



ARBITRATION AND CONCILIATION

Supreme Court allows retrospective application of the amended S.29-A of the Arbitration and Conciliation Act, 1996

AUTHOR Supriya Bhosale

PUBLISHED 4 April 2023

The Hon'ble Supreme Court ("the SC") in the matter of Tata Sons Pvt. Ltd. (Formerly Tata Sons Ltd.) versus Siva Industries and Holdings Ltd. & Ors. settles law on retrospective applicability of amended S.29A of the Arbitration and Conciliation Act, 1996 ("the Act"). The said section being procedural in nature, shall be applicable to the pending applications as on the effective date of the amendment to the Act ("the Amendment Act, 2019").

Facts of the case

In the year 2006, Applicant, the Respondent No. 1 and Tata Teleservices Ltd. ("TTSL") entered into a share subscription agreement ("the SSA") for issuance and allotment of shares of TTSL to the Respondent No. 1.

Thereafter, by a second SSA, NTT Docomo Inc. ("Docomo"), sought acquisition of 26% equity shareholding of TTSL through a combination of primary and secondary shares. Following this share purchase, in the year 2009, by a secondary share purchase agreement ("SSPA"), Docomo acquired 20.740 million shares of TTSL from the Respondent No. 1.

To this effect, an inter-se agreement, recording the understanding arrived at between the parties in the SSA and SSPA was executed. This inter-se agreement also provided for purchase of shares by the Respondent No.1 in the event of sale of equity shares by Docomo. Pursuant to the said right, Docomo decided to sell off the equity shareholding.

When disputes arose between the Applicant and Docomo, the latter invoked arbitration against the former under the rules of the London Council of International Arbitration. In the said arbitration proceeding, the award was passed against the Applicant requiring the Applicant to make payment to Docomo as well as to acquire shares put by it. As agreed, upon between the parties inter-se, the Respondent No. 1 and 2 were called upon to abide by the terms of agreement. Upon the Respondents failure to do so, arbitration as provided for in the inter se agreement was invoked.

The parties in the preliminary meeting itself agreed for an extension of mandate of the arbitrator for 6 (six) months. However, due to series of events that transpired in the interim, the Applicant made an interim application for an automatic extension of mandate owing to the amendment in S.29A of the Act.

Contentions

The Applicant contended that the statutory period of 12 (twelve) months for making an award in the erstwhile S.29-A of the Act has ceased to apply in case of international commercial arbitration as a result of amendment in the said section.

As per the contentions raised by the Respondent No. 2, amendment to S.29-A does not exclude its application to the international commercial arbitration and that the interpretation given by Applicant of the said section is incorrect. The rationale behind the contention is that if the court upholds the interpretation given by the Applicant, it would be contrary to intention of the legislature which surely cannot be that the proceedings continue at the discretion of the arbitral forum.

Observations of the Court

The SC succinctly explained the difference between pre and post amendment to S.29-A of the Act. The amended S.29-A makes it abundantly clear that the mandatory statutory period of 12 (twelve) months for passing an award no longer applies to the international commercial arbitration. The said timeline is merely directory and not mandatory in nature.

The Court also takes a step further and decides whether the amendment applies prospectively or retrospectively. While relying on the judgment passed by the Supreme Court in Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd., it held that the Amendment Act, 2019 does not stipulate any provision that would exclude applicability of this section to the applications for extensions filed prior to amended S. 29-A coming into effect. The Court while relying upon catena of case laws also held that the procedural law, being determinative of rights and liabilities of a party, is presumed to be retrospective.

The amended S.29A(1) being remedial in nature should be applicable to all proceedings pending as on the date when the Amendment Act, 2019 came into effect.

In light of the above facts, while allowing the application for extension of the mandate, the SC held that, the arbitrator shall be competent to decide upon the extension of his mandate keeping in mind expeditious completion of the proceedings.