INTERNATIONAL COMMERCIAL ARBITRATIONS BETWEEN SINGAPORE AND INDIA

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The present article focuses on International Commercial Arbitrations between Indian and overseas parties, where the seat of arbitration is in Singapore. It further discusses the issues faced by foreign companies trying to seek alternative methods of dispute resolution, obtain reliefs and remedies in India and Singapore as well as with the enforcement mechanism for Singapore seated arbitrations in both countries.

With the growth of international trade and commerce, more and more disputes arise from cross-border transactions involving 'foreign' parties, and parties have turned towards alternative methods of dispute resolution beyond the traditional forum of court. Given that the bedrock of arbitration is consent by parties, parties are free to agree to the procedures concerning arbitrations including the seat of arbitration. Parties normally agree to arbitration by means of an arbitration clause in a contract made by them before a dispute has arisen, although it can also be agreed to after a dispute has arisen. Arbitrations can be both institutional as well as ad-hoc arbitrations. Various institutions such as London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), Singapore International Arbitration Centre (SIAC), etc. also administer arbitrations, and carry their own rules of procedure for arbitration.

The SIAC was established in July 1991. The SIAC administers most of its cases under its own rules of arbitration although it is able to administer arbitrations under any other rules agreed to by the parties. The SIAC has initiated provisions for the purpose of:

1. International and domestic commercial arbitration and conciliation;
2. Promotion of arbitration and conciliation as alternatives to litigation for the settlement commercial disputes; and
3. Development of a pool of arbitrators and experts in the law and practice of international arbitration and conciliation

The SIAC has assisted in rendering administrative services which include settling fees of arbitrators, providing venue for hearings, organizing dates for meetings between the tribunal and parties' representatives and acting as a registry of pleadings, documents and correspondence.

This article deals with the basic law governing arbitrations in Singapore as well as India in respect of Singapore seated

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arbitrations, with a special focus on SIAC Rules.

For ready reference we are reproducing a model clause below, as per which the seat of arbitration would be Singapore and the substantive law is Indian:-

"*Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.*

The seat of arbitration shall be Singapore

The language to be used in the arbitral proceedings shall be English

The governing law of the contract would be the substantive law of India"

LEGAL SYSTEMS GOVERNING AN ARBITRATION

The seat of arbitration carries with it, implications regarding the law which is attracted to the proceedings of the arbitration. This is why it is important to understand how both jurisdictions deal with different systems of law applicable to an agreement.

The SIAC rules provide primacy to party autonomy as regards the seat. However, in absence of any particular provision by the parties, the tribunal is free to determine the seat.

Singapore
In Singapore, different aspects of an arbitration proceeding can and are often governed by different systems of law including and rules, including:

1. The governing law of the conduct of the arbitration (the *lex arbitri* or *curial law*);
2. If the arbitration is an institutional arbitration, the arbitral rules of that institution;
3. The governing law of the arbitration agreement;
4. The governing law of the contract i.e. the substantive dispute; and
5. The law governing the recognition and enforcement of the arbitral award.

Each of these is discussed briefly below.

(1) *Lex Arbitri* / Curial Law

The selection of the seat of arbitration is crucial as the *lex arbitri* has profound implications on the conduct of the arbitration proceedings, from the initial stages when a party attempts to commence arbitration to the enforcement of the arbitral award. The *lex arbitri* can regulate, *inter alia*:

(a) The validity of the arbitration agreement;

(b) The commencement of arbitral proceedings;

(c) The constitution of the tribunal, grounds for challenging their jurisdiction and their ability to rule on their own jurisdiction;

(d) Interim measures available to the parties;

(e) The court's involvement or assistance in relation to support or supervision of the arbitration; and

(f) The court's power in relation to the award in terms of review and appeal[1].

Where the seat of an arbitration is Singapore (this is not to be conflated with the physical venue of the arbitration), the arbitration proceedings will be governed by either the Arbitration Act (Cap 10) ("**Singapore AA**") if the arbitration is a domestic arbitration or the International Arbitration Act (Cap 143A) ("**Singapore IAA**") if the arbitration is an international one. An arbitration is considered "international" if one of the following applies:

(a) At least one party has its place of business outside Singapore when the arbitration agreement is made;

(b) Either the place of arbitration, the place where a substantial part of the obligations is to be performed or the place with which the subject matter of the dispute is most closely connected is outside the state in which the parties have their places of business; or

(c) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Section 3 of the Singapore IAA provides that the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**")adopted by the United Nations Commission on International Trade Law on 21st June 1985 has the force of law in Singapore.

