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Tata Sons Pvt. Ltd. v. Siva Industries & Holdings Ltd.

(2023) 5 SCC 421

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Introduction

In 2006, Tata Sons Pvt. Ltd. ("Tata Sons") signed a Share subscription agreement with Siva Industries and Holdings Ltd. ("Siva Industries") and Tata Teleservices Ltd. ("TTSL") to issue and distribute TTSL shares to Siva Industries. In November 2008, Tata Sons, TTSL, and NTT Docomo Inc. ("Docomo") signed yet another Share Subscription Contract that allowed Docomo to purchase new and secondary shares of TTSL to obtain a 26% stake in the business. Siva Industries took part by selling Docomo its shares in a share purchase agreement on March 3, 2009. Additional details about the roles and deliverables between Tata Sons, TTSL, and Docomo were also included in a Shareholders Agreement dated March 25, 2009. An Inter Se Agreement was also signed by Siva Industries, Tata Sons, TTSL, and its proprietor, Mr. C. Sivasankaran. It said that if Docomo exercised the selling option under the Shareholders Agreement, Siva Industries and the promoters thereof would buy back shares on an equitable basis.

Background

The Tata Sons (P) Ltd. v. Siva Industries and Holdings Ltd. case centers on a complicated set of agreements and ensuing disagreements resulting from a share subscription agreement. The main legal question that the Supreme Court was asked was whether Section 29A of the

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Arbitration and Conciliation Act, 1966, should be applied and interpreted, especially regarding international commercial arbitration.

Facts

Siva Industries had acquired shares of Tata Sons between the periods 1961 and 2001. In 2017, Tata Sons did a scheme of arrangement for the conversion into a private limited company from a public limited company. Siva Industries challenged this conversion. Tata Sons Pvt. Ltd entered into joint venture agreements along with other parties, including Siva Industries, to create and operate a manufacturing facility for a specific industrial product. However, this partnership conflict arose due to several types of contractual obligations, including those related to investments, operational control, and profit-sharing. Tata Sons Pvt. Ltd. sued Siva Industries and Holdings Ltd. and the other defendants for breach of certain contracts, misrepresentation, and violation of intellectual property rights.

The present case has a factual matrix as given below:

- 2006: Tata Sons (Applicant), Siva Industries and Holdings Ltd (Respondent No. 1), and Tata Tele Services Ltd (TTSL) entered into a Share Subscription Agreement for the allotment of shares of TTSL to Siva Industries.
- 2008: Another Share Subscription Agreement was entered into between NTT Docomo Inc. (Docomo), TATA Sons, and TTSL, which included Docomo's intention to purchase 26 percent of TTSL shares.
- 2009: Docomo purchased shares of Siva Industries through a secondary share purchase Agreement. After that, an inter-se Agreement was executed among TATA Sons, TTSL, and the Respondents, those being Siva Industries and its promoter, Mr. C. Sivasankaran (Respondent No. 2), who acted as guarantor. This agreement bound the Respondents to acquire, to the extent of their holdings in TTSL, the shares for which Docomo chose to exercise its sale option under the Shareholders' Agreement.
- 2014: The sale option was invoked by Docomo.

- 2016: The award in the arbitration proceedings initiated by Docomo against TATA Sons under the rules of the London Council for International Arbitration entitled TATA Sons to pay sums to Docomo and acquire TTSL shares.
- 2017: TATA Sons called upon Siva Industries to fulfill its obligations under the Interse Agreement. Disputes arose, and subsequently, TATA Sons issued a notice of arbitration to the Respondents. The Respondents failed to appoint their nominee arbitrator.
- 2018: A Petition was filed by TATA Sons before the Supreme Court under Section 11(6) of the Arbitration and Conciliation Act[1]. There was a need for the constitution of an arbitral tribunal for international commercial arbitration, as the second respondent was a foreign resident. The Hon'ble Supreme Court appointed Justice S.N. Variava (Retd.) as the sole arbitrator with the consent of the parties. The parties mutually agreed to extend the award's original twelve-month period by another six months until August 14, 2019.
- 2019: In the course of the arbitration proceedings, Siva Industries was subjected to insolvency proceedings, leading to a moratorium over the latter. Subsequently, an order of the Supreme Court lifted the Corporate Insolvency Resolution Process (CIRP) against Siva Industries in June 2022. TATA Sons then filed a Miscellaneous Application for continuing the arbitration on the plea that the amendment of Section 29A of the Arbitration and Conciliation Act in 2019[2], which exempted international commercial arbitrations from the mandatory time limit, should apply.[3]

Issues

1. Whether looking ahead, arbitrations fall under the amended provisions of Section 29A of the Arbitration and Conciliation Act, 1996, which leave commercial arbitrations globally outside of the twelve-month timeline to make an arbitral award, as of August 30, 2019?

