

Dispute Resolution Hotline

March 08, 2017

DELHI HC ALLOWS DEVAS TO SEEK ORDERS FOR SECURING THE USD 562.5 MILLION AWARD AGAINST ANTRIX

The Delhi High Court (“**Court**”) in *Devas Multimedia Pvt. Ltd. (“Devas”) vs. Antrix Corporation Ltd. (“Antrix”)*ⁱ

- Allows Devas to seek interim measures for the purposes of securing the arbitral award despite Antrix having previously filed an arbitration petition in another court of concurrent jurisdiction
- Adopts a purposive interpretation to give effect to the legislative intent behind Section 42 of the Arbitration and Conciliation Act, 1996 (“**Act**”)
- Holds that petitions must be ‘valid’ and the court which is approached in the first instance must be ‘competent’ to entertain and grant the reliefs prayed for in order to become the ‘one stop’ court for all subsequent proceedings

BRIEF BACKGROUND

An agreement was entered into in 2005 between Devas, a Bangalore based media company, and Antrix, the commercial arm of the Indian Space Research Organization (“**ISRO**”), both having their registered offices in Bangalore, for the lease of certain space segment capacity (“**Agreement**”). Article 20ⁱⁱ in the Agreement contained an arbitration clause providing for, *inter alia*, New Delhi as the “seat” and the rules of the International Chamber of Commerce (“**ICC**”) as the procedural law. Disputes arose in 2011 leading to invocation of arbitration and subsequent award in favor of Devas of USD 562.5 million (“**Award**”) in September of 2015 (for further details on the Antrix-Devas saga, access our hotline [here](#)).

The present case deals with the decision of the Delhi High Court in allowing a petition brought before it by Devas (“**the Devas Petition**”), *inter alia*, seeking attachment of Antrix’s assets to secure the Award. The present petition is one amongst a few others emanating from the same arbitration, filed both prior and subsequent to the passage of the Award, as set out below.

Petitions filed prior to the passing of the Award

Date of filing	Particulars	Court	Status prior to the present decision
5 th August, 2011	Antrix filed a Section 11 petition seeking a direction to constitute the arbitral tribunal along with an application seeking a stay on the arbitral proceedings and invocation of ICC rules	The Supreme Court of India	Dismissed on 10 th May, 2013 (invocation of the ICC rules by Devas upheld)
5 th December, 2011	Antrix filed a Section 9 petition seeking, <i>inter alia</i> , a direction to restrain Devas from proceeding with the ICC arbitration and restraining the constitution of the Tribunal as per the ICC rules (“ Antrix Petition ”)	Bangalore City Civil Court	Pending without any decision made on jurisdiction

Petitions filed subsequent to the Award

Date	Particulars	Court	Status prior to the present decision
9 th October, 2015	Devas filed the present Section 9 petition seeking directions to secure the Award in its favor	Delhi High Court	The Delhi High Court had to decide whether it had jurisdiction to entertain the present petition given Antrix’s previously pending petition in Bangalore
19 th November, 2015	Antrix filed a petition under Section 34 of the Act challenging the Award	Bangalore City Civil Court	Pending

ISSUE BEFORE THE COURT

The present Court thus had to decide whether it was barred from entertaining the Devas Petition as provided for under

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ARGUMENTS OBJECTING TO DELHI HIGH COURT'S JURISDICTION

Antrix argued that the subject matter of the dispute viz. termination of the agreement having been conveyed in Bangalore, made it clear that a substantial part of the cause of action arose in Bangalore. Also, since both parties had their registered offices in Bangalore, and with Devas having failed to raise any jurisdictional objections, the Bangalore City Civil Court would have subject matter, territorial and pecuniary jurisdiction.

In light of the above, and since it had filed its petition much prior to the filing of the Devas Petition, Antrix argued that the Devas Petition as well as the Delhi High Court's jurisdiction to entertain the same ought to be barred under Section 42 of the Act, as a consequence of which, any further petitions should be instituted by Devas only before the Bangalore City Civil Court.

ARGUMENTS SUPPORTING DELHI HIGH COURT'S JURISDICTION

Devas on the other hand, argued that the Antrix Petition is not maintainable in law and was ex-facie incompetent as it sought a stay of the ICC arbitration proceedings. Even assuming that the Bangalore City Civil Court assumes jurisdiction that it doesn't have, any order passed by it would be a nullity as the proceedings before it are *coram non judice*, given that the arbitral proceedings whose stay was sought had already achieved completion. Also, the principle of comity of jurisdiction had no application in the present case since the Bangalore Court had not even assumed jurisdiction or upheld that it had jurisdiction.

Devas further argued that the "seat" was analogous to an exclusive jurisdiction clause. Since parties had chosen Delhi, the Delhi High Court would have exclusive jurisdiction to entertain all matters arising from the arbitration proceedings, and not the Bangalore City Civil Court, irrespective of whether it was approached in the first instance.