(2) Institutional Arbitration versus Ad Hoc Arbitration

International arbitration proceedings in Singapore may be administered and supervised by an institution or conducted on an ad hoc basis. Although ad hoc arbitrations are often cheaper and faster, there are many advantages to having an arbitral institution administer and supervise the arbitration process. For instance, the institution may prescribe an established set of arbitration rules for the parties to abide by, offer administrative assistance to the parties and give them easier access to a panel of reputable, accredited arbitrators[2]. The selection of arbitrators is discussed in a later part of this article.

Institutional arbitration rules that are often used in Singapore include the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**"), the London Court of International Arbitration Rules ("**LCIA Rules**") as well as the Singapore International Arbitration Centre Rules ("**SIAC Rules**"). The parties to an arbitration may also choose independent, stand-alone arbitration rules formulated by institutions which do not administer or supervise arbitrations. These rules include the UNCITRAL Arbitration Rules and the Singapore Institute of Architects Arbitration Rules (frequently adopted in domestic construction disputes).

In contrast with the *lex arbitri*, arbitration rules provide the procedural framework for the arbitration proceedings. Put differently, arbitration rules serve as a guide on the manner in which the administration and adjudication of the dispute is to be carried out. They are therefore analogous to the Rules of Court applicable in court proceedings.

(3) Governing Law of the Arbitration Agreement

The governing law of an arbitration agreement is determined in accordance with a three-step test: (a) the parties' express choice; (b) in the absence of an express choice, the implied choice of the parties as gleaned from their intentions at the time of contracting; or (c) in the absence of any

[1] The Honourable The Chief Justice Sundaresh Menon, *Arbitration in Singapore - A Practical Guide* (Sweet & Maxwell, 2014) at 3.022.
[2] The Honourable The Chief Justice Sundaresh Menon, *Arbitration in Singapore - A Practical Guide* (Sweet & Maxwell, 2014) at 3.032.

express or implied choice, the system of law with which the arbitration agreement has the closest and most real connection.

In the absence of an express choice, how should the implied choice of the parties as to the governing law of the arbitration agreement be determined? The position in Singapore is that if there is an absence of any indication to the contrary and where the arbitration is part of the main contract, the parties are assumed to have intended the whole of their relationship to be governed by the same system of law. The natural inference is that the proper law of the main contract forming the subject matter of the dispute should also govern the arbitration agreement[3]. However, where the arbitration agreement is free-standing, in the sense that it was not intended to be a term of any other contract, then in the absence of any express choice of law, the law of the seat would most likely be the governing law of the arbitration agreement[4].

Although disputes over the governing law of the arbitration agreement are rare, it is advisable that parties entering into a transaction make it very clear in their contract what the governing law of the arbitration agreement is; this is especially so when the lex arbitri is not the same as the governing law of the transaction.

(4) Governing Law of the Contract

The approach of the Singapore courts in determining the governing or "proper" law of the contract is set out in *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 ("***Teregum Insurance***") and comprises three stages not unlike those applied in the process of determining the governing law of the arbitration agreement:

(a) Examine the contract itself to determine whether it states expressly what the governing law should be.

(b) In the absence of an express provision, see whether the intention of the parties as to the governing law can be inferred from the circumstances.

(c) If neither of the above can be done, then determine with which system of law the contract has it most close and real connection[5].

With reference to the second stage, the following are among the relevant factors for consideration: if the contracting parties agree that the courts of a given county shall have jurisdiction in any matter arising out of a contract, if they agree that the arbitration shall take place in a certain country, the language or terminology used in the contract, the form of the documents used in the transaction, a connection with a preceding transaction, the currency of the contract or the currency of payment, the places of residence or business of the parties, and the commercial purpose of the transaction[6].