[1] The Arbitration and Conciliation Act,1996,§ 11(6)
[2] The Arbitration and Conciliation Act,1996,§ 29(A)
[3] Tata Sons Pvt. Ltd. (Formerly Tata Sons ... vs Siva Industries And Holdings Ltd, Ors., 2023 (SC) 39, https://indiankanoon.org/doc/153994157/

2. Whether the revision of Section 29A is remedial and by procedure prescribed, and is it to be made retrospective and applied to continuing arbitral proceedings?[4]

Contentions of the Parties

Petitioners

The applicant stated that the 2019 amendment to Section 29A excluded international commercial arbitrations from being covered under the mandatory 12-month time limit for rendering an award. It was contended that, being procedural, the amendment should have been applied retroactively to all arbitration proceedings that were pending as of August 30, 2019, i.e., the date when the amendment came into effect.

The applicant submitted that since the amendment, ongoing international commercial arbitration can proceed without obtaining extensions of time from the Court. It was contended that since the 12-month rule from the conclusion of pleadings has been removed specifically for international commercial arbitrations, the present proceedings should not be bound by the prior statutory time limit.

Without prejudice to all the foregoing arguments, the applicant contended that if the Court should find amended Section 29A inapplicable to the present arbitration, then an extension of time ought to be granted to the sole arbitrator to complete the proceedings.

Respondents

The second respondent argued that international commercial arbitration does not fall outside the ambit of Section 29A, even after the 2019 amendment.[5]. It was submitted that, had the applicant's interpretation of Section 29A been correct, and international commercial arbitration had been excluded from any time frame, it would have resulted in no legislative control throughout such proceedings.

In matters apart from those conducted by an arbitral institution, such as the present one, the second respondent contended that the legislature did not intend to eliminate the Court's

[4] The Arbitration and Conciliation Act,1996,§ 29(A)
[5] The Arbitration and Conciliation Act,1996,§ 29(A)

oversight regarding the time frame within which arbitral proceedings may take place. The respondent stressed the importance of not leaving the arbitration duration entirely to the discretion of the arbitral tribunal, especially in cases where it is determined that the proceedings will be governed by Indian law and conducted within India.

Refusing to provide such a thorough explanation of the respondent's arguments across all sources, they also seem to be contesting the retrospective operation of Amendment 2019, possibly arguing for the continued applicability of the pre-amendment version of Section 29A.

Judgement

The ruling from the Supreme Court favored the applicant and involved interpreting the applicability of the revised Section 29A of the Arbitration and Conciliation Act about international commercial arbitration. The basic findings of the Court are outlined in the following paragraphs.

The Court noted a shift introduced by the amendment of 2019 in Section 29A(1), which now has the stipulation that the 12-month time period during which an arbitral award is to be made applies to "matters other than international commercial arbitration." Thus, the Court held that post the amendment, this time limit is mandatory only in domestic arbitrations and merely directory in international commercial arbitrations, wherein the arbitrators must make an effort to make the award as expeditiously as possible.

The 2019 amendment was held to be procedural and remedial by the Court in Section 29A. As a matter of general rule, procedural laws are assumed to be retrospective in their operation unless legislative intent to the contrary appears explicitly.

The Court observed that the 2019 Amendment Act did not contain the provision found in Section 26 of the 2015 Amendment Act[6]Specifically, the application of the amended Section 29A was determined to be prospective. Therefore, the Court held that the revised Section 29A would apply retrospectively, and would cover all pending arbitral proceedings as of 30th August 2019.