JUDGMENT

The Delhi High Court noted that in cases where the other court had already assumed jurisdiction, the principle of comity would normally entail acceptance of such a determination. However, if the other court was yet to decide on its jurisdiction, a subsequent court could not shirk its duty to decide on the objections raised under Section 42 of the Act. Therefore, since the Bangalore City Civil Court was yet to decide on its jurisdiction, the Delhi High Court decided to look into the merits of the objections raised under Section 42, starting off by analyzing the language of the said section, reproduced herein below;

"42. Jurisdiction - Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court." (Emphasis supplied)

On a plain reading of the above language, it observed that the word 'Court' isn't qualified by the word 'competent' and that the word 'application' isn't qualified by the word 'valid'. However, the Court wasn't inclined to accept such a simplistic reading, choosing to adopt a purposive interpretation instead. In doing so, it first laid out three possible scenarios to be considered;

- Where the court is 'competent' and the petition is 'valid' since the reliefs prayed for are capable of being granted. In such a scenario, it is clear that the requirement of Section 42 stands satisfied
- Where the court is 'competent', however the petition is 'invalid' as the prayers sought are incapable of being entertained or granted.
- Where the petition itself is 'valid', however it is filed in an 'incompetent' court that has no jurisdiction to entertain such a petition.

The Court then went on to analyze the object and purpose of Section 42 of the Act, which is to avoid multiplicity of proceedings and to ensure that the first court which is approached by either party to the agreement, becomes the 'one stop' court for all subsequent proceedings. It therefore considered it essential that such a petition must satisfy both criterion i.e. of being a 'valid' petition capable of being entertained and granted, and also filed in a court of 'competent' jurisdiction.

In the present case, the Delhi High Court found that the Bangalore Civil Court's did indeed have territorial jurisdiction thereby disagreeing with Devas' argument that the 'seat' conferred exclusive jurisdiction to the Delhi High Court. It however found that the prayers sought for under Antrix's petition were incapable of being granted since (i) seeking a stay of arbitration had become purely academic with the passage of time; and that (ii) Section 9 of the Act did not permit "any or all applications" and only interim measures specifically provided for therein. It therefore held that waiting for the decision of the Bangalore City Civil Court, which in all likely would be that it does not have jurisdiction, would be a mission in futility and defeat the purpose behind Section 42 of the Act.

In light of the above determinations, and having held that the Antrix Petition was an 'invalid' one, albeit filed in a 'competent' court, it overruled the objections raised by Antrix and upheld the maintainability of the present petition. As a sequitur, the Court held that even the Section 34 filed by Antrix in Bangalore would no longer be maintainable by virtue of Section 42, and that therefore the same would have to be accordingly withdrawn and filed in Delhi.

ANALYSIS

The present case is yet another demonstration of Indian courts increasingly giving effect to the legislative intent behind statutory provisions and adopting a purposive interpretation, while avoiding wastage of time on technicalities. In this case, the Court recognized the futility of a court's time in deciding mere academic questions, and chose to adopt an approach which would uphold the spirit of the Act rather than defeat its purpose. Such a judgment should discourage parties from indulging in mere forum shopping and filing petitions which have no validity, only for the purpose of delaying proceedings.

— Siddharth Ratho & Vyapak Desai

You can direct your queries or comments to the authors

ⁱ O.M.P. (I) 558/2015, In the High Court of Delhi At New Delhi, Available at: <http://lobis.nic.in/ddir/dhc/SMD/judgement/28-02-2017/SMD28022017OI5582015.pdf>

ⁱⁱ Article 20.

- (a) In the event of there being any dispute or difference between the Parties hereto as to any clause or provision of this Agreement or as to the interpretation thereof or as to any account or valuation or as to the rights, liabilities, acts, omissions of any Party hereto arising under or by virtue of these presents or otherwise in any way relating to this Agreement such dispute or difference shall be referred to the senior management of both Parties to resolve within three (3) weeks failing which it will be referred to an Arbitral Tribunal comprising of three arbitrators, one to be appointed by each party (i.e. Devas and Antrix) and the arbitrators so appointed will appoint the third arbitrator.
- (b) The seat of Arbitration shall be at New Delhi in India.
- (c) The Arbitration proceedings shall be held in accordance with the rules and procedures of the ICC (International Chamber of Commerce) or UNCITRAL.
- (d) The Arbitration Tribunal shall reach and render a decision or award in writing (concurred in by a majority of the members of the Arbitral Tribunal with respect to the appropriate award to be rendered or remedy to be granted pursuant to the dispute, (including the amount that any indemnifying Party is required to pay to the indemnified Party in respect of a claim filed by the indemnified Party).
- (e) To the extent practicable all decisions of the board of Arbitration shall be rendered no more than 30 (thirty) days following commencement of proceedings with respect thereto. The Arbitral Tribunal shall realize its decision on award into writing and cause the same to be delivered to the Parties.
- (f) Each Party to any Arbitration shall bear its own costs or expenses in relation thereto, including but not limited to such Party's attorneys' fees, if any, and the expenses and fees of the member of the Arbitral Tribunal appointed by such party, provided, however, that the expenses and fees of the third member of the Arbitral Tribunal and any other expenses of the Arbitral Tribunal not capable of being attributed to any one member shall be borne in equal parts by the Parties
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