

# **Recognition & Enforcement of Arbitral Awards**

**SESSION-3**

**in**

**National Workshop for High Court Justices on Arbitration  
including International Arbitration [P-1294]**

**Justice M. Sundar**

**Madras High Court.**

***Badat and Co. Vs. East India Trading Co.,  
AIR 1964 SC 538***

1. Supreme Court while holding that the Convention did not apply to award of an non convention Country, the awards are still enforceable in India on the same grounds and in the same circumstances in which they are enforceable in England under the Common Law on grounds of justice, equity and good conscience.
2. Broadly speaking, it shall be treated as contract.

***Bharat Aluminium Co. Vs. Kaiser Aluminium Technial Services  
Inc. (2012) 9 SCC 552 [Balco case]***

**169.** It was also submitted that non-Convention awards would not be covered either by Part I or Part II. This would amount to holding that the legislature has left a lacuna in the Arbitration Act, 1996. This would mean that there is no law in India governing such arbitrations.

**170.** We are of the opinion that merely because the Arbitration Act, 1996 does not cover the non-Convention awards would not create a lacuna in the Arbitration Act, 1996. If there was no lacuna during the period in which the same law was contained in three different instruments i.e. the Arbitration Act, 1940 read with the 1961 Act, and the Arbitration (Protocol and Convention) Act, 1937, it cannot be construed as a *lacuna* when the same law is consolidated into one legislation i.e. the Arbitration Act, 1996.

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**171.** It must further be emphasised that the definition of “foreign awards” in Sections 44 and 53 of the Arbitration Act, 1996 intentionally limits it to awards made in pursuance of an agreement to which the New York Convention, 1958 or the Geneva Protocol, 1923 applies. It is obvious, therefore, that no remedy was provided for the enforcement of the “non-Convention awards” under the 1961 Act. Therefore, the non-Convention award cannot be incorporated into the Arbitration Act, 1996 by process of interpretation..... .

***Richardson Vs. Mellish [1824 2 Bing 229]***  
***Burrough J.***

‘Public policy’ is a very unruly horse and once you get astride it, you never know where it will carry you.

**Besant Vs. Wood [1879 12 Ch D 605]**

**Sir George Jessel MR**

*'This is a branch of law which depends upon what is commonly called 'public policy.' Now you cannot lay down any definition of the term 'public policy', or say it comprises such and such a proposition, and does not comprise such and such another: that must be, to a great extent, a matter of individual opinion, because what one man, or one judge, and perhaps I ought to say one woman also in this case, might think against public policy, another might think altogether excellent public policy. Consequently it is impossible to say what the opinion of a man or a judge might be as to what public policy is.*

***Renusagar Power Co. Ltd. Vs. General Electric Co.***  
***[1994 Supp (1) SCC 644]***

**Para 66**

'....the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality.'

***Shri Lal Mahal Ltd. Vs. Progetto Grano Spa***  
***[(2014) 2 SCC 433]***

*In Lal Mahal*, a three Judge Bench of Hon'ble Supreme Court made it clear that the default Renusagar position would continue to apply to cases which arose under section 48(2)(b).

***Vijay Karia Vs. Prysmian Cavi E Sistemi SRL***  
***[(2020) 11 SCC 1]***

**Para 88**

'The fundamental policy of Indian law, as has been held in *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644], must amount to a breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of being compromised. "Fundamental Policy" refers to the core values of India's public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the courts.'

***Shriram EPC Ltd. Vs. Rioglass Solar Sa***  
***[(2018) 18 SCC 313]***

Supreme Court examined an important issue of whether a foreign award was liable for stamp duty under the provisions of the Stamp Act, 1899. The Court held that the expression “award” has never included a foreign award from the very inception till date. Consequently, a foreign award not being includible in Schedule I to the Indian Stamp Act, 1899, is not liable for stamp duty.

## ***Government of India Vs. Vedanta Ltd. [(2020) 10 SCC 1]***

Supreme Court examined the issue of limitation qua enforcement of foreign arbitral awards. The following principles were set out by the Supreme Court:

- a) The application under Sections 47 and 49 for enforcement of the foreign award, is a substantive petition filed under the Arbitration Act, 1996.
- b) Foreign awards are not decrees of an Indian civil court. By a legal fiction, Section 49 provides that a foreign award, after it is granted recognition and enforcement under Section 48, would be deemed to be a decree of “that court” for the limited purpose of enforcement. The phrase “that court” refers to the court which has adjudicated upon the petition filed under Sections 47 and 49 for enforcement of the foreign award.
- c) Article 136 of the Limitation Act would not be applicable for the enforcement/execution of a foreign award, since it is not a decree of a civil court in India.

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(d) The issue of limitation for enforcement of foreign awards being procedural in nature, is subject to the lex fori i.e. the law of the forum (State) where the foreign award is sought to be enforced.

(e) The limitation period for filing the enforcement/execution petition for enforcement of a foreign award in India, would be governed by Indian law. The Indian Arbitration Act, 1996 does not specify any period of limitation for filing an application for enforcement/execution of a foreign award. Section 43 however provides that the Limitation Act, 1963 shall apply to arbitrations, as it applies to proceedings in court.

