



expert talk

DISPUTES BETWEEN CLIENT AND LAWYERS HELD COMMERCIAL

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BACKGROUND

1. Recently, the Delhi High Court in *Spentex Industries v. Quinn Emanuel Urquhart and Sullivan* had the opportunity to decide whether arbitration agreements between foreign law firms and clients are valid.ⁱ In refusing to hold that such agreements between foreign law firms and clients are void, inoperative, or incapable of being performed, the court ruled that foreign law firms have commercial relationships with clients.
2. On 21 May 2013, Spentex Industries Ltd. ("**Plaintiff**") and its subsidiary executed an engagement letter ("**Engagement Letter**"), engaging the services of Quinn Emanuel Urquhart & Sullivan LLP ("**Defendant**"), a law firm based in Washington DC, in relation to certain disputes that had arisen between the Plaintiff and its subsidiary on one hand, and the Republic of Uzbekistan on the other.
3. The Defendant acted for the Plaintiff's subsidiary ("**Subsidiary**") in ICSID arbitration proceedings against the Republic of Uzbekistan, and raised invoices on the Subsidiary for the same. On 27 December 2016, an award was passed in the arbitration proceedings.
4. The Plaintiff failed to pay the Defendant's fees, which included fixed fees, costs, and expenses incurred in relation to the ICSID arbitration proceedings.
5. Thus, on 25 August 2017, the Defendant invoked arbitration proceedings against the Plaintiff and the Subsidiary under the aegis of JAMS, in terms of the Engagement Letter. On 1 September 2017, JAMS gave a notice for commencement of the arbitration.

PARTIES' SUBMISSIONS

PLAINTIFF'S ARGUMENTS

6. The Plaintiff contended that the arbitration agreement was null and void, inoperative, and incapable of being performed, since the relationship between the Plaintiff and the Defendant could not be considered to be commercial, under the laws of India.
7. The Plaintiff relied on the cases of *M. P. Electricity Board and Ors. v. Shiv Narayan & Anr.*,ⁱⁱ and *Sakharam Narayan Kherdekar v. City of Nagpur Corporation & Ors.*,ⁱⁱⁱ to state that the legal relationship between a client and law firm cannot be treated as commercial. Consequently, Sections 44 and 45 of the Arbitration and Conciliation Act, 1996 ("**Act**") would not apply.

DEFENDANT'S ARGUMENTS

8. The Defendant on the other hand contended that:
 - (a) The suit was not maintainable, and liable to be dismissed. The Defendant relied on several cases to support this argument, including:
 - (i) *Clearwater Capital Partners (Cyprus) Ltd. v. Satyajit Singh Majithia & Ors.*;^{iv}
 - (ii) *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.*;^v
 - (iii) *Sasan Power Ltd. v. North American Coal Corporation (India) Pvt. Ltd.*;^{vi} and
 - (iv) *McDonald's India Pvt. Ltd. v. Vikram Bakshi & Ors.*^{vii}



- (b) The relationship between the Plaintiff and the Defendant was commercial. To buttress this contention, the Defendant relied on the cases of:
- (i) *R. D. Saxena v. Balram Prasad Sharma*; ^{viii} and
 - (ii) *Aditya Narayan Singh v. State Election Commission, Uttar Pradesh & Anr.* ^{ix}

JUDGEMENT

9. At the outset, the Delhi High Court relied on *World Sport Group and Sasan*, finding that the suit was maintainable for the limited purpose of holding an enquiry into whether the arbitration agreement in the Engagement Letter was null and void, inoperative, or incapable of being performed.

10. The court noted that the scope of enquiry was narrow, and courts should be reluctant to interfere in arbitral proceedings. Moreover, courts cannot delve into the validity of the substantive agreements, and it is the mandate of courts to refer parties to arbitration, unless the arbitration agreement itself is null and void, inoperative, or incapable of being performed.

11. The Delhi High Court then noted India's reservation to the New York Convention in terms of Section 44 of the Act, which states that a foreign award would mean only those awards which arise out of commercial relationships under Indian law.

12. Turning to the meaning of the terms "commercial", the court relied on the judgements of the Supreme Court in *R. M. Investment and Trading Co. Pvt. Ltd. v. Boeing Co. & Anr.* ^x and in *New Delhi Municipal Council v. Sohan Lal Sachdev*, ^{xi} to state that the term "commercial" has to be interpreted liberally, and consistently with its literal meaning.

13. Relying on the Collins Concise Dictionary (3rd edition), the court noted that the term "commerce" was defined as "*The activity embracing all forms of the purchase and sale of goods and services.*" Consequently, the court held that transactions relating to services for valuable consideration would be a commercial legal relationship, covered by Section 44 of the Act.

