

# Indian Supreme Court narrows the scope of public policy challenges to foreign awards

The Supreme Court of India has reversed a previous decision and taken a narrow view of the "public policy" exception to the enforcement of foreign awards. The ruling will give reassurance to parties to foreign-seated arbitrations looking to enforce in India.

## Shri Lal Mahal v Progetto Grano Spa

One of the difficulties typically faced by parties enforcing arbitral awards in India is the relative ease with which it has been possible to challenge awards under the grounds of "public policy".

In *Shri Lal Mahal Ltd v Progetto Grano Spa*, a three-judge bench of the Supreme Court has significantly narrowed the scope of the "public policy" exception – reversing previous case law on the subject – in a ruling which should make it harder for parties to resist enforcement of foreign awards in the Indian courts.

The decision concerned the enforcement of a 1997 Grain and Feed Trade Association (GAFTA) award of US\$1.5 million for breach of contract against an Indian grain supplier. With the Indian supplier resisting enforcement of the award on public policy grounds, the Supreme Court rejected an expansive interpretation of the "public policy" exception and approved the narrower meaning laid out in the 1994 case *Renusagar Power Plant Co Ltd v General Electric Co*.

## Narrowing the scope of the public policy exception – reining in India's unruly horse

Section 48(b)(2) of the Indian Arbitration and Conciliation Act 1996 (the "**Indian Act**") states that enforcement of a foreign arbitral award may be refused if the court finds that "*the enforcement of the award would be contrary to the public policy of India.*"

In *Renusagar*, the Supreme Court (interpreting the scope of "public policy" under the Foreign Awards Act 1961) ruled that the "public policy" exception to enforcement would only arise where enforcement would be contrary to: (i) fundamental policy of Indian law; (ii) the interests of India; or (iii) justice or morality. This decision was generally regarded to be in line with the norms of private international law. Subsequently, however, in the notorious *Saw Pipes* decision, the Supreme Court expanded the definition of public policy (in relation to domestic arbitrations) to include cases where an award demonstrated "*patent illegality*" under Indian law.

## Key issues

- "Patent illegality" under Indian law not sufficient to resist enforcement of a foreign arbitral award
- Along with recent *Bharat Aluminium* decision, offers further reassurance to parties arbitrating with Indian counterparties

In *Phulchand Exports Ltd v Ooo Patriot* the Supreme Court applied the expanded definition of "public policy" in respect of foreign awards. This left foreign awards open to challenge purely on the basis of a contravention of Indian law, and meant that parties trying to enforce foreign awards in India commonly faced applications for the awards to be re-examined on the merits.

In *Shri Lal Mahal*, the Supreme Court overruled *Phulchand Exports* and held that in relation to the enforcement of foreign awards, "public policy" should be construed narrowly in line with *Renusagar*.

A mere breach of law alone will not attract the bar of public policy and "something more than contravention of law is required".

### Reassurance to parties arbitrating with Indian counterparties

Following last year's decision in *Bharat Alumium*, where the Supreme Court limited the extent to which

Indian courts can intervene in foreign-seated arbitrations, *Shri Lal Mahal* offers further reassurance that international arbitration awards will be enforceable in India in compliance with the normal New York Convention standards. *Shri Lal Mahal* is another step towards rectifying some of the controversial decisions which have undermined India's international arbitration framework since the Indian Act came into force.

*Shri Lal Mahal* clarified that while the scope for "public policy" challenges has been narrowed with respect to foreign awards, it remains unchanged in relation to domestic awards. It therefore remains strongly advisable for parties contracting with Indian counterparties to choose a seat of arbitration outside India.

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SINGAP-1-183206-v1  
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