In *Teregum Insurance* the Judith Prakash J clarified there is no strict necessity for there to be proof that the second stage could not apply before the court can move on to the third stage, because the tests of inferred intention and close connection often merge into each other and because before the objection close connection test became fully established, the test of inferred intention was an

[3] *BCY v BCZ* [2017] 3 SLR 357; [2016] SGHC 249 at [43] – [49], where Steven Chong J declined to follow an earlier local decision *FirstLink Investments Corp Ltd v GT Payment Pte Ltd* [2014] SGHCR 12 where the High Court took the law of the seat of the arbitration as the starting point, following instead the English approach taken in *Sulamérica Cia Nacional de Seguros SA v Enesa Engelharia* SA [2013] 1 WLR 102.
[4] *Ibid.* at [66] – [67].
[5] *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 at [82]. *See also Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491, 510 at [36].
[6] *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* [1996] 2 SLR(R) 589 at [39].

objective test designed not to elicit actual intention but to impute an intention which had not been formed.

(5) Law Governing the Recognition and Enforcement of Arbitral Awards

A distinction has to be made between arbitral awards made pursuant to an arbitral award made pursuant to an arbitration seated in Singapore and an arbitral award made pursuant to a foreign arbitration. The former is recognised and enforced in accordance with the Singapore AA or Part II of the Singapore IAA, both of which have similar provisions for recognition and enforcement of such an award. The latter is recognised and enforced in accordance with Part III of the Singapore IAA, which gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[7] ("**New York Convention**"), of which India is also a contracting state. The topic of recognition and enforcement of arbitral awards is discussed in greater detail below.

India

In the Indian legal system in an arbitration containing a foreign element, there are three different systems of law which govern the arbitration[8]:-

1. The law governing the substantive law of the contract[9]which is the law governing substantive issues in dispute in the contract. Also referred to as "substantive law", "applicable law", or "proper law of the contract".

2. The law governing the existence and proceedings of the arbitral tribunal[10], which is the law governing the conduct of the arbitration proceedings. It is also referred to as the "curial law" or the "lexarbitri". This is the law which is derived from the seat of arbitration.

3. The law governing the recognition and enforcement of the award[11] is the law which governs the enforcement, as well as filing or setting aside of the award and is also the law which governs the arbitrability of the dispute.

   Furthermore, in absence of any other stipulation in the contract, proper law is the law applicable to the arbitral tribunal itself[12]. Also the *lexarbitri* and the law governing the recognition and enforcement of the award are one and the same in absence of an intention/stipulation to the contrary[13]. The place of the arbitration generally specified in a contract determines the seat of arbitration unless contrary intention is apparent from the contract.

   In the Indian legal system, an International Commercial Arbitration is defined as an arbitration arising from a legal relationship which must be considered commercial, where either of the parties is a foreign national or resident or is a foreign body corporate or is a company, association or body of individuals whose central management or control is exercise in some other country, or a government of a foreign country[14].

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[7] This was adopted in 1958 by the United Nations Conference on International Commercial Arbitration at the twenty-fourth meeting. India and Singapore acceded to the New York Convention in 1960 and 1986 respectively.

[8] Harmony Innovation Shipping Ltd. v. Gupta Coal India Ltd. &Anr. (2015) 9 SCC 172

[9] Reliance Industries Ltd. v. Union of India (2014) 7 SCC 603.

[10] Reliance Industries Ltd. v. Union of India (2014) 7 SCC 603.and Sumitomo Heavy Industries Ltd. v. ONGC Ltd. (1998) 1 SCC 305

[11] Sumitomo Heavy Industries Ltd. v. ONGC Ltd. (1998) 1 SCC 305

[12] Yograj Infrastructure Ltd. v. Ssangyong Engineering & Construction Co. Ltd. (2012) 12 SCC 359

[13] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc (2012) 9 SCC 552; Enercon (India) Ltd. and Ors.v. EnerconGmbh and Anr. (2014) 5 SCC 1

[14] Section 2(1)(f) of the Indian Act.

The Arbitration and Conciliation Amendment Act, 2015 recognizes companies controlled byforeign hands as a foreign body corporate, the Supreme Court has excluded its application to companies registered in India and having Indian nationality. In case a corporation has dual nationality, one based on foreign control and other based on registration in India, such corporation would not be regarded as a foreign corporation.

An International Commercial Arbitration may either be seated in India, or be seated in a foreign country, and this article focuses on International Commercial Arbitrations seated only in Singapore The implication of Singapore seat is that Part I of the Arbitration and Conciliation Act, 1996 (the Indian Act), which is the curial law in India, is excluded for such arbitrations, barring certain exceptions discussed later.