14. The court found that in the present case, where the relationship between the Plaintiff and the Defendant was one of rendering legal services for an agreed fee, it could not be urged that there was no hint of a commercial element. The court also found it relevant to note that the Defendant being foreign law firm, the statutory regime in India governing the relationship between lawyer and client, would not apply.

15. Regarding to the judgements cited by the Plaintiff, the court stated that these would have no application to the present dispute, since the factual backgrounds were completely different.



16. Both judgements relied upon by the Plaintiff concerned advocates who fell within the regime of the Advocates Act, 1961. Moreover, the questions before the courts were fundamentally different. In *M. P. Electricity Board*, the court was deciding whether the electricity connection in a lawyer's rented office space was to be treated as a commercial connection. In *Sakharam*, the question related to registration of an advocate's office under the Bombay Shops and Establishments Act.

17. Thus, the cases cited by the Plaintiff had no bearing on the present case.

ANALYSIS AND CONCLUSION

18. The Delhi High Court was correct in holding that the relationship between a foreign law firm and a client is commercial. It is inconceivable that there is no flavour of commerciality in the engagement of a law firm by a client.

19. It is also important to note that even though India has opted to reserve the application of New York Convention awards to only those disputes that are considered commercial, the term "commercial" itself must be given a wide import, applying its literal meaning.

20. This will ensure not only that there is expeditious enforcement of foreign awards in India, making it a favourable jurisdiction and what is popularly known as an arbitration hub, but also that India fulfils its obligations under the New York Convention.

21. Finally, it is imperative that clients honour arbitration agreements in their engagement letters with foreign law firms.

ⁱ I.A. No. 14498/2017 in CS(OS) 568/2017

ⁱⁱ (2007) 7 SCC 283

ⁱⁱⁱ AIR 1964 Bom 200

^{iv} 2012 (128) DRJ 478

^v (2014) 11 SCC 639

^{vi} (2016) 10 SCC 813

^{vii} 2016 SCC OnLine Del 3949

^{viii} (2000) 7 SCC 264

^{ix} 2003 SCC OnLine All 1118

^x (1994) 4 SCC 541

^{xi} (2000) 2 SCC 494



About Us

Singularity is an Asia and Africa focused international disputes boutique, established in August 2017. Since then, we have handled over US\$ 2 billion in cross-border disputes across jurisdictions and industries.

These disputes were in various parts of the world including Egypt, India, Israel, Indonesia, Kazakhstan, Nigeria, Malaysia, the Philippines, Turkey, UK, UAE, Sierra Leone, Singapore and Somalia.

In the first 1000 days, we are already recognized as market leaders.

- Legal 500- Tier 2 in Asia-Pacific - India for arbitration;
- Benchmark Litigation- Tier 3 in Asia Pacific - India for international arbitration;
- Financial Times - Top 5 in Asia-Pacific for innovation in dispute resolution;
- India Business Law Journal and Asian Legal Business -Rising Law Firm of the Year;
- RSG Consulting - Top 50 law firms in India.

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The Expert Talk initiative seeks to provide quality continued digital education to professionals, through freely accessible webinars, and a digital library of blogs, alerts, insights and talks, on dispute resolution and litigation finance.

About Our Arbitration Practice

We provide advice and advocacy in investment treaty and commercial arbitrations, conducted under all major international arbitration rules and governed by distinct laws. Our key engagements include:

- Representing two Indian companies in a billion-dollar dispute under a joint-venture agreement for construction of a thermal power plant against a Korean sovereign company (SIAC Rules, Singapore seated, Indian law)
- Advising an Indian company for its dispute against a Turkish employer relating to the construction of a circulating fluidized bed combustion boiler in Istanbul, Turkey (ICC Rules, Turkey seated, Turkish law)
- Representing a Singaporean and an Indian company in an ad-hoc arbitration concerning termination of a contract for conversion of a mobile offshore drilling unit to a mobile offshore production unit, against an Indian state-owned enterprise (India seated, Indian law)
- Representing two Singaporean upstream oil and gas companies in an arbitration for their disputes under a joint venture agreement against their ex-managing director for breach of fiduciary duties and non-compete agreement (SIAC Rules, Singapore seated, Singapore law)
- Representing an Indian company in an arbitration concerning the termination of a contract for the construction of an ethanol and power plant in Philippines against an Australian employer and Filipino co-contractor (SIAC Rules, Singapore seated, English law)
- Advising a Singaporean company for its disputes under a charter party settlement agreement with a shipping company based in Bahamas (LMAA Rules, London seated, English Law)



About the Author

Rohit is a counsel at Singularity Legal. He specialises in advising energy & resources, construction & infrastructure, shipping & trade, and sports & entertainment companies in shareholder and joint venture disputes, operational disputes, and sovereign disputes.

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