

February 14, 2008

Business & Technology Sourcing Practice  
International Arbitration Practice

## Indian Supreme Court Paves the Way to Challenge Foreign Arbitration Awards in India on Broad Public Policy Grounds

On January 10, 2008, the Supreme Court of India issued an important decision in the case *Venture Global Engineering v. Satyam Computer Services, Ltd.* regarding the enforcement in India of foreign arbitration awards. The decision has implications both for companies doing business involving India and for companies with substantial assets located in India. Specifically, the Supreme Court upheld a challenge in India to a foreign arbitration award on the grounds that the relief contained in the award violated certain Indian statutes and was therefore contrary to Indian public policy pursuant to Part I of India's Arbitration and Conciliation Act, 1996 (the "Arbitration Act"). In reaching its decision, the Supreme Court in *Venture Global* for the first time ruled that broadly interpreted public policy considerations that were previously only grounds for challenging domestic arbitration awards are now appropriate grounds for challenging foreign arbitration awards.

The case arose from a challenge in India by a US company, Venture Global Engineering (VGE), to set aside an award rendered against it in an arbitration proceeding in London under the rules of the LCIA. The relief in the award implicated VGE's interests in India and called for the transfer of certain shares that VGE owned in an Indian joint venture. VGE's challenge asserted that the relief in the award violated certain Indian corporate and foreign investment statutes, specifically the Foreign Exchange Management Act, 1999, and therefore constituted a "conflict with the public policy of India" pursuant to the general provisions contained in Section 34 of Part I of the Arbitration Act.

The general provisions of Part I of the Arbitration Act set forth certain grounds on which arbitration awards may be challenged, including a violation of Indian public policy. In 2002, the Indian Supreme Court held, in *Bhatia International v. Bulk Trading*, that interim relief was available to parties under these general provisions with respect to the enforcement of a foreign arbitration award in India. In 2003, the Court issued its opinion in *ONGC v. Saw Pipes*, which broadly interpreted the definition of "public policy" under the general provisions in Part I to permit challenges to an arbitration award if the relief in the award violates Indian statutes.

Now, with *Venture Global*, the Indian Supreme Court has concluded that all of the general provisions of Part I of the Arbitration Act, including the expansive interpretation of those provisions under its *Saw Pipes* decision, do apply to foreign arbitration awards. Notably, the Court's ruling was notwithstanding the fact that Part II of the Arbitration Act contains provisions that specifically address the enforcement in India of foreign arbitral awards, including specific public policy considerations that conform to the New York Convention, of which India is a member, and that have been more narrowly interpreted than the general provisions in Part I.

Importantly, however, the Supreme Court further held in its *Venture Global* decision that Part I of the Arbitration Act, in its entirety or partially, may be either expressly or impliedly excluded by contract parties in international commercial arbitration so that Part I, or that portion excluded, may not be a basis for

challenging an arbitration award arising from a dispute involving that contract.

## The Decision's Relevance for Companies with Business Interests in India

The Indian Supreme Court's *Venture Global* decision paves the way to challenge foreign arbitration awards in an Indian court based on broad public policy grounds pursuant to Part I of the Arbitration Act. The decision has important implications for any company that may find itself involved in an arbitration proceeding involving business interests in India. It also has implications for those companies that have assets located in India that might be the future subject of an enforcement proceeding.

The decision is particularly relevant for the offshore outsourcing industry because of India's prominence in this space. India is one of the top offshore destinations for companies in the United States that outsource information technology and business processes. For many reasons, arbitration is the vastly preferred method of dispute resolution in most commercial contracts involving India. However, as a result of the *Venture Global* decision, new risks exist with respect to the impact of Part I of India's Arbitration Act on contract parties' rights and expectations in agreements involving India and that contain arbitration clauses. The Supreme Court's decision did recognize, however, the right of contract parties to address the application, in whole or in part, of Part I of the Arbitration Act in their contracts. Accordingly, these new risks arising from the Supreme Court's decision may be addressed and minimized by analysis of Indian law concerning the rights and interests involved in a particular transaction and by carefully drafted provisions in the underlying contract that expressly address the issues raised by the Supreme Court's holding.

To obtain a copy of the Supreme Court's decision or to further discuss the decision's implications for companies doing business in India, please contact [Sonia Baldia](#) (+1.202.263.3395), [David Carpenter](#) (+1.312.701.8432), [Ashish Prasad](#) (+1.312.701.8438) or [Bill Knoll](#) (+1.713.238.2636).

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