INTERIM RELIEF FROM COURT

The mode of obtaining Interim Reliefs would vary depending on the seat of arbitration, as already explained above. While drafting of contracts, the parties must be extremely careful while choosing the seat of arbitration and choosing the law to be made applicable to said arbitration between them. The SIAC rules also provide that it shall be open to parties to seek interim relief from judicial authorities prior to constitution of the tribunal itself. In exceptional circumstances, parties can approach court, even after the constitution of the tribunal.

Singapore

Under Section 12 of the Singapore IAA, an arbitral tribunal have powers to make orders or give directions to any party in respect of interim measures. The arbitral tribunal can, *inter alia*, direct one party to give the other security for costs, give directions for the discovery of documents and interrogatories and grant injunctions including those that would ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party.

However, sometimes it is necessary for the court to intervene and assist when the parties require interim relief that goes beyond the scope of the arbitral tribunal's powers. Such situations arise where the interim relief is needed before the tribunal has been constituted, or where the interim relief sought must be applied for *ex parte* and on an urgent basis. Section 12A of the Singapore IAA empowers the court to make orders for:

(a) Giving of evidence by affidavit;

(b) The preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute;

(c) Samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;

(d) The preservation and interim custody of any evidence for the purposes of the proceedings;

(e) Securing the amount in dispute;

(f) Ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and

(g) An interim injunction or any other interim measure.

These above remedies are available regardless of where the arbitration is seated. However, the court powers are not unlimited. These restrictions are set out in sub-sections (3) to (7) of Section 12A of the Singapore IAA, and are summarized briefly below:

(a) If the fact that the place of arbitration is outside Singapore or likely to be outside Singapore when it is designated or determined makes it inappropriate to make such order.

(b) If the case is one of urgency, the court may make orders under Section 12A(2) of the Singapore IAA as it thinks necessary for the purpose of preserving evidence or assets.

(c) If the case is not one of urgency, the court may make orders under Section 12A(2) of the Singapore IAA only with the permission of the arbitral tribunal or the agreement in writing of the other parties to the arbitration proceedings.

(d) The court may make orders under Section 12A(2) of the Singapore IAA only if or to the extent that the arbitral tribunal has no power or is unable for the time being to act effectively.

(e) Such orders made by the court will cease to have effect if the arbitral tribunal makes an order which expressly relates to the whole or part of the order under Section 12A(2) of the Singapore IAA.

If the parties to an arbitration have opted for the application of the SIAC Rules, these rules empower the SIAC to appoint an emergency arbitrator for the purposes of adjudicating an application for emergency relief before the arbitral tribunal is constituted. The remedy thereby allows parties to dispense with the need to go to court for interim relief[15]. The availability of this remedy, however, does not appear to preclude the parties from seeking relief in court, it is expressly provided in the SIAC Rules that a request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances thereafter, is not incompatible with the SIAC Rules[16].

India

In India, Section 9 of the Indian Act governs the power of the courts to grant interim relief. It is based on Article 9 of the UNCITRAL Model Law[17]. Under Section 9 of the Indian Act, a party is permitted to apply to Court for certain interim measures, before, during or after making of the award by thae Tribunal. Although Section 9 is a part of Part I of the Indian Act, owing to a recent amendment[18], the position has been substantially changed. Before the amendment of 2015, the law with respect to seeking interim relief from court was governed by a judgment[19] of the Supreme Court of India. The judgment clearly laid down that Part I of the Arbitration and Conciliation Act (of which Section 9 is a part) would be inapplicable to any foreign seated arbitration. However, the 2015 amendment, in effect, nullifies the law laid down in *BALCO* to a limited extent and holds that even in an International Commercial Arbitration having a foreign seat, a party can approach Indian courts under Section 9 and get appropriate relief.

[15] Rule 30.2 of the Singapore International Arbitration Rules 2016.
[16] Rule 30.3 of the Singapore International Arbitration Rules 2016.
[17] United Nations Commission of International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985.
[18] Arbitration and Conciliation (Amendment) Act, 2015
[19] Bharat Aluminum and Co. vs. Kaiser Aluminium and Co. (2012) 9 SCC 552.

Therefore a Section 9 remedy would be available for a Singapore seated arbitration, only if the arbitration has been commenced after the coming into effect of the amending act[20].

The nature of reliefs sought under Section 9 are generally for protection, preservation or interim custody of goods, assets, properties, securing the amounts in dispute, appointment of interim receivers etc.

