



Litigation

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THE SUPREME COURT OF INDIA UPHOLDS THE SANCTITY OF INTERNATIONAL ARBITRATION

The Supreme Court of India has today handed down its judgment in a seminal case in Indian arbitral jurisprudence; *Bharat Aluminium Co. v Kaiser Aluminium Technical Service, Inc.* (Civil Appeal No. 7019 of 2005).

In a decision which will be welcomed by international investors into India, the Constitutional Bench of the Indian Supreme Court has held that the provisions of Part I of the Indian Arbitration Act 1996 have no application to international commercial arbitration proceedings conducted outside of India. In the words of the Honourable Justice Surinder Singh Nijjar, awards rendered by international tribunals seated outside of India, "... would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Arbitration Act, 1996."

The effect of the 190 page Judgment, from India's highest court, is that an application for interim relief (in the form of, for example, an injunction) cannot be brought pursuant to Part I of the Indian Arbitration Act 1996 in cases where the seat of arbitration is outside of India.

Thus, where an international investor and an Indian counterparty agree to refer disputes arising under a contract to international arbitration seated outside of India, neither party will be able to use the machinery in the Indian Arbitration Act 1996 to obtain an injunction from the Indian Courts so as to restrain those arbitration proceedings.

The decision should therefore serve to thwart what many commentators have seen as the concerning propensity of the Indian Courts (which arose in material part as a result of the decision in *Bhatia International v Bulk Trading S.A. & Anr* (2002) 4SCC 105) to intervene in international arbitration proceedings conducted overseas.

Whilst today's judgment is only of prospective effect (and therefore only applies to arbitration agreements entered into post the date of the Judgment), it will serve to increase the international community's confidence in the use of international arbitration when looking to invest into India.

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