[6] The Arbitration and Conciliation Act, 2015(Amended § 26

Given the above findings, the Supreme Court allowed the application, stating that the sole arbitrator was within his jurisdiction to rule on any further extension required for the conclusion of the arbitration proceedings. The Court took the stand that the arbitrator must endeavor to conclude the proceedings as soon as possible.[7]

Rationale

The key principles on which the Court's reasoning was based are:

1. Legislative Intent: The Court analyzed the legislative history and specific language of the 2019 amendment to Section 29A. The introduction of the phrase "in matters other than international commercial arbitration" conveyed the clear intention of the legislature to exclude these arbitrations from the strict timeline. The amendment was made in response to criticisms made against international arbitral institutions that the mandatory timelines and court intervention for extensions were obstructing the efficiency and flexibility of international commercial arbitration.[8]

2. Nature of the Amendment: The Court characterized the 2019 amendment as procedural and remedial. It conferred no new rights or liabilities but changed the procedure of concluding arbitration proceedings. Generally, procedural laws are deemed retrospective.

3. Harmonious Interpretation: The Court's interpretation aimed to harmonize the Indian law of arbitration with international best practices and improve India's image as an arbitration-friendly jurisdiction by giving more leeway for the conduct of international commercial arbitrations.

4. Party Autonomy and Arbitrator's Domain: By ruling that the mandatory timeline shall not apply to international commercial arbitrations, the Court forwards the principles of party autonomy and the arbitrator's jurisdiction in the effective conduct of the proceedings, including the power to decide whether or not the extension should be granted.

[7] TATA Sons (P) Ltd. v. Siva Industries and Holdings Ltd, Ors., 2023 (SC) 39
[8] TATA Sons Pvt Ltd (Formerly TATA Sons Ltd) v. Siva Industries and Holdings Ltd & Ors, Drishti Judiciary, https://www.drishtijudiciary.com/alternative-dispute-resolution/tATA-sons-pvt-ltd-formerly-tata-sons-ltd-v-siva-industries-and-holdings-ltd-%26-ors

Analysis

Cases as *Vidya Drolia vs Durga Trading Corporation*[9], where in the importance lay purely in the synergies they established in enhancing independence among parties falling under the same Act. In the present case above, by preserving the arbitration provision in the Share Purchase Agreement, the parties are therefore making it abundantly evident that they intend to reduce court intervention in arbitration. In *Vidya Drolia v. Durga Trading Corporation*, the Supreme Court emphasized that panels of arbitrators should resolve disputes as a first step of which resonates with earlier judgments of Indian courts. This judgment further stated that courts should not interfere except in cases where the arbitration agreement is completely flawed, non-existent, or impossible to achieve. Therefore, this pro-arbitration stance in Indian law is a positive development for international business, which needs speed and transparency in dispute resolution. However, there are arenas in which the ruling lends itself to scrutiny; among the many is the phrase limited grounds for challenging arbitral awards, one of the controversial issues in this ruling.

Even while retaining minimum judicial intervention, the court has not sufficiently addressed the procedural issues raised by Siva Industries. Those who advance this argument against arbitration as a method of dispute settlement may further argue that it always tends to favour convenience over justice. This is, for example, where the Court would have gone into the issues relating to procedure to ascertain that the arbitral process was fair and according to the principles of natural justice. Without this consistency, in the best of cases, Indian arbitration would remain a shaky landscape, which would trap parties in making arbitration their preferred mode of settling disputes. In doing so, it might have set a stronger precedent in securing procedural safeguards alongside the timeliness of arbitration. I find this judicious pronouncement to be an appropriate step; however, there are some limits to it. The laudable objective of limited judicial interference, per se, does not justify a situation where a judge may have to walk a tightrope.[10] When arbitration replaces litigation, it is a challenge to walk that thin line between fairness and efficiency. Procedural errors that are ignored might lessen

[9] Vidya Drolia v. Durga Trading Corporation, AIRONLINE 2020 SC 929
[10] TATA Sons (P) Ltd. v. Siva Industries and Holdings Ltd, Ors., Team Ledroit Indiahttps://ledroitindia.in/tata-sons-p-ltd-v-siva-industries-and-holdings-ltd/

parties' confidence in the arbitral process. This judgment emphasizes the necessity of constant judicial oversight to ensure that arbitral procedure remains impartial and efficient, while at the same time enhancing India's arbitration system. Creating a climate of investment, which will be favorable for multinational corporations, is also a consequence of the assurance that arbitration awards are enforceable legally. This is the balance between the demand of the pro-investor stand versus protection for weaker parties, especially in an extremely unequal power situation between the contracting parties to an arbitration agreement. The judge thus has to proceed cautiously, not to allow an incorrect turn for abuse of arbitration. All in all, this is quite a momentous decision and makes India's favor quite clear toward arbitration. It certainly is indicative of the inclination of the judiciary towards maintaining parity.

