

OUR
SECTORSLEGAL
SERVICES

LOCATIONS

OUR
PEOPLEHFW
CONSULTING SEARCH

BRIEFINGS

PRO-ARBITRATION DELHI HIGH COURT ENFORCES SIAC AWARD - GLENCORE INTERNATIONAL AG V INDIAN POTASH LIMITED & ANR CASE¹

BRIEFINGS

BULLETINS

VIDEO

CASE UPDATES

GUIDES

THOUGHT LEADERSHIP

BOOKS

PUBLICATION
SUBSCRIPTION

The Delhi High Court's recognition of yet another foreign award passed under the Singapore International Arbitration Centre (SIAC) Rules 2010, despite several objections by the award-debtor, reinforces India's increasingly pro-arbitration approach and signals the country's growing potential to attract foreign investors.

Background to the award

Glencore International BV (Glencore) filed an execution petition in 2015 in relation to a SIAC award (Award) in its favour before the Delhi High Court.

Indian Potash Limited (IPL), the award-debtor, raised objections against the enforcement of the award on numerous grounds, including that the parties had not agreed to an arbitration under the SIAC Rules.

The arbitration was subject to the laws of Singapore. However, the arbitration clause required that the arbitration be conducted under "the Rules of Singapore International Arbitration of the Chambers of Commerce in Singapore" – a non-existent institution.

The SIAC Register decided that SIAC had the necessary jurisdiction and proceeded with the reference.

Interestingly, the arbitral tribunal applied the expedited procedure to the arbitration.

The Delhi High Court's decision

Upon the filing of the Execution Petition by Glencore, IPL raised four objections before the Delhi High Court, each of which were rejected by the Court:

Objection 1: The Award was not stamped under the Indian Stamp Act

IPL contended that the enforcement proceedings could be commenced only after the Award was properly stamped.

In rejecting this objection, the Delhi High Court relied on the Supreme Court's decision in *M/s Shriram EPC Limited v Rioglass Solar SA (Civil Appeal No. 9515/2018)*, where it was held that foreign awards were not required to be stamped under the Indian Stamp Act.

The Court also held that a requirement to stamp foreign awards would be contrary to the intention of the Indian Arbitration Act, 1996.

This is because it would be impossible for an award-creditor to pay stamp duty in every Indian state where it wished to enforce its award.

Objection 2: The parties did not agree to the arbitration being conducted under the SIAC Rules

Given the reference to a non-existent institution under the arbitration clause, IPL contended that the SIAC Rules (and the expedited procedure thereunder) were not applicable to the arbitration.

The Court found that:

¹ the tribunal adopted the correct interpretative approach to arrive at the reasonable

We use cookies to monitor site usage so we can make improvements to your experience.

Is that OK with you?

YES

NO

TELL ME MORE

CONTACT US

**Chanaka
Kumarasinghe**
Partner

**Sadhvi
Mohindru**
Associate

Objection 3: The tribunal failed to decide on its jurisdiction at the threshold, before the rendering of the Award

IPL argued that this failure deprived it of a possible appeal prior to the rendering of the Award and caused significant prejudice.

The Court held that the fundamental policy of Indian law did not require a decision on jurisdiction prior to a hearing on merits.

The discretion in this regard would lie with the arbitral tribunal, as also provided under Singapore's International Arbitration Act.

Objection 4: Breach of principles of natural justice

IPL objected to the fact that Glencore was permitted to amend its pleadings during the final hearing and that IPL was not permitted to contest the amendment.

This objection was also found to be unsustainable in view of Rule 17.5 of the SIAC Rules 2010, which empowers the arbitral tribunal to allow amendments to pleadings.

The Court found that the tribunal gave IPL sufficient opportunity to reply to the amendments and it was IPL that failed to respond

The Delhi High Court also directed IPL to deposit the awarded amounts within four weeks from the date of the decision.

Key takeaways

The Delhi High Court's decision signifies a trend amongst Indian courts to adopt an increasingly pro-arbitration approach.

Expectations, however, must be managed in respect of timelines. While the Delhi High Court's final decision in this case is encouraging, it did take four years for this decision to be passed, after the execution petition was filed in 2015.

All this is, nevertheless, encouraging news in the developing history of the enforcement of foreign awards in India.

For further information, please contact the authors of this article:

Chanaka Kumarasinghe

Partner, Singapore

D +65 6411 5314 | M +65 9170 3100

E chanaka.kumarasinghe@hfw.com

Sadhvi Mohindru

Associate, Singapore

D +65 6411 5357 | M +65 9839 6536

E sadhvi.mohindru@hfw.com

Footnote

- 1 The judgment can be found [here](#).

Share this page

RELATED NEWS

RELATED MATERIALS

[LATEST NEWS](#)
[IN OF MC99: A POSITIVE STEP BUT ONE WITH POTENTIAL PITFALLS](#)

[2ND ANNUAL EUROPEAN AVIATION CONFERENCE](#)

[PRO-AI](#)

OUR SECTORS

LEGAL SERVICES

LOCATIONS

OUR PEOPLE

HOME

ABOUT US

KNOWLEDGE & INSIGHTS

NEWS & PRESS

EVENTS

CAREERS

CONTACT US

PRIVACY NOTICE

ACCESSIBILITY

DISASTER RECOVERY

LEGAL NOTICES

SITEMAP

ANTI-MODERN SLAVERY

STATEMENT

© Holman Fenwick Willan LLP 2019. Authorised and regulated by the Solicitors Regulation Authority (No. 509977)

We use cookies to monitor site usage so we can make improvements to your experience.
Is that OK with you?

YES

NO

TELL ME MORE