

Dear All,

CNICA, in its march towards noble object of promoting Arbitration, has proposed to share information on Arbitration with you.

Hence email captioned as “ CNICA Reporter” will be sent to you. The email shall contain a note on judicial pronouncements or latest news and views in arbitration or details of conferences or seminars etc.

Today’s email brings to you the recent Pronouncement by the Divisional Bench of the Madras High Court:

Parties to the Case: Tamil Nadu Electricity Board Rep by its Secretary Vs. Videocon Power Ltd. & others,

Case No: OSA No:270 and 271 of 2008

Judgment dated: 27.1.2009

Divisional Bench Comprised of His Lordship Mr.Justice D.Murugesan and His Lordship Mr.Justice M.Sathyanarayanan

Held:

While considering the questions whether the award in dispute was an Foreign Award or a Domestic Award the Hon’ble Court held that

“The court must keep in mind the agreement as such and in the absence of any provision in the agreement either contrary to the arbitral proceedings in India or arbitrators to sign the award in India merely because either arbitral proceedings conducted in India or the arbitrators have signed the award in India would themselves not make arbitral award as domestic award.”

To find out whether an award is foreign or domestic the following test is to be conducted.

“ Firstly the relationship between parties must be commercial relationship. Secondly the award must be made in pursuant to the agreement in writing Thirdly the ward must be made in convention country.”

If the award satisfies the above test, then it is construed as a foreign award.

While considering the question whether foreign award could be challenged under section 34 of the Arbitration and Conciliation Act 1996, the Court held that, the real test to find out as to whether a foreign award could be challenged

under part I of the act depends upon the terms of the agreement. Since the award was a foreign award, since the parties expressly excluded the applicability of Part I of the Arbitration and Conciliation Act 1996 and since the arbitral proceedings were held in convention countries, the award can not be challenged under Part I of the Act.

The Court further held that

“ A foreign award which would be enforceable under Chapter I of the Part II of the Act shall be treated as binding for all purpose o the persons as between whom it was made.”

Finally while answering the question whether second appeal is maintainable against the award passed under section 48 of the Arbitration and Conciliation Act 1996. Their Lordships held as follows:-

“ In as much as Sub Section (1) of the Section 50 of the Act is available only against the order refusing to refer parties to Arbitration under section 45 of the Act and an order refusing to enforce a foreign award under section 48 of the Act, no second appeal is contemplated in view of the sub section 2 of Section 50 of the Act. However, sub section 2 of the section 50 of the Act empowers a right on the parties aggrieved to approach the supreme court. The said section by virtue of its specific provision provides for second appeal only to supreme court in respect of an order allowing the petition for enforcement of a foreign award. It must be construed that the provisions of Clause 14 of the Letters Patent is excluded. Hence the provisions of Letters Patent can not prevail over a legislative Act. When there is a specific enactment contemplating a provision for appeal to the Supreme court, in respect of an order passed under section 40 of the Act, the appeal under 15 of the Letters Patent is not certainly maintainable.”

We appreciate your inputs and suggestions in this regard. We shall also appreciate if you could furnish us the email address of persons who would be interested in receiving our email.

Regards

G.Ashokapathy
Secretary,
CNICA.