(f) The period of limitation for filing a petition for enforcement of a foreign award under Sections 47 and 49, would be governed by Article 137 of the Limitation Act, 1963 which prescribes a period of three years from when the right to apply accrues.

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g) The application under Section 47 is not an application filed under any of the provisions of Order 21 CPC, 1908. The application is filed before the appropriate High Court for enforcement, which would take recourse to the provisions of Order 21 CPC only for the purposes of execution of the foreign award as a deemed decree. The bar contained in Section 5 of the Limitation Act, which excludes an application filed under any of the provisions of Order 21 CPC, would not be applicable to a substantive petition filed under the Arbitration Act, 1996. Consequently, a party may file an application under Section 5 for condonation of delay, if required in the facts and circumstances of the case.

# **National Agricultural Cooperative Marketing Federation of India Vs. Alimenta S.A [(2020) SCC OnLine SC 381]**

*National Agricultural Cooperative Marketing Federation of India (NAFED) case demonstrates a situation where a challenge under Section 48 was upheld on public policy grounds.*

# **Mahanagar Telephone Nigam Limited Vs. Canara Bank and others [(2020) 12 SCC 767]**

- **Para 10.7 :**

**10.7.** The group of companies doctrine has also been invoked in cases where there is a tight group structure with strong organisational and financial links, so as to constitute a single economic unit, or a single economic reality. In such a situation, signatory and non-signatories have been bound together under the arbitration agreement. This will apply in particular when the funds of one company are used to financially support or restructure other members of the group. [ ICC Case No. 4131 of 1982, ICC Case No. 5103 of 1988.]

# PASL Wind Solutions Private Limited Vs. GE Power Conversion India Private Limited [(2021) 7 SCC 1]

## Para 74 :

**74.** In *Zoroastrian Coop. Housing Society Ltd. v. Registrar of Coop. Societies* [*Zoroastrian Coop. Housing Society Ltd. v. Registrar of Coop. Societies*, (2005) 5 SCC 632] , this Court held : (SCC pp. 661-62, para 38)

“38. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the court coining a theory that whatever is not consistent with the scheme or a provision of the Constitution, be it under Part III or Part IV thereof, could be declared to be opposed to public policy by the court. Normally, as stated by this Court in *Gherulal Parakh v. Mahadeodas Maiya* [*Gherulal Parakh v. Mahadeodas Maiya*, 1959 Supp (2) SCR 406 : AIR 1959 SC 781] the doctrine of public policy is governed by precedents, its principles have been crystallised under the different heads and though it was permissible to expound and apply them to different situations it could be applied only to clear and undeniable cases of harm to the public. Although, theoretically it was permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society.”

# **Amazon.com NV Investment Holdings LLC Vs. Future Retail Limited and others [(2022) 1 SCC 209]**

Whether an “award” delivered by an Emergency Arbitrator under the Arbitration Rules of the Singapore International Arbitration Centre (“the SIAC Rules”) can be said to be an order under Section 17(1) of the Arbitration and Conciliation Act, 1996 is the first question arose in this case.

## **Para 46 is the answer:**

**46.** We, therefore, answer the first question by declaring that full party autonomy is given by the Arbitration Act to have a dispute decided in accordance with institutional rules which can include Emergency Arbitrators delivering interim orders, described as “awards”. Such orders are an important step in aid of decongesting the civil courts and affording expeditious interim relief to the parties. Such orders are referable to and are made under Section 17(1) of the Arbitration Act.

## **Facts :**

Amazon acquired 49% of stakes in Future Coupons under an agreement which was approved by Competition Commission of India (CCI). Future Coupons holds 9.82% of shares in Future Retail, i.e., Big Bazaar. After Amazon agreement, reliance bought out Big Bazaar which was challenged by Amazon. CCI has suspended its approval to the agreement between Amazon and Future Coupons, thereby substratum for invoking arbitration taken away. NCLAT is now in seizin.

# Gemini Bay Transcription Private Limited Vs. Integrated Sales Service Limited and another [(2022) 1 SCC 753]

## Paras 39 and 40 :

39. .... It is important to notice that when enforcement of a foreign award is resisted, the party who resists it must prove to the Court that its case falls within any of the sub-clauses of sub-section (1) or sub-section (2) of Section 48. Since some arguments were made as to the expression “proof” contained in Section 48(1), it is necessary to deal with the same. In *Emkay Global Financial Services Ltd. v. Girdhar Sondhi* [*Emkay Global Financial Services Ltd. v. Girdhar Sondhi*, (2018) 9 SCC 49 : (2018) 4 SCC (Civ) 274] , a question arose under the pari materia provision contained in Section 34 of the Arbitration Act, 1996 as to what the expression “proof” means therein. After referring to a number of High Court judgments, and to an amendment that has now been made to Section 34, in which the expression “furnishes proof that” is now substituted by “establishes on the basis of the record of the Arbitral Tribunal that”, this judgment held that the expression “proof” cannot possibly mean the taking of oral evidence as it will otherwise defeat the object of speedy disposal of Section 34 petitions.....

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**40.** Given that foreign awards in Convention countries need to be enforced as speedily as possible, the same logic would apply to Section 48, as a result of which the expression “proof” in Section 48 would only mean “established on the basis of the record of the Arbitral Tribunal” and such other matters as are relevant to the grounds contained in Section 48.