



Delhi High Court reiterates that time limit u/s 29A is not applicable to arbitral proceedings “commenced” as per Section 21, prior to 2015 amendment¹

Brief Facts

The Ministry of Defence filed a suit against Agusta Westland International Ltd. seeking a declaration that the mandate of the arbitral tribunal constituted to adjudicate their disputes had been terminated and a permanent injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, restraining the defendant from continuing with the arbitral proceedings on the grounds that the mandate of the tribunal had been terminated and also on the ground that serious criminal cases were pending against the defendant before Special Court for CBI.

The plaintiff submitted that the arbitration process deserves to be stayed as the mandate of the tribunal stood terminated under Section 29A of the Arbitration and Conciliation Act, 1996 (“Act”), which requires the award to be made within twelve months of the arbitral tribunal entering upon reference. It was further submitted that the allegations of corruption, fraud and bribery raised with respect to the transaction are not arbitrable.

The defendant argued that this case would not be governed by Section 29A of the Act as the arbitral proceedings had commenced prior to the Arbitration and Conciliation (Amendment) Act, 2015 (“Amendment Act”) coming into force. It was further argued that the plaintiff had already raised these issues before the tribunal and it was for the tribunal to rule on its

jurisdiction under the Act. The plaintiff relied on the terms of appointment of the arbitrators, which was fixed after the Amendment Act came into force and argued that the case would be covered by Section 29A of the Act, since the arbitration proceedings commenced only after the terms of appointment were fixed.

Issues

- (i) Whether Section 29A of the Act would apply to the pending proceedings?
- (ii) Whether the proceedings in the present case ought to be terminated owing to the nature of allegations raised, *i.e.*, corruption, bribery, etc.

Judgment

Issue (i): The Court discussed Sections 21 and 29A of the Act to conclude that the language of the Explanation to Section 29A is distinctly different from that of Section 21. The Court held that while the time period prescribed under Section 29A would apply from the date when the tribunal enters upon reference, which is further elucidated upon in the Explanation to Section 29A, the commencement of the arbitral proceedings would be governed by Section 21, *i.e.*, on the date on which a request for the dispute to be referred to arbitration is received by the respondent. The Court noted the clear distinction between “commencement of arbitral proceedings” and “entering upon reference”, which are not synonymous as was sought to be urged by

In this Issue

Brief Facts

Issues

Judgment

Analysis





Arbitration Case Insights

the plaintiff. In the present case, the notice invoking arbitration was issued on 4 October 2013 and therefore, the arbitral proceedings commenced prior to the Amendment Act coming into force. The Court further held that Section 29A applies prospectively to arbitral proceedings and therefore, Section 29A would not be applicable to the present proceedings.

Issue (ii): The Court noted that the plaintiff had filed its objections before the tribunal back in October 2014. The Court further noted the decision in *A. Ayyasamy v. A. Paramasivam*², which held that disputes relating to bribery, corruption, fraud and criminal injuries are non-arbitrable. Relying on this decision, the Court held that it ought to consider the question of arbitrability of disputes and whether they can be raised at this stage, and such a claim cannot be rejected. The Court directed that the arbitral record be brought on record and also directed the defendant to respond to the case of the plaintiff in order for it to decide this issue.

Analysis

This judgment is vital inasmuch as it provides the purpose of the Explanation to Section 29A of the Act. The Court appreciates the practical

difficulties in arbitration proceedings and the ensuing time gap between the notice invoking arbitration and appointment of arbitrators. Given this time gap, the period of twelve months under Section 29A cannot be held to begin from the time the arbitration commences, but from the time the arbitral tribunal enters upon reference, which may be a significant time after the invocation of arbitration.

However, it is yet to be seen whether the Court's decision to decide the arbitrability of disputes, given the pendency of an application under Section 16 of the Act, is an act of judicial intervention not contemplated by the Act. There are various judgments of the Supreme Court which have held that once the arbitral proceedings commence, the courts should only intervene in circumstances enumerated under the Act. Though the Court specifies that it will consider the submission that the question of arbitrability has already been raised before the tribunal and whether the parties deserve to be referred to the arbitral tribunal, the parties would have to go through the entire process of filing pleadings and hearing, which frustrates the rationale of limited judicial intervention.

In this Issue

Brief Facts

Issues

Judgment

Analysis

1 Authored by Ila Kapoor, Partner and Ananya Aggarwal, Senior Associate; *Ministry of Defence v. Agusta Westland International Ltd.*, C.S. (COMM) No. 9 of 2019, Delhi High Court, 2019 SCC OnLine Del 6419, judgment dated 9 January 2019.

Quorum: Pratibha Singh, J.
2 (2016) 10 SCC 386.

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