Supreme Court Confirms Position on Arbitral Awards

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The Supreme Court of India ("SC") has today delivered an eagerly awaited judgment settling the law concerning applicability of Part I of the Arbitration and Conciliation Act, 1996 ("Act") on international commercial arbitrations held outside India. The controversy had taken a centre stage following the judgments of the SC in Bhatia International vs. Bulk Trading S.A. & Anr. and Venture Global Engineering vs. Satyam Computer Services Ltd.

In the year 2002, the three Judges Bench of the SC in the matter of Bhatia International held that the provisions of Part I of the Act would apply to all arbitrations and to all proceedings relating thereto, including the international commercial arbitrations held out of India unless the parties by agreement, express or implied, had excluded all or any of its provisions. Thereafter, in the year 2008 in the case of Venture Global, the SC not only discussed the ratio and observations made in Bhatia International but also extended its reasoning to explicitly hold that the "public policy" provision of Section 34 in Part I of the Act, also applies to the foreign awards.

Though the SC and the High Courts were following ratio of the above two judgments while dealing with the aforesaid controversy, there were certain ambiguities which were raised before the SC in a number of cases, including Bharat Aluminium Co. vs. Kaiser Aluminium Technical Service Inc., White Industries Australia Ltd. vs. Coal India Ltd., Harkirat Singh vs. Rabobank International Holding B.V. and Tamil Nadu Electricity Board vs. Videocon Power Limited & Anr., etc.

The five Judges Bench of the SC has now settled the controversy by passing a common judgment in eight cases involving the aforesaid issue by concluding that, Part I of the Act would have no application to international commercial arbitrations, held outside India. Therefore, such awards would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Act. The SC has further concluded that the provisions contained in the Act, make it crystal clear that there can be no overlapping or intermingling of the provisions contained in Part I with the provisions contained in Part II of the Act. The SC has also specifically clarified that in a foreign seated international commercial arbitration, no application for interim relief would be maintainable under Section 9 or any other provision, as applicability of Part I of the Act is limited to all arbitrations which take place in India.

While putting the controversy at rest, the SC has disagreed with the ratio of Bhatia International and Venture Global and has ordered that the law now declared by the SC shall apply prospectively, to all the arbitration agreements executed hereafter.

The judgment is expected to be hailed by the investors' community. However, there are aspects of the judgment such as its prospective applicability which may be a concern to the parties who are already part of international commercial arbitration agreements concerning their business or interest in India. We will examine the judgment in detail and circulate an analysis of the judgment by the next week for the benefit of our clients and associates. [For a copy of the judgment click here]

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