

## NEWSLETTER 5

### **Appellate Dimensions: Articles 136 and 227 in the Realm of Arbitral Tribunal Ruling**

#### **Introduction:**

Arbitration, an alternative dispute resolution method, has gained significant importance in India. The Arbitration and Conciliation Act of 1996 (referred to as "the Act") is the foundation for governing the arbitration process in the country. Carefully examining the Act reveals a purposeful legislative intention to limit judicial interference, restricting it to specific situations. The legal landscape regarding this matter is illustrated by notable cases such as *Deep Industries Limited v. Oil and Natural Gas Corporation Limited*<sup>1</sup>, *Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.*<sup>2</sup>, and *Vijay Karia and Others v. Prysmian Cavi E Sistemi SRL and Others*<sup>3</sup>.

#### **The Act as an Exhaustive Code:**

The Act clearly states that it is a comprehensive law, highlighting that the court's involvement is limited to its guidelines. Section 5 and Section 37 define the boundaries of such involvement, allowing for only a few appeals from specific court or arbitration orders. However, despite these legal provisions, parties have turned to the Supreme Court under Article 136 of the Constitution and to the High Courts under Articles 226-227.

#### **The case of Deep Industries Limited:**

In the case of *Deep Industries Limited* in 2020, the Supreme Court reasserted the purpose of the Act to reduce interference from the judiciary in arbitration proceedings. They highlighted Section 5 and Section 37 as ways to limit this interference, aligning with the influential *SBP and Co.* ruling. The Court warned against the High Courts considering petitions under Articles 226 and 227, emphasising that such actions would undermine the intended goal of limited intervention set out by the legislature.

#### **Article 227 – Rules of restraint:**

---

<sup>1</sup> (2020) 15 SCC 706

<sup>2</sup> 2020) 1 SCC 75

<sup>3</sup> (2020) 11 SCC 1

Although it cannot be denied that judicial intervention under Article 227 has to be kept to the very minimum, this does not mean that the court will not interfere at all. While it may be true that interference by a court in the exercise of jurisdiction by another tribunal calls for great restraint – for many might carry the risk of a clash of jurisdictions, especially in the field of industrial disputes where decisions are usually taken on facts – yet, this is no reason to strike down orders which are revealed at any time to be ‘patently shown to lack inherent jurisdiction’. We have always held that though the restraint in intervention on the part of a court must be very great, the inquiry as to jurisdiction cannot at all be ruled out. Intending to maintain this rule of restraint, it is necessary to eschew any interference with the merits of underlying disputes refrain from determining the substantive question and limit overall judicial scrutiny to the correctness of the assumption of jurisdiction only. The Supreme Court in *Deep Industries Limited* singled out Article 227 as deserving particular scrutiny in the context of labour disputes. What is more, the later case of *Bhaven Construction* affirmed this approach and ‘stressed’ that ‘intervention under Articles 226/227 is allowed only in cases of “bad faith” and “exceptional circumstances” or if the party is rendered remediless.’

#### **Vijay Karia Case – Article 136 Jurisdiction:**

Scope of interference under Article 136: In respect of an appeal under Section 48 of the Act – which pertains to the enforcement of foreign awards – in the judgment in *Vijay Karia (2020)*, the Supreme Court reiterated the legislative policy of limited appeal concerning foreign awards. The law was to be enforced as such, leaving no discretion for the court. The exercise of Article 136 jurisdiction must not be used to defeat the legislative policy of limited appeal concerning foreign awards. This discretion should be sparingly exercised to determine an issue of law yet to be addressed.

#### **Conclusion:**

In sum, on balance, the judicial interpretation of the extent of limited judicial intervention in the arbitration process keeps the legislative intent enshrined in the Arbitration and Conciliation Act, 1996 and the underlying text of the Constitution of the rights to judicial intervention. The ratios in *Deep Industries Limited*, *Bhaven Construction* and *Vijay Karia*, collectively, reveal the necessity to maintain the sanctity of the arbitration process while ensuring minimal judicial intervention, which by judicial position has to be provided in exceptional circumstances. In these times of change and reform in the Indian arbitration

world, the parties need to understand these cases in detail, to advance their claims and defences in the ultimate determination of their disputes equitably and fairly.

Best,

Kashish Chadha

III LL.B.

Arbitration Cell, ILSCA