

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[CTI FUTURE CORPORATION VS. DUCGIANG CHEMICAL AND
DETERGENT POWDER JOINT STOCK COMPANY]

CJ & **SGRJ:**
18.02.2022

ORDER

1. The petitioner is before this Court seeking for the following reliefs:
 - "i. To enforce the Award dated 18 August 2021 passed by the Sole Arbitrator in SIAC.ARB.903/2020 and registered with the SIAC Registry of Awards as Award No.087/2021 (Annexure-A) and execute the Award in the Execution Petition annexed herewith.*
 - ii. Pass such other order as this Hon'ble Court may deem fit and proper in the interest of justice."*

2. The international commercial arbitral award dated 18.08.2021 has been delivered by the Sole Arbitrator in international arbitration proceedings held in Singapore, the final award being registered with the Singapore International Arbitration Centre (SIAC) Registry of Awards as Award No.87 of 2021. It is the said award that is sought to be enforced in these proceedings.

3. A perusal of the award as also cause title of the present proceedings indicates that both the petitioner and respondent are body corporates which are incorporated

outside India, the petitioner having its registered office at Korea and the respondent having its registered office at Vietnam. It is in this background that a question has arisen as to whether an international commercial arbitral award rendered outside India between the parties who have no connection to India can be enforced in India by filing proceedings under Sections 47, 48 and 49 of the Arbitration and Conciliation Act, 1996 (for short, "the Act of 1996").

4. Part II of the Act of 1996 deals with New York Convention Awards, under which Sections 44 to 52 find place. Section 44 of the Act of 1996 deals with foreign awards and defines the same as an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India. Section 44(b) contemplates a situation of an award being delivered in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification declare to be territories to which the Convention applies.

5. Thus, for an award to be recognised as a foreign award, it has to be as regards a commercial relationship as per the laws in India and rendered in a territory where the Convention has been made applicable by a suitable notification by the Central Government.
6. Section 46 of the Act of 1996 makes any foreign award enforceable under the Act within India. Section 47 of the Act of 1996 requires the original award or a copy thereof, duly authenticated in the manner required by the law in the country it is made, the original agreement for arbitration or a duly certified copy thereof and such evidence as may be necessary to prove that the award is a foreign award.
7. Section 47(2) contemplates that if the award or agreement to be produced is in foreign language, then the same shall be translated into English.
8. The explanation to Section 47 provides for the definition of 'Court' under which means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit in its ordinary original civil

jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

9. It is relevant to quote Section 2 (e) (ii) of the Act of 1996 which reads as under:

"2.(e) "Court" means –

(i) xxx

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court."

10. Section 2 (f) of the Act of 1996 deals with international commercial arbitration, which is reproduced hereunder for reference:

"2.(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

- (iii) *an association or a body of individuals whose central management and control is exercised in any country other than India; or*
- (iv) *the Government of a foreign country;”*

Section 2(f) of the Act of 1996, when applied to the present case it is clear that the present arbitration is international commercial arbitration.

11. The Central Government by its notification dated 06.07.1999 has declared an arbitral award rendered in Republic of Singapore could be enforced in India, the said notification reads as under:

“S.O.542(E) – In exercise of the powers conferred by clause (b) of section 44 of the Arbitration and Conciliation Act, 1996 (26 of 1996), the Central Government, being satisfied that reciprocal provisions have been made, hereby declares the Republic of Singapore to be a territory to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, set forth in the First Schedule to the said Act, applies for the purpose of any award of the nature referred to in that section made on or after the 11th day of October 1960”

From the above notification, it is clear that any award which has been rendered in Singapore could be enforced in India.

12. The contention of Sri Shreyas Jayasimha, learned counsel appearing for the petitioner is that in view of the said notification, an arbitral award rendered in the Republic of Singapore can be enforced in the Republic of India in a Court which would have territorial jurisdiction to pass the necessary orders relating to execution sought for. In the present case, he submits that this Court would have the jurisdiction since the property belonging to the respondent against which interim orders are being sought for are likely to dock in New Mangalore Port.
13. In the above background, we have to consider whether this Court would have jurisdiction to take the above matter on file.
14. The arbitral award being an international commercial arbitral award is not in dispute, the award being rendered in Singapore is not in dispute, the enforceability of the said award in India is not in dispute in view of the notification issued by the Central Government.
15. In the peculiar facts and circumstances of the case, would this Court exercise its jurisdiction when both the parties are not connected to India and they are not corporate

bodies established within the territorial limits of the Republic of India, more particularly within the territorial limits of this Court.

16. A foreign award under a New York Convention has been given a special status. India being a signatory to the said New York Convention it is required that all countries which are signatories to the New York Convention enable execution of a foreign arbitral award rendered in a reciprocating country in the event of a property against which the arbitral award is sought to be enforced is situated within the jurisdiction of that particular country.

17. In this background considering that the above application which is filed under Sections 44 to 52 of the Act of 1996 which deals with New York Convention awards under Chapter I of Part II of the Act of 1996 and the obligations of the Republic of India in terms of Article 51 (c) of the Constitution of India, we are of the considered opinion that this Court could exercise jurisdiction to enforce a foreign award in the event the properties of the respondent against which the enforcement is sought for is situated within the territorial limits of this Court in view of

later part of Section 2 (e) (ii) of the Act of 1996 as also later part of the explanation to Section 47(2) of the Act of 1996. Hence, the above petition is taken on record.

18. Issue notice to the respondent.

19. Re-list on 22.02.2022.

**(RITU RAJ AWASTHI)
CHIEF JUSTICE**

**(SURAJ GOVINDARAJ)
JUDGE**

AHB
List No.: 1 Sl No.: 6