This provision gives a huge relief to parties in cases where assets of parties to the Singapore seated arbitration are located in India and there is a fear of disposal. Similarly, the Appeal against an Order passed in a Petition filed under Section 9 would also lie to Indian courts only as per the amendment[21].

APPLICATION FOR APPOINTMENT OF ARBITRATORS

The procedure for appointment of arbitrators in both territories is once again dependent upon the seat of arbitration. A person of any nationality may be an arbitrator, unless otherwise agreed by the parties. As far as the SIAC rules are concerned, the appointment of the arbitrators as well as the tribunal is done by the parties depending on the procedure agreed between them. Further on failure of the parties SIAC itself can also constitute the tribunal having due regard to any qualifications provided by the parties' agreement itself.

Singapore

(1) Default Appointments

Sections 9 and 9A of the Singapore IAA set out the basic guidelines for the appointment of arbitrators in international arbitrators in the absence of an agreement between parties on this matter. While parties are a liberty to determine the number of arbitrators hearing their dispute (usually one or three arbitrators), where there is no such determination or agreement, Section 9 provides that there shall be a single arbitrator. The parties will then have to jointly nominate an arbitrator, but if they are unable to agree, one of the parties will have to make an application for the appointment of the arbitrator by the President of the SIAC.

Where there are three arbitrators, Section 9A of the Singapore IAA provides that each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator. Where the parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so, the parties may apply to the President of the SIAC to appoint the third arbitrator.

(2) Appointments under the SIAC Rules

If the parties to an arbitration have elected for the arbitration to be governed by the SIAC Rules, then the mechanisms set out at Rules 9 to 11 of the SIAC Rules (2016) for the appointment of one or three arbitrators will be applied instead.

One advantage to adopting the SIAC Rules is that they provide for multi-party appointment of arbitrators (i.e. where there are multiple claimants and/or respondents). In contrast, the Singapore IAA is silent on this matter.

Rule 12 of the SIAC Rules (2016) provide that where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the

[20] Serial no. 26 of Arbitration and Conciliation (Amendment) Act, 2015
[21] Section 2(2) of the Act makes the appeal provision of Section 37 also applicable to International Commercial Arbitrations, even if the place of arbitration is outside India.

sole arbitrator. In the absence of such joint nomination, the President of the SIAC shall appoint the sole arbitrator. Where there are more than two parties to the arbitration and three arbitrators are to be appointed, the claimants shall jointly nominate on arbitrator and the respondents shall jointly nominate one arbitrator. If the parties cannot jointly nominate the third, then the President of the SIAC will appoint the remaining arbitrator, who will also be the presiding arbitrator. If the claimants and the respondents are not able to agree among themselves on their joint nominations, the President of the SIAC will appoint all three arbitrators and designate on of them to be the presiding arbitrator.

India

The appointment of Arbitrators in India is governed by Section 11 of the Indian Act, Article 11 being the concomitant provision of the UNCITRAL Model Law. As far appointment of Arbitrators in a Singapore seated Arbitration, Part I of the Indian Act has no application and there is no exception carved out in the act itself. In these cases, it is the domestic law of Singapore which would be relevant, as explained above.

The only relief on this front which a party can obtain in the case of a Singapore seated arbitration is, that in case an Indian court is seized of a matter in respect of which an arbitration agreement exists, it can refer the parties to arbitration[22].

APPLICATION FOR CHALLENGING/ENFORCEMENT OF THE AWARD

The law governing the enforcement/challenge to the award is extremely relevant, and especially so, in the case of an International Commercial Arbitration. This is because an award remains a mere dead letter until it can be enforced in the relevant country and compliance can be ensured.

Singapore

(1) Domestic International Awards

As discussed above, the recognition and enforcement of Singapore seated domestic and international arbitrations are governed by the Singapore AA[23] and Part II of the Singapore IAA[24] respectively.

An application under Section 19 of the Singapore IAA to enforce a domestic international award (the nomenclature for an award given in an international arbitration seated in Singapore) can be made pursuant to Order 69A rule 6 of the Singapore Rules of Court. To start the enforcement process, the applicant has to make an ex parte application for leave to enforce the award. Once the order for leave to enforce the award is granted, the applicant must serve the order on the respondent by delivering it to the respondent personally, leaving it at the respondent's usual or last known place of residence or business or in such manner as the court may direct.

