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SUPREME COURT OF INDIA

SUNDARAM FINANCE LIMITED VERSUS ABDUL SAMAD AND ANOTHER

The Hon'ble Supreme Court delivered its judgment on February 15, 2018 in the matter of *Sundaram Finance Limited ("Appellant") Versus Abdul Samad & Anr. ("Respondents")*. The Hon'ble Supreme Court adjudicated upon the question as to whether an award under the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "**the Act**") is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or whether the award can be straightway filed and executed in the court where the assets are located.

Background:

The dispute arose on account of default in repayment of loan installments by Respondent No.1 and subsequently arbitration proceedings were initiated by the Appellant in terms of the arbitration clause contained in the loan agreement.



As no one appeared for the Respondents despite the service of Notice upon the Respondents, an ex-parte arbitral award was passed in favour of the Appellant. Subsequent to the passing of the arbitral award, the Appellant filed execution proceedings in the jurisdiction of the courts at Morena, Madhya Pradesh. However, following the view adopted by the Hon'ble Madhya Pradesh High Court that the transfer of decree should be first obtained before filing the execution petition before the court where assets are located, the trial court returned the execution application on account of lack of jurisdiction and directed the same to be presented to the court of competent jurisdiction. The effect of the judgment was that the Appellant was required to file the execution proceedings first before the court of competent jurisdiction in Tamil Nadu, obtain a transfer of the decree and only then could the proceedings be filed in the trial court at Morena. Subsequent to the order of the trial court, the Appellant approached the Hon'ble Supreme Court by way of Special Leave Petition on the ground that no useful purpose would be served by approaching the Hon'ble Madhya Pradesh High Court in light of the view already expressed by the High Court which is in conflict with the opinions of some other High Courts.

Decision:

After considering several conflicting views taken by various High Courts on the said issue, the Hon'ble Supreme Court observed that the arbitral proceedings stand terminated on the making of the final award and hence Section 42 of the Act which deals with jurisdiction over arbitral proceedings would not apply to an execution application.



The Hon'ble Supreme Court held that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining transfer of the decree from the court, which would have jurisdiction over the arbitral proceedings.

INFORMATION UTILITIES UNDER THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (“IBBI”)

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (AMENDMENT) REGULATIONS, 2018

The Insolvency and Bankruptcy Board of India (“IBBI”) has amended *the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016* on February 06, 2018.

The following amendments have been notified:

1. Inserted definitions: Evaluation matrix, fair value and liquidation value.
2. Regulation 27: Fair value has to be determined along with liquidation value.
3. Regulation 35 shall be substituted by:

“35. Fair value and Liquidation value.

- (1) *Fair value and liquidation value shall be determined in the following manner: -*
 - (a) *the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;*

5. The following clause has been inserted in after regulation 36:

“36A. Invitation of Resolution Plans

- (1) The resolution professional shall issue an invitation, including evaluation matrix, to the prospective resolution applicants in accordance with clause (h) of sub-section (2) of section 25, to submit resolution plans at least thirty days before the last date of submission of resolution plans.*
- (2) Where the invitation does not contain the evaluation matrix, the resolution professional shall issue, with the approval of the committee, the evaluation matrix to the prospective resolution applicants at least fifteen days before the last date for submission of resolution plans.*
- (3) The resolution professional may modify the invitation, the evaluation matrix or both with the approval of the committee within the timelines given under sub-regulation (1) or sub-regulation (2), as the case may be.*
- (4) The timelines specified under this regulation shall not apply to an ongoing corporate insolvency resolution process-*

 - (a) where a period of less than thirty-seven days is left for submission of resolution plans under sub-regulation (1);*
 - (b) where a period of less than eighteen days is left for submission of resolution plans under sub-regulation (2).*
- (5) The resolution professional shall publish brief particulars of the invitation in Form G of the Schedule:*

 - (a) on the website, if any, of the corporate debtor; and*
 - (b) on the website, if any, designated by the Board for the purpose.”*



6. Sub- Regulation (4) of regulation 39 has been amended to add that the resolution professional shall submit the resolution plan at least fifteen (15) days before the expiry of the maximum period permitted. This will enable the Committee of Creditors to close a resolution process as early as possible subject to provisions in the Code and the Regulations. A proviso has also been added to the said regulation stating that the timeline provide in the sub-section shall not apply to ongoing corporate insolvency resolution process which has completed 130th day from its commencement date.
7. Insertion of additional **FORM G** which is an *“Invitation of Resolution Plans”*



INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

The Insolvency and Bankruptcy Board of India (“**IBBI**”) passed an *Order dated February 26, 2018*. The Order passed was in the matter of Grant of Certificate of Registration of an Insolvency Professional under Regulation 6 and Regulation 8(3) (b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (“**Regulation 2016**”).

With a view to keep the procedure transparent Regulation 6 of the Regulation 2016 mandates that persons making an application for such certificate of registration provide the IBBI with additional documents as requested by the IBBI. In this particular case the documents submitted by the Applicant was an FIR which was filed against the Applicant. A charge of aiding and abetting the offence of outraging the modesty of woman was made against the Applicant under Section 509 of the Indian Penal Code 1860. On scrutinizing the documents, the IBBI made prima facie opinion that the registration ought not be granted to the Applicant as the Applicant is not fit or proper to be appointed as an Insolvency Professional (“**IP**”).

