
RESERVE BANK OF INDIA CAN NOT STOP ENFORCEMENT OF A FOREIGN ARBITRATION AWARD

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By a recent Judgment High Court of Delhi rejected objection filed by Reserve Bank of India (Central Bank of India) resisting enforcement of International Arbitration award, on the ground of violation of statutory provisions, passed by an Arbitral tribunal appointed under the Rules of London Court of International Arbitration (LCIA), seated in London between NTT Docomo from Japan & Tata sons Limited from India. The said Judgment in NTT Docomo Vs Tata Sons SCC Online Delhi 8078, passed by a Single Judge of the High Court, Justice Mr Muralidhar has proved the fact that India respects finality of International awards and is a Foreign investment friendly country.

Facts of the case: NTT Docomo, Tata Tele services and Tata Sons entered into a share holders Agreement (SHL) in which there were certain Key performance indicators were specified by parties. If the 2nd key performance indicator is not achieved by Tata Tele services on 30th March 2014, Tata should find a buyer for selling the shares purchased by NTT Docomo at the sale price which should be more than 50% of the price at which Docomo purchased its shares. Since Tata could not fulfil the 2nd performance indicator by the given date, on 7th July 2014 Docomo issued a Sale notice to Tata and TTSL to find buyers as promised in the SHA. The market price went down less than 50% of the share purchase value, hence no buyer came forward to buy the shares. Hence disputes could not be resolved by the parties' disputes went for arbitration initiated by Docomo.

The arbitration tribunal was formed as per LCIA rules and the proceedings were seated in London. The Arbitration decided various disputes including the issue of payment of the share purchase value which is about 1.1 billion USD. The tribunal directed Docomo to return the shares and the above said amount was granted by way of damages to Docomo, since Tata could not fulfil the obligations specified in the contract. Docomo filed an application for recognition and

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enforcement of the award in Delhi. Parties found out a settlement to pay the award amount. But Reserve Bank of India filed an intervention application. In the intervention application, it was contended that paying a foreign party a price for a share which is more than the market price is not permissible in law and violative of the “Public Policy” of India.

Decision: The High Court of Delhi recognized and directed the award to be enforced. It held that the intervention by Reserve Bank of India is not permissible as per the provisions of Arbitration and Conciliation Act, 1996 since the parties to the award only can challenge an award. More over since the tribunal has granted the said amount by way of damages, there is nothing illegal in making payment. This judgment surely enhances the image of India among the International Arbitration community and the foreign investors.