Indian Supreme Court Confirms Three-Year Limitation Period for Enforcement of Foreign Arbitral Awards

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In the latest of a series of recent positive developments (see also our previous update here), the Indian Supreme Court in *Government of India v Vedanta Ltd* took a pro-arbitration stance in a decision that suggested increasing alignment of Indian law with international best practices on enforcement. The Court enforced an award worth $278 million against the Indian government, allowing recovery of development costs under a production sharing contract for the Ravva oil and gas fields off the coast of Andhra Pradesh in the Bay of Bengal. The contract was governed by Indian law. The arbitration was seated in Kuala Lumpur and English law applied to the arbitration agreement.

Importantly, the Supreme Court clarified the limitation period for filing an application to enforce a foreign arbitral award before Indian courts, which is not expressly provided for in Indian law. Previously, the various Indian High Courts had reached different decisions on the correct limitation period. One view classified foreign awards as "*decrees*" of a civil court, which have a 12-year statutory limitation period for enforcement. In contrast, another view considered the general limitation period of three years to be applicable. The Supreme Court took the latter view and held that the three-year limitation period applies to the enforcement of foreign awards.

The Supreme Court further held that the three-year period runs from when the "*right to apply accrues*". In this case, the right to apply was found to accrue when the Government of India demanded additional payments from Vedanta after the award had been issued (which meant that the limitation period had not expired when Vedanta filed its enforcement application four years after the date of the award). While the decision, therefore, clarifies that the date on which the right to apply accrues could be different from—and later than—the date of the foreign award, it does not explain when such a right would generally accrue. This lack of clarity will no doubt lead to future litigation in Indian courts.

In addition, the Court adopted a narrow reading of the public policy exception to enforcement, and resisted attempts by the Government to re-litigate the merits of the dispute. The Court noted that Indian courts should be "hesitant" to refuse enforcement

on public policy grounds, unless the award was obtained through corruption, fraud or undue means. It also emphasised that Indian courts deciding enforcement applications would not provide a "de facto appeal" against the award.

The Supreme Court also deferred to the decisions of the Malaysian courts—Kuala Lumpur being the seat of the arbitration— in refusing to set aside the award and rejecting the Government's arguments that they incorrectly applied Malaysian law (and not Indian law as the governing law of the contract, or English law as the law governing the arbitration agreement).

Encouragingly, in reaching its decision, the Supreme Court positively referred to numerous international authorities on enforcement, including international case law, academic commentary on the New York Convention, and best practices endorsed by the International Law Association (ILA) and the International Council for Commercial Arbitration (ICCA). The extensive reference to international jurisprudence demonstrates the Court's intention to align Indian law on this issue with international best practices.

While the time taken for the enforcement of the award was still around six years from the date of application, this judgment provides an example of the willingness of Indian courts to allow for enforcement against the Government of India. It is an indication of India's ambition to be seen as an arbitration- and investor-friendly jurisdiction.

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