

## JSA Prism Dispute Resolution

May 2023

### Defects in authorisations for signing pleadings in arbitration proceedings are curable

A division bench of the Bombay High Court (“**Bombay HC**”) has in *Palmview Investments Overseas Limited v. Ravi Arya & Ors.*<sup>1</sup> *inter alia* held that an infirmity with a board resolution authorising signatories to affirm and sign pleadings on behalf of a company in an arbitration proceeding is a curable defect.

#### Facts

Palmview Investments Overseas Limited (“**the Appellant**”), an investment company incorporated under the relevant laws of British Virgin Islands (“**BVI**”) is a shareholder of Arya Iron & Steel Co. Private Limited (**Respondent No. 6**). Disputes arose between the Appellant and the other shareholders of Respondent No. 6 with the respect to the valuation of shares. Consequently, the Appellant invoked arbitration proceedings in terms of the shareholders’ agreement.

Both parties filed their respective pleadings and the matter proceeded to the recording of evidence. After the conclusion of the cross-examination of the Appellant’s nominee director in Respondent No. 6 (“**Sunil Jain**”), Respondent Nos. 1 to 5 (“**RA Group**”) filed 2 (two) separate applications under Section 31 (6) read with Section 32 of the Arbitration and Conciliation Act, 1996 (“**the Arbitration Act**”) before the Arbitral Tribunal seeking dismissal of the Appellant’s claim *inter alia* on the grounds that – (a) the board resolution authorising Sunil Jain to sign and verify the statement of claim and depose on behalf of the Appellant was an invalid document which went to the root of the matter; and (b) the Appellant failed to prove the validity of the resolution under BVI laws through an expert in foreign law as required under Section 45 of the Indian Evidence Act, 1872. Both these applications were opposed by the Appellant who contended that the purported invalidity of the board resolution was a curable defect.

The Arbitral Tribunal passed an order holding that while the Appellant’s board resolution authorising Sunil Jain was invalid, the same was a curable defect. Accordingly, the Arbitral Tribunal granted the Appellant an opportunity to cure the defect (“**Impugned Order**”).

The RA Group filed 2 (two) separate petitions before the Bombay HC under Section 34 of the Arbitration Act challenging the Impugned Order. The single judge of the Bombay HC held that the Impugned Order was in contravention of the public policy of India and that the Arbitral Tribunal could not have permitted rectification of the defect.

The Appellant challenged this judgement before the division bench of the Bombay High Court under Section 37 of the Arbitration Act.

<sup>1</sup> Commercial Appeal (L) No. 36947 of 2022

## Issues

1. Whether the petitions filed by the RA Group under Section 34 of the Arbitration Act were maintainable?
2. Whether the Arbitral Tribunal could have allowed the Appellant to cure the defect in the board resolution?

## Decision

The division bench of the Bombay HC allowed the appeals under Section 37 of the Arbitration Act and *inter alia* observed the following:

1. An order or decision of the arbitral tribunal is an interim award under Section 31 (6) of the Arbitration Act (form and contents of an arbitral award) if it finally decides an issue or “*any matter*” on which the arbitral tribunal can make a final award. This would include an order determining the validity of an authorisation provided by a company to file a claim on its behalf. Accordingly, the petitions are maintainable under Section 34 of the Arbitration Act since the Impugned Order is an interim award under the Arbitration Act.
2. The substantive rights of parties should not be defeated on account of procedural irregularities which do not go to the root of a matter. In fact, in the absence of a company expressly authorising a person who has signed the pleadings on its behalf, the company may subsequently ratify such authorisation either expressly or impliedly.
3. There was no fetter on the Arbitral Tribunal to apply the principles enshrined in the Code of Civil Procedure, 1908 (“**CPC**”). The Arbitral Tribunal has not acted contrary to the law but has in allowing the defect to be cured applied the principles of natural justice and the requirements for signing and verification of pleadings as specified under Order 29 Rule 1 (suits by corporations) r/w Order 6 Rule 14 (verification of pleadings) of the CPC.
4. An arbitral tribunal, by allowing a party to cure a procedural defect, cannot be said to have acted as ‘*amiable compositeur*’ or ‘*ex aequo et bono*’ under Section 28 (2) of the Arbitration Act. In any event, Section 28 of the Arbitration Act applies only to the substance of the dispute and not procedural issues. In allowing the defect to be cured, the Arbitral Tribunal has merely acted according to law, and applied the principles of natural justice.

## JSA Comment

While the issue of infirmities in authorisations provided to persons signing pleadings on behalf companies has been previously decided in the context of suits governed by the CPC, this judgment now clarifies that the same position would apply even in arbitration proceedings. Further, such issues are procedural and curable and do not affect the substantive rights of parties.

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