It was submitted by the Applicant that only criminal proceedings were initiated and hence it does not disqualify the Applicant under Regulation 4 of the Regulation 2016.

Regulation 4 of the Regulation 2016 is as follows:



“Eligibility.

4. No individual shall be eligible to be registered as an insolvency professional if he

(a) is a minor;

(b) is not a person resident in India;

(c) does not have the qualification and experience specified in Regulation 5 or Regulation 9, as the case may be;

(d) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(e) he is an undischarged insolvent, or has applied to be adjudicated as an insolvent;

(f) he has been declared to be of unsound mind; or

(g) he is not a fit and proper person;

Explanation: For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence, including financial solvency and net worth.”

It was held by the IBBI that the pendency of such a case is material in determining the eligibility of the IP by stating that:

“The integrity, conduct, reputation, character and competence of the applicant are of material consideration. It is material to note how/ what others feel about the applicant who has been charge -sheeted for offence under section 509 of the Code i.e. for word,



gesture or act intended to insult the modesty of a woman, using foul language, ill – treating etc. Pendency of such cases questions the conduct, behaviour of an individual which impacts his reputation.”

In view of the same the IBBI rejected the application of the Applicant for registration as an insolvency professional.



COMPETITION COMMISSION OF INDIA

The Competition Commission of India (“**CCI**”) on *February 08, 2018* passed its Order in the matter of Matrimony.com Limited and Consumer Unity & Trust Society (CUTS) (“**Informant**”) versus Google LLC, Google India Private Limited and Google Ireland Limited (herein collectively referred to as “**Google**”).

Acting on a complaint by the Informant under Section 4 of the Competition Act, 2002 (“**Act**”), the fairtrade watchdog CCI imposed a penalty of Rs. 1,35,86,00,000/- (Rupees One Hundred and Thirty Five Crore and Eighty Six Lakh Only) for infringing anti-trust conduct.

Background

The case against Google dates back to 2012 when Bharat Matrimony, now known as matrimony.com, and Consumer Unity & Trust Society had complained to the competition regulator about Google’s anti-competitive behaviour. The internet giant provides online search services and online advertising business, namely AdWords and AdSense.

Google was accused of abusing its dominant position in online general web search and online search advertising services in India on the following accounts:

- Favouring its own services and of its partners by manually manipulating its search results.



- Indulging in search bias, that is, manipulating the search algorithm to suppress results of competition and unfairly promoting its own services like Google News, YouTube, Google Maps etc. This reduces traffic to competing specialised search services.
- Leveraging its dominance in the online search market to unduly benefit its own services like YouTube, Google Maps etc.
- Prohibiting advertisers from advertising on words that might be confused with Google's trademarked words.
- Making it difficult for advertisers to use competing platforms by imposing prohibitive switching costs. Since Google is an essential trading partner because of its dominance, advertisers are forced to stay with it.

Decision

The Commission directed the Director General (“**DG**”) to conduct an investigation into the matter consequent to which an Investigation report was submitted by the DG. In its final report the DG had noted that based on market share, size, resources, economic power, commercial advantages etc, Google was dominant in the Online General Web Search Services and Online Search Advertising in India.

Pursuant to the Investigation report the Commission partly agreed with the DG's conclusion and held as follows:



- “(a) Ranking of Universal Results prior to 2010 which was not strictly determined by relevance. Rather the rankings were pre-determined to trigger at the 1st, 4th or 10th position on the SERP. Such practice of Google was unfair to the users and was in contravention of the provisions of Section 4(2)(a)(i) of the Act.*
- (b) Prominent display and placement of Commercial Flight Unit with link to Google’s specialised search options/ services (Flight) amounts to an unfair imposition upon users of search services as it deprives them of additional choices and thereby such conduct is in contravention of the provisions of Section 4(2)(a)(i) of the Act.*
- (c) The prohibitions imposed under the negotiated search intermediation agreements upon the publishers are unfair as they restrict the choice of these partners and prevent them from using the search services provided by competing search engines. Imposing of unfair conditions on such publishers by Google amounts to violation of the provisions of Section 4(2)(a)(i) of the Act. Google is doing so because it has dominance in the market for online general web search to strengthen its position in the market for online syndicate search services. This amounts to violation of the provisions of Section 4(2)(e) of the Act. Further, as competitors were denied access to the online search syndication services market, contravention of Section 4(2)(c) of the Act is also made out.”*

The Commission did not find any transgression in Google’s specialized search design, AdWords, online intermediation and distribution agreements. Partially holding Google responsible for infringing anti-trust laws, the Commission directed Google to deposit the fine within 60 (sixty) days. The Order was passed by a majority of 4-2 with two members dissenting.



It was held by the dissenting members that regulatory intervention should be based on evidence and not mere perception. Finding that the DG was unable to provide substantial evidence and competitive analysis to show that Google's market dominance lead to any discrepancies in its conduct and stifling of any innovations, the dissenting members did not hold Google responsible for any contravention under Section 4 of the Act.

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Warm Regards,

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