Provisional Attachment Under PMLA And Its Effect On Arbitral Tribunal's Jurisdiction

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Introduction

As litigation disputes in India become increasingly complex, it is common for multiple legal domains to cross paths with each other. One such example is the conflict between arbitral proceedings concerning subject matter that is also the subject of proceedings under the Prevention of Money Laundering Act, 2002 ("**PMLA**").

In a recent judgment rendered by the Hon'ble Delhi High Court ("**High Court**"), a important legal question was raised, *i.e.*, whether arbitral tribunals possess the authority to resolve disputes concerning subject matter that is otherwise provisionally attached under the PMLA. The Delhi High Court, in ***Lata Yadav v. Shivakriti Agro (P) Ltd***.[1] extensively deliberated on this issue. In this article, we navigate through the facts of the case and the findings rendered by the High Court.

Brief Facts

The dispute originated from a resolution plan submitted by Respondent No. 4 (an LLP) and Respondent No. 2 during the Corporate Insolvency Resolution Process (CIRP) of Respondent No. 3, a rice milling company. To implement the resolution plan, Respondent No.4 entered into a Facility Agreement dated 30.09.2019 with Respondent No. 1, another rice industry company, which provided financial assistance of INR 130 crores (INR 1.3 billion) to Respondent No.4. Respondent No.1 claimed that the agreement was breached and commenced arbitration. The referral Court appointed a Sole Arbitrator ("**Arbitrator**") under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").

As the arbitral proceedings progressed, Respondent No.2 and the representatives of Respondent No.1 were arrested by the Enforcement Directorate ("**ED**"). The ED also issued a provisional order of attachment ("**POA**") against the assets under dispute. Thereafter, the petitioner and Respondent No. 4 filed an application under Section 16(3) read with Section 32(2)(c) of the Arbitration Act seeking to terminate arbitral proceedings on two grounds:

(i) *First*, that the underlying contract was *void ab initio* due to fraud; and

(ii) *Second*, that the subject matter of the dispute (*i.e.*, the assets) had been provisionally attached by the ED under Section 5 of the PMLA.

By the impugned order, the Ld. Sole Arbitrator rejected the application under Section 16(3) read with Section 32(2)(c) of the Arbitration Act. Aggrieved by the order of the Ld. Sole Arbitrator, the Petitioner filed a writ petition against the impugned order.

1 *Lata Yadav v. Shivakriti Agro (P) Ltd*., 2025 SCC OnLine Del 4334.

Issues

The moot proposition before the High Court was whether post the passing of the provisional attachment order, the jurisdiction of the arbitral tribunal is ousted?

Observations of the High Court

At the outset, the High Court observed that the extent of interference when exercising jurisdiction under Article 227 of the Constitution of India is very limited and interference is only justified in exceptional cases where perversity is clearly evident.

On Arbitrability, and Allegations of Fraud

The High Court placed reliance on the ratio laid down in ***A. Ayyasamy v. A. Paramasivam***[2] and ***Rashid Raza v. Sadaf Akhtar***[3] to reiterate that not all allegations of fraud render a dispute non-arbitrable. Only serious allegations, *i.e.*, those frauds which permeate the entire contract, including the arbitration clause or affect public interest, would fall outside the scope of arbitration. Otherwise, mere allegations of fraud simpliciter do not oust the jurisdiction of the arbitral tribunal.

The High Court also endorsed the twin tests set out in ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.***[4] for determining the arbitrability of matters involving allegations of fraud and similar crimes. These tests include:

(i) Whether the extent of alleged fraud is so much so that the underlying arbitration agreement itself is vitiated; and

(ii) Whether the allegations of fraud or criminality pertain to public law domain.

In the absence of either test being satisfied, the High Court held that the matter would be arbitrable.

Speaking on the validity of the underlying arbitration agreement, the High Court relied upon ***N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.***[5], and held that unless the arbitration agreement is *ex facie* invalid or non-existent, the dispute must be referred to arbitration. The High Court noted that in the present case, there was no finding that the arbitration agreement was void, and hence, arbitrability could not be put into question merely due to allegations of fraud under Section 17 read with Section 19 of the Contract Act, 1872.

2 *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386.
3 *Rashid Raza v. Sadaf Akhtar*, (2019) 8 SCC 710.
4 *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*, (2021) 4 SCC 713.
5 *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2021) 4 SCC 379.

On the effect of parallel criminal proceedings

Referring to ***Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee***[6], the High Court observed that the existence of a parallel criminal investigation by the CBI or ED does not preclude the arbitral tribunal from exercising its jurisdiction. A transaction can give rise to both civil and criminal consequences, and arbitral proceedings can proceed independently of criminal trials.

On the inapplicability of Section 41 of the PMLA to arbitral proceedings

The High Court held that Section 41 of PMLA merely prevents civil courts from hearing certain matters, but this restriction does not apply to arbitral tribunals where there is no direct conflict between the PMLA and the Arbitration Act. Additionally, it noted that Section 71 of the PMLA has an overriding effect only when there is an actual inconsistency, which was not the position in the present case.

The High Court observed that the Arbitrator rightly confined himself to the adjudication of contractual disputes on the validity of the facility agreement. While there may be overlap in factual background, the High Court noted that the scope and remit of arbitral proceedings and criminal/ PMLA proceedings are distinct. The High Court also acknowledged that, in the event of any overreach, the award can always be challenged under Section 34 of the Arbitration Act.

The High Court held that simply issuing a POA under PMLA does not oust the jurisdiction of the arbitral tribunal. The High Court opined that bringing the arbitral proceedings to an abrupt halt at this advanced stage was not appropriate.

Comments

The judgment in ***Lata Yadav*** indicates that, during arbitration proceedings, the ED can attach tainted assets or 'proceeds of crime' without influencing the arbitration process. The ruling aims to prevent individuals from using arbitration or insolvency procedures to evade criminal liability.

The crux of the judgment is that criminal and arbitral proceedings, which are both under special statutes, can go hand in hand without barging into the field occupied by the other statutes. However, the judgment does not seem to address what would be the effect of the POA at the pre-arbitration stage, at the post-arbitration stage or at the award enforcement stage.

6 ***Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee***, (2014) 6 SCC 677.

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