The respondent may apply to have the order set aside within a limit period after it has been served; during that time, the applicant will not be able to enforce the award until the expiry of the time given, or the disposal of the application to set aside the order (if any)[25]. A party may therefore challenge an arbitral award in this manner, or take a more proactive approach by making an application to set aside the arbitral award without waiting for the other party to attempt to enforce it.

[22] Section 45, the Indian Act
[23] See Sections 44 and 46 of the Arbitration Act (Cap 10).
[24] See Sections 19 – 19B of the International Arbitration Act (143A).
[25] Order 69A rule 6(4) of the Singapore Rules of Court.

What are the bases on which a party may challenge an arbitral award? Although the Singapore courts are generally reluctant to interfere with arbitral awards, this policy of minimal curial intervention remains subject to the parties' statutory rights to recourse against arbitral awards[26]. The grounds on which a party may set aside a domestic international arbitral award are enumerated in Section 24 of the Singapore IAA and Article 34 of the Model Law. Briefly, the statutory grounds for the setting aside or challenging a domestic international award are as follows:

(a) If the making of the award was induced or affected by fraud or corruption;

(b) If a breach of the rule of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced;

(c) If a party to the arbitration agreement was under some incapacity, or the arbitration agreement is not valid under the law to which the parties subjected it;

(d) If the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(e) If the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;

(f) If the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the seat of the arbitration;

(g) If the award has not yet become binding on the parties or has been set aside or suspended by a court of the seat of the arbitration.

(h) If the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Singapore; or

(i) The award is in conflict with the public policy of Singapore.

(2) Foreign Awards

The New York Convention has been implemented in Singapore by virtue of Part III of the Singapore IAA. Section 29 of the Singapore IAA provides that a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore enforceable under Section 19. Note that Part III of the Singapore IAA applies only to foreign awards made in Convention countries. However, this restriction is unlikely to present as a barrier to the enforcement of international awards as the number of countries that are parties to the New York Convention is growing every year. As at November 2017, there are 157 Convention states.

India

In an arbitration seated in a foreign territory, Part II of the Indian Act is applicable. Part II of the Act deals with enforcement of certain foreign awards in India. These awards are either awards passed in

[26] *GD Midea Air Conditioning Equipment Co Ltd v Tornado Consumer Goods Ltd and another matter* [2017] SGHC 193 at [56].

New York Convention Territories, or Geneva Convention Territories, Singapore being a New York Convention Country.

Section 44 of the Indian Act provides that in order for a foreign award to be recognized as such under Part II, Chapter I (New York Convention Awards) certain conditions need to be fulfilled, which are as under:-

i. The territory should be signatory to the New York Convention
ii. The Indian Central Government should have notified in the Official Gazette that it has reciprocal provisions with such a territory.

Since, in the case of Singapore, both the above conditions are met, the awards are recognized as Foreign Awards in India and the enforcement mechanism provided under Part II of the Indian Act needs to be followed.

Section 47 of the Indian Act provides that a party while applying for the enforcement of a foreign award, apart from the procedural aspects of certification and authenticity, also has to produce such evidence as is necessary to prove that the award fulfils the conditions as above stated.

Furthermore, Section 48 of the Indian Act provide the grounds to challenge the enforcement of a foreign award which include party incapacity, invalidity of agreement under the law of the seat, absence of proper notice to the party regarding appointment, or inability of a party to represent his case, non arbitrability of the dispute, matters beyond scope of arbitration, wrong composition of tribunal, or that the award has not become binding as per the law of the seat, or is against the public policy of India.

Once the award has survived the challenge and the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court[27]. After this stage it can be executed under Order XXI of the Code of Civil Procedure, 1908 in the same manner as a decree from an Indian court.

APPEALS ARISING FROM ORDERS OF INTERIM RELIEFS OR ORDERS OF ENFORCEMENT OF FOREIGN AWARDS

Singapore

(1) Appeals arising from Interim Orders made in Arbitral Proceedings

Section 24 of the Singapore IAA permits the court to set aside awards made by arbitral tribunals. However, it has been held that the definition of "awards" excludes orders or directions made under Section 12 of the Singapore IAA, that is, order or directions made by an arbitral tribunal and that deal with procedural matters protective measures.

