APAC NEWSLETTER

Legal, Compliance and ESG

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Dear Readers, we bring to your reading and attention following topics:

A. SECTION 65-B OF THE INDIAN EVIDENCE ACT, 1872 DOES NOT APPLY TO ARBITRAL PROCEEDINGS

~ Jayesh Gupta, Manager- Legal

To understand the below case law first we shall understand what is Section 65B of the Indian Evidence Act.

Any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the "computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

In the case of Millennium School v. Pawan Dawar (O.M.P. (COMM) 590/2020 10.05.2022), in the said case the parties entered into an agreement wherein the respondent agreed to provide transportation services to the students and the employees of the Petitioner using the buses owned by the Petitioner. The agreement was for 8 years and provided a lock-in period of 5 years. A dispute arose between the parties. Accordingly, the Petitioner terminated the agreement. Subsequently, the respondent applied for the appointment of the arbitrator, and the Court referred the parties to the arbitration.

The arbitrator partly allowed the claims of the respondent on the ground that the termination of the agreement was illegal as the agreement provided for no termination during the lock-in period except for the grounds provided under Clause 1 of the agreement. It rejected the evidence of the Petitioner on the ground that it did not comply with the requirement of Section 65-B of the Indian Evidence Act. Accordingly, the arbitrator held that the Petitioner has failed to prove the deficiency in services of the respondent.

The Court held the Petitioner was justified in terminating the agreement when a material breach occurred on part of the respondent. The Court further held that the arbitrator erred in rejecting the documents of the Petitioner on the ground that the requirement of Section 65-B was not complied with. The Court held that in terms of Section 19 of the Arbitration & Conciliation Act read with Section 1 of the Indian Evidence Act, the provisions of Evidence Act do not apply to arbitration proceedings, therefore, there was no necessity of complying with the requirement of Section 65-B. It held that the tribunal could not reject the evidence of the respondent after initially admitting them solely on the ground that the certificate under Section 65-B was defective.

The impugned award of the arbitral tribunal was set aside to the extent that the Respondent's claim for loss of profits and cab charges were provided to him.

This judgment shows the pro-arbitration approach of the Indian Judiciary. The said judgment will help the parties in speedy disposal absolving themselves from technical objections from the other side.

B. Look Out Circular (LOC) can be issued against personal guarantor in the interest of public money: Telangana High Court

~ Vivek Ugale, Senior Officer- Legal

Summary of the Finding of the Court: The Hon'ble High Court of Telangana in the case of Garikapati Venkateswara Rao v/s. Union of India & Ors. has dismissed a writ petition filed by a personal guarantor to lift the travel ban issued based on LOC.

Facts of the case: The writ petition was filed by the Garikapati Venkateswara (Hereinafter referred to as the 'Petitioner') for the issue of writ of Mandamus declaring the action of respondents imposing travel ban on the Petitioner as illegal, arbitrary and in violation of Article 21 of the Constitution of India. The counsel for the Petitioner submitted that the Petitioner was the Director cum chairman of GVR Infra Projects Ltd. The company had availed a loan from Vijaya Bank which is now merged with the Bank of Baroda (Hereinafter referred to as the Respondent no.7).

Proceedings were initiated against the company i.e., against the GVR Infra Projects Ltd **("the Company"**). Under the provisions of the IBC (Insolvency and Bankruptcy Code). A resolution plan was approved by NCLT (National Company Law Tribunal), Chennai vide order dated 20.07.2020. Under the said resolution plan, resolution applicant UV Asset Reconstruction Company Limited and WL Structures Pvt Ltd. consortium (In association) had taken over the management of the company.

The Petitioner submitted that he booked a ticket to travel to Maldives on 7th October 2021 with 5 others with a return ticket after 3 days. The Petitioner was holding the valid passport. When he went to airport for boarding flight, he was stopped by immigration authorities. The other 5 were allowed to travel. He could not travel since there was a ban of foreign travel imposed on him.

The Petitioner further submitted that no prior notice was issued to him by any authority informing him about the said. The Petitioner contended that he was not connected with the Company anymore. The Petitioner further contended that merely because the Petitioner stood as personal guarantee to the Company, which loans in fact were covered under the resolution plan approved by the NCLT, a travel ban could not be imposed on the Petitioner without any material to show that he would abscond from the jurisdiction of the court.

The respondents contended that the request for LOC was made to safeguard the public money and the same was not violative of Petitioner's fundamental rights.

The respondent bank relied upon the judgment of the High Court of Delhi in ICICI Bank Ltd. v/s. Kapil Puri (2017). In the said case the deed of guarantee, the term of contract stipulated that without the permission of ICICI Bank, the respondents should not leave India for employment or business or for long stay at abroad and the DRT (Debt Recovery Tribunal) without taking into consideration, the said terms, had given a blanket order directing the respondents that whenever they would go out of India, they should inform the Tribunal and seek its permission.

Finding of the court: The court observed that a huge amount of Rs. 226.02 Crores was outstanding to a public sector bank and the Petitioner had given a personal guarantee to the said outstanding amount.

The court further observed that as the respondent bank-initiated recovery proceedings against the Petitioner and if LOC is lifted and the Petitioner disappears, the recovery proceedings would be brought to standstill and recovery of crores of public money would become impossible And the Court dismissed the writ petition.

C. SELL OF MINOR'S PROPERTY BY PARENTS/LEGAL GUARDIAN

~ Yogesh Babar, Deputy Manager- Legal

A minor is any person who has not completed the age of 18 years.

The Supreme Court of India has held that the sale of a minor's property cannot be done without the prior permission of the court. So, in order to sale, gift, exchange or to mortgage or charge any minor's property, the parents or the legal guardian of the minor must obtain a permission from the court prior to such sell, gift or mortgage of the property.

According to Sec. 8 of THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956;-

Sub-section (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection, or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

Sub-section (2) The natural guardian shall not, without the previous permission of the court,— (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

Under sub-section (3), disposal of such an immovable property by a natural guardian, in contravention of subsection (1) or subsection (2) above, is voidable at the instance of the minor or any person claiming under him. So, such sell or mortgage of the minor's property, is voidable and the minor or any person representing the minor can challenge it.

So, when the property stands in the name of a minor and any parent or guardian is applying for loan on security of such property, so before sanctioning any such loan we must ensure, that the parent or the guardian has obtained permission from the local court for taking loan on the minor's property.

If any lender sanctions loan to the parents on security of their minor's property, wherein no permission is taken from the court for creation of mortgage, if challenged, the lender might lose out their interest over the security of such property. Therefore, proper scrutinization of documents along with fulfilment of requisite permissions is must before sanctioning such loan.

THANK YOU!