
Requirements for proving “inability to present the case” - enforcement of foreign awards

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In India law relating to enforcement of a Foreign award is quiet well settled but still many Indian parties, don't want to miss the opportunity to resist enforcement of a foreign award against them. India's procedural law is Arbitration and Conciliation Act,1996 as amended with effect from 23rd October 2015. The said law is enacted in line with the UNCITRAL Model law on Arbitration. S. 48 of the said Act provides for the conditions for the denying the enforcement of a Foreign Award in India which include the following:

1. When there is some incapacity for the parties or the contract is not valid as per the applicable laws chosen by parties.
2. The party against whom award is to be executed did not have a proper notice and hence could not present the case.
3. Award is beyond the scope of the terms of submission to Arbitration
4. Composition of the tribunal was not as per the arbitration clause
5. Award is set aside or suspended by a competent authority
6. Subject matter is incapable of settlement by arbitration
7. Award is against public policy of India

In a recent case, there was an International Arbitration award, arising out of an International Arbitration conducted under LCIA Rules between Glencore International AG from Switzerland and Dalmia Cements from India. The Disputes were relating to supply of Coal of Indonesian Origin. Dalmia cement refused two cargos raising certain quality issues and hence Glencore went for the arbitration towards damages, interest and costs. The final arbitration award was pronounced on 17.11.2014 and Glencore initiated enforcement of the said award in India, which was resisted by Dalmia cement on three main grounds.

Dalmia contended that it could not effectively present the case since the Arbitral tribunal denied the opportunity of producing certain additional documents and hence the award is not enforceable under S 48(1)(b) of the Act. The 2nd ground was the award was violative of Public policy of India since the damages were granted by the tribunal without any documentary proof. The third ground is that Glencore was given an opportunity to produce certain documents in the last minute and hence tribunal did not treat the parties equally.

But the Delhi High Court by way of a detailed judgment dated 3rd July 2017 (Glencore International AG Vs Dalmia Cement (Bharat) Limited 2017 SCC Online Delhi 8932

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dismissed the said application. The court held that the party claiming setting aside of the award should first produce documents to show that there was no proper notice, to invoke the provisions of S.48(1)(b) of the Act, which is not done by the challenging party. The court also found that the facts of the case prove that sufficient opportunity was given to Dalmia and hence negated the other two contentions also. Hence Indian Courts normally do not interfere with the Foreign seated International Arbitration awards, unless the documents prove the requirement for interference.

