

Non-Compete Clause Not Enforceable At The Stage Of Granting Interim Reliefs Under S.9 Of Arbitration Act If Prima Facie The Aggrieved Party May Be Adequately Compensated By Damages

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Introduction

The Delhi High Court, in a recent judgment in ***Las Ground Force Pvt. Ltd. v. Goldair Handling S.A*** [2024 DHC 9528] dealt with the enforcement of a non-compete clauses at the stage of granting interim reliefs within the framework of Section 9 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). In this article, we navigate through the facts, and the findings of the High Court in the present matter.

Facts

The dispute originated from a collaboration between LAS Ground Force Pvt. Ltd. (Petitioner No. 1) and Goldair Handling SA (Respondent) for providing ground handling services across airports in India. The sequence of key events is as follows:

- (i) The Petitioner No. 1 and the Respondent were successful bidders in tenders floated by the Airports Authority of India ("**AAI**") for ground handling services at airports located at Chennai, Goa, Bagdogra, Udaipur, and Jodhpur.
- (ii) The parties executed separate Shareholders' Agreement to form Special Purpose Vehicles (SPVs) for performing operations in relation to specific airports.
- (iii) To maintain exclusivity and jointly undertake projects, the parties also executed an Exclusivity Agreement and a Collaboration Agreement.
- (iv) The dispute arose when AAI issued tenders for ground handling services at Ranchi and Vijayawada airports. The petitioners (Nos. 1 and 2) contended that the respondent's participation in these tenders violated the non-compete provisions of the Shareholders' Agreement and Exclusivity Agreement. The respondent, in response, argued that the Exclusivity Agreement had been terminated, and the Shareholders' Agreements were limited to Bagdogra and Udaipur airports, allowing them to participate in tenders for other airports.

In the above background, the petitioners sought interim relief under Section 9 of the Arbitration Act to restrain the respondent from participating in the tender process for Ranchi and Vijayawada airports.

Arguments by the Petitioners

1. On Enforcement of Non-Compete Clause: The petitioners relied on the Shareholders' Agreement, which imposed a non-compete obligation during the agreement's subsistence and for three years thereafter. Given that the Shareholders' Agreement was subsisting, the petitioners argued that the respondent cannot be permitted to make a bid in any of the airports for offering services which are subject-matter of the non-compete clause.

In this regard, the petitioners argued that the Shareholders' Agreement extended to all airports managed by the AAI, not just Bagdogra and Udaipur, as evidenced by the broad definitions of the terms "Business" and "Services".

2. On Balance of Convenience: The petitioners contended that the respondent's participation in the tenders for ground handling services at Ranchi and Vijayawada Airport would cause irreparable harm and loss to the petitioners.
3. On Section 27 of the Indian Contract Act: The petitioner relied on the judgment of the Supreme Court in **Niranjan Shankar Golikari v. Century Spinning and Manufacturing Ltd.**, [1967 SCC OnLine SC 72], **Gujarat Bottling Co. Ltd. v. Coca Cola Co.** [1955 5 SCC 545], and **Percept D Mark (India) (P) Ltd. v. Zaheer Khan** [(2006) 4 SCC 227] to argue that a negative covenant that seeks to restrain trade during the subsistence of a contract is not in breach of Section 27 of the Indian Contract Act.

Arguments by the Respondent

1. On Limited Scope of Agreements: The respondent maintained that the Shareholders' Agreement was specific to Bagdogra airports and did not extend to other locations. In this regard, the respondent drew attention of the High Court to the recitals under the Shareholders' Agreement. The definition clause in the said agreement limited the definition of Airport to Bagdogra airport.
2. On Termination of Exclusivity Agreement: The respondent referred to Schedule A of the Exclusivity Agreement, which contained a list of airports to which the said agreement would be applicable. This included the airports located at Ranchi and Vijayawada. The respondent emphasised that pursuant to the termination of the Exclusivity Agreement, the respondent was competent to participate in the tender process for the airports located at Ranchi and Vijayawada.
3. On Section 27 of the Indian Contract Act: The respondent argued that a broad interpretation of the non-compete clause would violate Section 27, which prohibits agreements in restraint of trade.

High Court's Analysis

On Prima Facie Case and Non-Compete Clauses

The High Court acknowledged the existence of non-compete clauses in the Shareholders' Agreements but noted that these clauses were limited to the Bagdogra and Udaipur airports. It observed that while the parties had separately entered into an Exclusivity Agreement to cover other airports, the same was terminated. The termination of the Exclusivity Agreement indicated that the parties no longer intended to maintain exclusivity beyond the specific airports mentioned in the Shareholders' Agreements.

On Balance of Convenience and Irreparable Harm

The High Court held that restraining the respondent from participating in the tenders would cause irreparable harm, as it would lose business opportunities. In contrast, the petitioners could be compensated with damages if they succeeded in arbitration.

On Non-Exclusivity Clause in AAI Agreements

The High Court then referred to Clause 2.4 of the concession agreements with AAI, which explicitly provided for non-exclusive operations. This undermined the petitioners' argument that the non-compete clause extended to all AAI airports.

On the Scope of Judicial Intervention

The High Court emphasised that the central question as to whether the non-compete clause in the Shareholders' Agreement violated Section 27 of the Indian Contract Act was a matter for the arbitral tribunal to decide. It declined to pre-empt the arbitration by granting interim relief that would effectively resolve the dispute.

Final Findings

The High Court dismissed the petitions, concluding that:

- (i) The Shareholders' Agreements were limited to specific airports and did not impose non-compete obligations for other locations.
- (ii) The termination of the Exclusivity Agreement allowed the respondent to compete for tenders at Ranchi and Vijayawada airports.
- (iii) The balance of convenience and irreparable harm favoured the respondent, as the petitioners could seek damages in arbitration.

Comment

The Delhi High Court's judgment highlights the importance of precision in drafting contractual clauses, especially in competitive sectors. The High Court's refusal to delve into the substantive merits of the dispute reinforces the principle of minimal judicial intervention in arbitration. This approach aligns with the Arbitration Act's objective of promoting alternative dispute resolution mechanisms.

Contact

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