Client Update
Indian Arbitration Reforms—Key Step Forward

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On October 23, 2015, the President of India (the "**President**") promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2015[1] (the "**Ordinance**") to amend and reform India's existing arbitration law, the Arbitration and Conciliation Act, 1996 (the "**Act**"), by way of certain key amendments[2] (the "**Amendments**"). The Ordinance takes into account the 246th report (and its supplement) of the Law Commission of India (the "**Law Commission Report**"), which had recommended various amendments to the Act. The Law Commission made several proposals for making arbitration a preferred mode for settlement of commercial disputes in India by making it more user-friendly, cost – effective and expeditious.

Under Indian law, when the parliament is not in session, the President is empowered to promulgate ordinances to make any legislation effective, on being satisfied that circumstances exist which render such action necessary. An ordinance has the same effect as any law passed by the parliament, but is required to be presented before the parliament once it reassembles, which it now has for its winter session. If an ordinance is not approved by the parliament, it ceases to operate after six weeks from its reassembly. There are some instances where ordinances have been promulgated multiple times to keep them effective if parliamentary approval is not forthcoming.

Some of the key Amendments are:

- Interim measures—An arbitral tribunal will now be empowered to grant interim measures similar to a court and such measures shall be enforceable

[1] Available at: http://www.egazette.nic.in/WriteReadData/2015/166406.pdf.

[2] Amendment to the Arbitration and Conciliation Bill, 2015, Press Information Bureau, Government of India, 26 August 2015.

in the same manner as if an order of a court. This will significantly reduce the time and cost involved in approaching courts in India for interim measures and will prevent parties from misusing courts to sidetrack and prolong the arbitral process.

- Neutrality of arbitrators—Prior to their appointment, arbitrators shall be required to disclose any relationship or interest that may give rise to a conflict of interest or concerns over neutrality. Further, persons in certain specified relationships shall be ineligible to be appointed as arbitrators.

- Speedy arbitration—In order to ensure that arbitration is expeditious, a new provision requiring the arbitral tribunal to give an award within 12 months has been included, which can be extended by the parties by up to six months. Thereafter, the time period can only be extended by a court for sufficient cause and, while extending the period, the courts may also order a reduction of fees of the arbitrator(s) not exceeding five percent for each month of delay if the courts find that proceedings have been delayed for reasons attributable to the arbitral tribunal. However, if the award is made within a period of six months, the arbitrator(s) may get additional fees with the parties' consent.

- Restrict grounds of challenge to arbitral awards—To restrict the grounds on which an arbitral award may be challenged in Indian courts, an attempt has been made to explain the term "Public Policy of India" (often used as the most common ground for challenging an arbitral award in India). An award can now be challenged as being in violation of the "Public Policy of India" only if: (i) the making of the award was induced or affected by fraud or corruption; (ii) it is in contravention with the fundamental policy of Indian law; (iii) it is in conflict with the most basic notions of morality or justice. In the past, this ground has often been misused to challenge arbitral awards before Indian courts, resulting in undue delays and rendering the arbitration process largely infructuous.

- Stay on proceedings—The mere filing of an application challenging an award will not automatically stay its execution. After the Amendments take effect, an award's execution shall only be stayed upon a court's specific order.

- Costs—A new regime providing comprehensive provisions for costs is proposed to be introduced. This will be applicable to both the arbitral and related litigation process and is intended to dissuade frivolous and meritless claims.

SIGNIFICANT CLARIFICATION TO THE *BALCO* DECISION

In a recent decision, the Supreme Court of India in the *Union of India v. Reliance Industries Limited & Ors. (Reliance)* case[3] provided a rather significant clarification to its earlier landmark decision in the *Bharat Aluminium Company Ltd. v. Kaiser Aluminium Technical Services, Inc. (BALCO)* case.[4] In the *BALCO* decision, which was seen as a pro-arbitration turn of the Indian courts, the Supreme Court had held that Indian courts may not exercise supervisory jurisdiction over foreign-seated arbitrations pursuant to India's domestic arbitration law, the Arbitration and Conciliation Act, 1996.

However, an important limitation of the BALCO decision was that it applied by its own terms only to arbitrations conducted pursuant to agreements concluded after September 6, 2012. As such, the enforcement of any foreign award issued pursuant to an arbitration agreement signed before September 6, 2012 was still left open to potential challenges in Indian courts under the pre-*BALCO* regime.

However, in the *Reliance* case, the Supreme Court clarified this and has held that the pre-*BALCO* regime will not be applicable to foreign – seated arbitrations at all. This would mean that even if an arbitration agreement is concluded prior to September 6, 2012, Indian courts would not be able to exercise supervisory jurisdiction over it under the pre-*BALCO* regime.

CONCLUSION

The Amendments, which largely give effect to the Law Commission Report, are a welcome step for arbitration in India which is often time – consuming, expensive and prone to court interference, and has often resulted in foreign parties preferring to have India – related disputes arbitrated in neutral venues like Singapore or London.

However, the Ordinance will only be effective for a short period of time unless it gets parliamentary sanction. Given the current political scenario where the government enjoys a majority in the lower house but not in the upper house, it is difficult to predict the ultimate outcome. However, this is definitely a concrete step towards much needed arbitral reforms in India.

[3] SLP (Civil) No. 11396 of 2015.

[4] (2012) 9 SCC.

Further, though the *Reliance* decision does not lay down any new law, it is a significant clarification for foreign – seated arbitrations and further cements India's pro-arbitration turn since *BALCO*.

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Please note that this firm is not qualified to advise on Indian law. This update is based on information that has been published in the press and from other sources in the public domain.

Please do not hesitate to contact us with any questions.