The rationale for the differential treatment of final arbitration awards and interim orders made by arbitral tribunals was summarized in the local decision of *PT Pukuafu Indah and others v Newmont Indonesia Ltd and another* [2012] 4 SLR 1157; [2012] SGHC 187, where Lee Seiu Kin J observed that procedural issues fell directly within the province of arbitral tribunals. Arbitration, particularly international arbitration, was conceptualised as a form of dispute settlement that is not bound by the parochial application of the procedural rules of the arbitral seat, albeit subject to a minimal level of procedural integrity. This limited control by the court should therefore only be exercised at the

[27] Section 49 of the Indian Act

stage where a party seeks to set aside a final award, and not with respect to each and every order made by the tribunal[28].

In contrast with final awards, interim orders may require a more nuanced balance to be struck between the efficiency of arbitration and safeguards to ensure due process. This is because orders granting interim relief (such as injunctions) may have the effect of prejudging the substantive rights of one party and are dependent on the court for coercive effect. The Singapore Parliament has chosen to strike this balance by adopting the line of minimal curial intervention to limit challenges only to awards that decided the substantive merits of the case[29].

(2) Appeals arising from Interim Orders made by the Court and Appeals against Decisions concerning the Enforcement of Foreign Awards

Appeals arising from interim and enforcement orders made by the court under Section 12A and Section 29 respectively of the Singapore IAA may be made in accordance with Order 56 of the Singapore Rules of Court.

India

It follows from the discussion above that an interim relief is given under Section 9, then automatically an appeal against such Orders would lie to Indian Courts under Part I, Section 37 of the Indian Act. Similarly, incase an order of an Indian court in respect of a challenge to an award passed in Singapore under Part II needs to be appealed, Section 50 of Act would become applicable and again the Appeal would lie in India.

However, in a scenario, where Indian courts have not been approached for execution/enforcement/ challenge from the award passed in Singapore, then Indian Courts would not have any role to play in the appeal process either.

Conclusion

To conclude it may be said, that the courts in both countries would play different roles in International Commercial Arbitrations seated in the Singapore. Firstly it needs to be determined which is the seat of arbitration and which is the curial law which is attracted. Thereafter for different remedies, different courts can be approached.

Singapore has taken steps to ensure practical support for international arbitrations conducted in the country, with the result that it is regarded, both legally and commercially, as a preferred forum for resolving trade disputes. Singapore is widely recognised by parties trading in the region as a place for conducting arbitrations that is both neutral and geographically convenient in relation to the parties to the dispute. Moreover, the 2015 amendment has given more leeway to Indian courts as far as Interim reliefs are concerned, thus providing additional protection to Singapore based parties vis-s-a-vis Indian players. In view of the above, India is fast becoming an arbitration and foreign investor friendly country.

[28] *PT Pukuafu Indah and others v Newmont Indonesia Ltd and another* [2012] 4 SLR 1157; [2012] SGHC 187 at [23] – [25].
[29] *Ibid.* at [23].

Firms Profile[30]

Singhania & Partners LLP

A sharp rise in international business transactions, Global bidding for contracts and Foreign direct investment many Companies have to deal with International Arbitrations. Parties that are signatories to international contracts often want to avoid using the home courts of one of the parties in order to ensure neutrality as well as unbiased decisions thus avoiding the problem faced due to unfamiliar or unpredictable local court procedures. Singhania and Partners LLP has strong experience in handling International arbitrations keeping the seat in India and outside India like Singapore, U.K, China, Switzerland, Canada and many more. The Firm also provides consultation at the time of negotiation of contracts to incorporate effective arbitration clauses. We conduct both institutional and ad hoc arbitrations. The firm is a member of TerraLex which is a premier network of law firms offices worldwide. The membership of TerraLex provides the firm with trusted advisors in more than 153 jurisdictions in cross-border matters.

Kelvin Chia Partnership

We have a team of experienced and seasoned arbitrators who have engaged in domestic and international arbitrations. Notably, we were involved in arbitration proceedings in London over a manufacturing and trade mark licensing arrangement, and have acted for a leading Chinese tunnelling, infrastructure and engineering state enterprise in an arbitration against a Swedish multi-national transportation and infrastructure company. We also represented a large European multinational telecommunications company in enforcing a multi-million dollar foreign arbitration award in Singapore.

Our lawyers are attuned to the needs of our clients, and are committed to the amicable and hassle-free settlement of disputes, management of conflict or negotiation of contracts in the mediation process.

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