby published, as required by sub-section (1) of Section 35 of the said Act, for information of all persons likely to be affected thereby. The Ministry by way of said Notification gave notice that the said draft rules will be taken into consideration after the expiry of a period of thirty days from the date on which the copies of the Official Gazette in which this notification is published, are made available to the public.

The Contract Labour (Regulation & Abolition) Central (Amendment) Rules, 2017

(i) For Rule 82 of the Principal Rules, the following rule shall be substituted, namely:-

"82. (1) Every contractor shall upload a Unified Annual Return in the Form XXIV specified in these rules, on the web portal of the Ministry of Labour and Employment on or before the 1st day of February following the close of the year to which it relates.
(2) Every principal employer of a registered establishment shall upload a Unified Annual Return on or before the 1st day of February following the end of the year to which it relates.
(3) The principal employer or contractor shall also file a Unified Annual Return to the concerned authorities manually on or before the 1st day of February following the close of the year to which it relates.
(4) In case, if, the employer maintain registers or records or reports in electronic form, such registers or records or reports shall also be taken into consideration by the inspector for the purpose of examination of any register or record required to be kept under the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) and the rules made thereunder and require the production thereof for inspection."

(ii) Further in the Principal Rules, Form XIV and form XV shall be omitted.

(iii) Also in the Principal Rules, after Form XXIII, a new form has been proposed to be inserted, namely Unified Annual Return Form-'XXIV'

Objections or suggestions, if any, may be addressed to the Joint Secretary to the Government of India and Director General (Labour Welfare), Ministry of Labour & Employment, Jaisalmer House, 26, Mansingh Road, New Delhi-110011;

AMENDMENT TO PAYMENT OF WAGES ACT, 1936

The Ministry of Law and Justice (Legislative Department) vide its Notification dated 16th February, 2017/Magha 27, 1938 (Saka) pursuant to receiving of the assent of the President published for general information the Payment of Wages (Amendment) Act, 2017 to amend the Payment of Wages Act, 1936 (the 'Act').

The Act applies in the first instance to the payment of wages to persons employed in any factory, to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration, and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2. The Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed eighteen thousand rupees per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey

Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify.

By virtue of this Notification, this Amendment Act came into force on the 28th day of December, 2016. The Amendment Act substituted the exiting section 6 of the Payment of Wages Act, 1936, with the following

> *"All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee:*
>
> *Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account."*

Section 6 earlier provided that the wages shall be paid in current coins or currency notes or in both; provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Apparently the payment of wages by way of cheque or crediting the waged directly to the bank account of the employee have now been introduced. Also, taking of authorization from the employee for payment of wages either by cheque or by way of crediting directly in the account has been done away with.

Taking genesis from Government's crucial policy of giving priority to electronic mode of transacting, this surely will smoothen the procedure of payment of wages and at the same time make it less cumbersome to maintain records.

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NOTES

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