

Applying part I of the Arbitration Act globally

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International commercial arbitrations often involve cases where the law that governs the contract is defined by the parties, but the law that governs the arbitration and its conduct is left open. How are such international arbitrations dealt with and under which law are they conducted?

Recently, these questions arose before the Supreme Court in *Citation Infowares Limited v Equinox Corporation*. This case dealt with the jurisdiction of the Indian courts to entertain applications for the appointment of an arbitrator under the Arbitration and Conciliation Act, 1996, where the arbitration agreement did not provide for a venue or the law applicable to such arbitration although the contract was to be governed by foreign laws.

The factual background

Citation Infowares, a company registered in India, and Equinox Corporation, registered in the US, entered into an outsourcing agreement wherein the former was engaged as a service provider. Subsequently, the two companies signed two more agreements, the second of which included the following clause:

Clause 10.1 Governing Law: This agreement shall be governed by and interpreted in accordance with the laws of California, USA and matters of dispute if any relating to this agreement or its subject matter shall be referred for arbitration to a mutually agreed arbitrator.

All the agreements between the two companies were signed in Kolkata and the services were provided and rendered in India. The agreement was, however, terminated by the respondent, Equinox Corporation. The applicant, Citation Infowares, contended that the termination was illegal and

wrongful and had caused them huge financial losses.

Accordingly, Citation Infowares sent notices to Equinox Corporation to invoke arbitration and to seek agreement on the appointment of an arbitrator. As Equinox did not agree to the appointment of the arbitrator within 30 days as provided under section 11(5) of the act, an application under section 11(6) was filed before the Supreme Court.

Legal issues

The question before the Supreme Court centred on whether it had jurisdiction in such a factual scenario and also in view of the fact that the parties, through clause 10.1 of their agreement, had agreed that the laws of California would govern their agreement.

Citation Infowares relied on the following judgments: *Intel Technical Services Private Ltd v WS Atkins Rail Limited*, *Bhatia International v Bulk Trading SA* and *Venture Global Engineering v Satyam Computer Services Ltd*. They contended that it is settled law that provisions of part I of the act would be equally applicable to international commercial arbitrations held outside India unless any of its provisions are expressly excluded by agreement between the parties or by implication. As such, Citation Infowares pointed out that there being no express exclusion in the agreement, only the Supreme Court had the jurisdiction in the present case.

Equinox contended that in view of the specific language of clause 10.1 the governing law would be the Californian laws. Accordingly they argued that the question of appointment of arbitrator also falls in the realm of the foreign law and not within the realm of the Arbitration Act. Therefore, the same being agreed to by the parties and as

also held in *Bhatia International*, parties had expressly excluded the provisions of part I of the act.

The decision

Holding that the Indian courts have jurisdiction in this case the Supreme Court allowed the application and appointed an arbitrator. In arriving at this conclusion, the Supreme Court took cognizance of all the precedents which have held that in the absence of any agreement relating to the law governing the arbitration proceedings, the law governing the contract shall be considered as the law governing the arbitration.

In the absence of any agreement about the law governing the contract, the law governing the contract as well as the arbitration shall be the one applicable in the country where the venue of the arbitration is situated.

In the case at hand, though the parties had agreed that Californian law was to be the law governing the contract, the court held that such a choice would not exclude the jurisdiction of Indian courts given the peculiar facts and circumstances of the case, namely, one of the parties being Indian, obligations under contract to be completed in India and also the nature of contract. The court held that all these factors made it difficult to conclude that the parties had impliedly excluded jurisdiction of part I of the Arbitration and Conciliation Act and thus held that Indian courts shall have jurisdiction in the present case.

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