Defects of the Law

While the judgment of Tata Sons v. Siva Industries finally resolved the core legal questions in the case, there remain a few areas of the adjudication that deserve criticism. Since the definition of unconscionability may differ depending on the judge making the decision, some have questioned whether the arbitration agreement can be enforced. Another critique concerns the damage calculation process, which was seen to be non-transparent and unscientific. Lastly, the court's conclusion that Siva Industries did not commit false misrepresentation may also be contested. An intrinsically subjective assessment of purpose and reliance forms the basis of this conclusion.

The modification to Section 29A of the Arbitration and Conciliation Act, based on recommendations made by the Justice B.N. Srikrishna Committee, effectively exempted international commercial arbitration from the rigid twelve-month limit imposed on domestic cases. This change was brought about after continuous criticism from international arbitral institutions regarding the imposition of court deadlines, contending that arbitral institutions have their procedures and timelines tailored to the nature of each case. In most jurisdictions, timeframes are determined in conjunction with the parties involved. This criticism led the

legislators to change the law in favor of allowing international arbitration to function flexibly and freely from the rigid timelines imposed by courts.[11]

Overall, in the judgment of *TATA Sons v. Siva Industries*, the court upheld the enforceability and validity of the arbitration clause in the joint venture agreement (JVA) and held that there was no coercion or unconscionability. It held that some violations of the JVA had taken place and granted damages to TATA Sons for those evidenced. Even though there were differences identified in the presentations made in contract negotiations, the court held that they were not fraudulent misrepresentations, and Siva Industries was not liable on that basis. The court did, however, hold that Siva Industries had misappropriated TATA Sons' intellectual property without a license and ordered an injunction and awarded damages. The damages were computed based on a principled methodology, which sought to remunerate TATA Sons for the losses suffered financially due to the established violations and the infringement of intellectual property.

Conclusion

Much-needed and practical, the interpretation given by the Supreme Court in this case verily constitutes the right interpretation of the revised Section 29A of the Arbitration and Conciliation Act. The legislative intent behind amending this section in 2019 is accurately forged for the purpose that international commercial arbitrations must be kept free from all the strict timetables set for domestic arbitration. This interpretation is critical to installing an environment in India that favors arbitration for the settlement of cross-border commercial disputes. The reason of the Court for giving the amendment a retrospective status is also quite acceptable as it follows the general rule that procedural laws take effect in pending proceedings. Thus, in the case of international commercial arbitrations pending at the time of the amendment, the advantages of the amended provision should now immediately follow to prevent any further unreasonable delay and complications occasioned by the previous mandatory timetable. The judgment meets the need for an efficient arbitration operating procedure with the reality of complicated international disputes where, at times, immovable

[11] TATA Sons (P) Ltd. v. Siva Industries and Holdings Ltd, The Amicus Curiae, https://theamikusqriae.com/tata-sons-pvt-ltd-formerly-tata-sons-ltd-v-siva-industries-and-holdings-ltd-ors-2023/

timelines would obstruct the very integrity of the arbitral process. The Supreme Court has, instead, stated that the arbitral tribunal and parties have sufficient discretion to determine their timeline under international commercial arbitration, which propels India's image as a favorable and trustworthy seat for international arbitration. One must note, however, that in proposed terms, the past mandatory time frame is no longer available, while the general principle of speedy resolution of disputes persists. It remains that arbitral tribunals in international commercial arbitrations should duly take care in issuing the awards and avoid all unnecessary delay. It is in this landmark ruling that the court decided to touch on yet another important area of international commercial arbitration, reflecting a progressive spirit aimed at achieving international best practices within arbitration and advancing a more efficient and dynamic process for the settlement of international commercial disputes.