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In considering whether an award should be enforced or not, courts should not re-appreciate the evidence which was placed before the arbitral tribunal.

The Calcutta High Court (“**Calcutta HC**”), in *Jaldhi Overseas PTE Ltd. v. Steer Overseas Pvt. Ltd.*¹ has reiterated that while considering the issue of enforcement of a foreign award, the court must not (a) re-appreciate evidence; (b) substitute its own view with that of the arbitrator; or (c) review the matter afresh. Further, in a case where an arbitrator has rendered a finding (based on appreciation of the facts and evidence on record) that there existed an agreement and an arbitration clause, the court should not substitute its own view, unless it is manifestly evident that there existed no agreement.

Brief Facts

- 1) The petitioner agreed to carry the respondent’s cargo of iron ores from Indian ports to the main port of China.
- 2) The commercial terms were discussed over various email correspondences, in furtherance to which certain fixture notes were exchanged which contained an arbitral clause for arbitration to be conducted in Singapore.
- 3) Due to delay in berthing of the cargo, the petitioner incurred demurrage and detention charges, pursuant to which the petitioner initiated arbitration before the Singapore International Arbitration Centre.
- 4) The respondent challenged that there was never a valid contract between the parties as only email correspondences were exchanged which did not amount to *consensus ad idem* or a valid contract in place.
- 5) In the arbitration, a partial award was passed in favour of the petitioner, and it was found that there existed a valid contract and that the tribunal had the jurisdiction to adjudicate the dispute.
- 6) The petitioner filed an application under Section 46 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) r/w Order XXI of the Code of Civil Procedure, 1908 for enforcement of the award before the Calcutta HC.

Issues

- 1) What considerations should be kept in mind while deciding whether a foreign award should be enforced or not?
- 2) Whether there existed an agreement between the parties, and whether there also existed an arbitration clause for resolution of their disputes.

¹ EC 100 of 2022

Findings

- 1) The Calcutta HC discussed in detail the scope of court's discretion while entertaining a plea to refuse the enforcement of a foreign award. Relying on the decisions of the Supreme Court in *Shri Lal Mahal Limited v. Progetto Grano Spa*², *Vijay Karia and Ors. v. Prysmian Cavi E Sistemi SRL and Ors*³, *Government of India v. Vedanta*⁴, *Gemini Bay Transcription Private Limited v. Integrated Sales Service Limited and Another*⁵, the Calcutta HC reiterated that while deciding challenges to enforcement of foreign arbitral awards, the courts are precluded from:
 - a) re-appreciating evidence,
 - b) substituting their own view with that of the arbitrator, and
 - c) reviewing the matter afresh.
- 2) The Calcutta HC also examined various judgments in which foreign arbitral awards were challenged on the ground that there existed no arbitration agreement. The Calcutta HC held that in circumstances where an arbitration agreement is evidently found lacking or there is no concluded contract, the enforcement of an award must be refused and will fall prey to:
 - a) Section 48(2)(a) of the Arbitration Act – for the subject matter of dispute not capable of settlement by arbitration;
 - b) Section 48(2)(b) of the Arbitration Act – for violation of public policy, as unilateral imposition of a contract upon an unwilling and unrelated party would be against 'most basic notions of justice' and would shock the conscience of any court.
- 3) On the issue whether there existed a concluded agreement/arbitration agreement, the Calcutta HC analysed various precedents on how correspondences must be interpreted to gather the intention of the parties. Having reviewed these various judgments, the Calcutta HC observed that in this case, the arbitrator had (a) analysed the facts; (b) appreciated the evidence; and (c) reviewed various communications and conduct of parties. Based on this, the arbitrator had come to a finding that there was a concluded agreement between the parties. The Calcutta HC then ruled that the arbitrator's view is sacrosanct and should not be substituted with an alternate view/opinion which the Calcutta HC may possibly have on re-appreciation of the evidence.

JSA Comment

The Calcutta HC has comprehensively summarised the fundamental principles governing the discretion of courts while deciding challenges to foreign arbitral awards. The principle of minimal intervention by courts is welcome and this encourages private parties to arbitrate disputes as there is a certain level of assurance that any award in their favour will not get stuck in prolonged litigation. At the same time, it is important that if there is an award which is manifestly irrational, it must be interfered with and/or not enforced.

² (2014) 2 SCC 433

³ (2020) 11 SCC 1

⁴ (2020) 10 SCC 1

⁵ (2022) 1 SCC 753

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