

May, 2024
**Private Circulation Only*

MDP Legal Updates

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MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE CREDIT FACILITIES AGGREGATING TO APPROXIMATELY INR 418,00,00,000/- AVAILED FROM A PUBLIC SECTOR BANK

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement, Escrow Agreement, Supplementary Escrow Agreement, Security Trustee Agreement, Substitution Agreement, Counter Guarantee, Deed of Hypothecation, Deed of Pledge, Powers of Attorney, Letter of Lien, Corporate Guarantee, Agreement for Assignment of Loans and Directors' Declaration; (ii) drafted the compliance and ancillary documents; and (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for credit facilities of an aggregate amount of Rs. 418,00,00,000/- (Rupees Four Hundred and Eighteen Crores Only) availed for the purpose of construction of the access-controlled expressway under hybrid annuity model on design, build, operate and transfer basis and submission of the performance security guarantee as required under the terms of the concession agreement, by a leading Indian conglomerate with diversified interests across various sectors including energy, airports, transportation, hospitality and life sciences.

MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITIES AGGREGATING TO INR 194,25,00,000/- AVAILED FROM A PUBLIC SECTOR BANK

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement, Deed of Hypothecation, Power of Attorney for Deed of Hypothecation, Escrow Agreement, Personal Guarantees and Security Trustee Agreement; (ii) drafted the compliance and ancillary documents; and (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for credit facilities of an aggregate amount of INR 194,25,00,000/- (Rupees One Hundred and Ninety Four Crores and Twenty Five Lakh Only) for a group of companies engaged in the construction and leasing business.

MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITIES AGGREGATING TO INR 50,00,00,000/- AVAILABLE FROM A NON-BANKING FINANCIAL COMPANY

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement and the Indenture of Mortgage; (ii) drafted the compliance and ancillary documents; and (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for credit facilities of an aggregate amount of INR 50,00,00,000/- (Rupees Fifty Crores Only) to a private limited company engaged in the real estate business.

MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITIES AGGREGATING TO INR 75,00,00,000/- AVAILABLE FROM A NON-BANKING FINANCIAL COMPANY

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the Composite Facility Agreement cum Indenture of Mortgage ; (ii) drafted the compliance and ancillary documents; and (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for credit facilities of an aggregate amount of INR 75,00,00,000/- (Rupees Seventy Five Crores Only) to a limited liability partnership engaged in the real estate business.

BOMBAY HIGH COURT REITERATES MERELY BECAUSE THE DISPUTE IS AMENABLE TO ARBITRATION DOES NOT IPSO FACTO IMPLY THAT THE DEFENDANT VESSEL CANNOT BE ARRESTED IN AN ACTION IN REM

The Division Bench of the Hon'ble Bombay High Court has recently dismissed a Commercial Appeal vide its Order dated May 7, 2024 upholding the order passed by the Ld. Single Judge in the Admiralty Suit holding that the view taken by the Ld. Single Judge is plausible and is a possible view in facts and circumstances of the case.

The Appeal was filed challenging the judgement dated 27th July 2022 passed by the Ld. Single Judge (N.J. Jamadar, J) in Commercial Admiralty Suit No. 47 of 2022. The Vision Projects Technologies Pvt. Ltd. ("the Plaintiff" in Admiralty Suit) ("Respondent" in the Appeal) instituted the Suit praying for an order / decree against the OSV Crest Mercury 1 ("the Defendant Vessel" in Admiralty Suit)("Appellant" in the Appeal) to pay to the Plaintiff sums of USD 1,873,082.32 and also for the arrest and sale of the Defendant Vessel. The Defendant Vessel was a tug/offshore supply vessel and Continental Radiance ("the Owner") was the registered owner of the Vessel. The Plaintiffs and Continental Radiance executed a Bareboat Charterparty BARECON 2001 on 19th October 2015. And, thereafter due to the Plaintiffs dues remaining unpaid, the maritime claim amounting to USD1,873,082.32 arose. By an Order dated 21st June 2021, the Hon'ble Bombay High Court granted arrest of the Defendant Vessel and it was to set aside this Order that the Defendant Vessel and Continental Radiance filed an Interim Application. The said Interim Application was dismissed by the Ld. Single Judge. Hence the Appeal was filed.

The Counsel appearing for the Appellant submitted that the arrest of a ship as a security for a domestic Arbitration which is already initiated between the parties is legally impermissible. He further submitted that if in personam arbitration proceedings and the in rem admiralty suit were to be continued simultaneously, there might be contrary findings rendered between the Tribunal and the Admiralty Court. The Hon'ble BHC upheld the findings of the Ld. Single Judge and opined that that merely because the disputes could be referred to Arbitration does not ipso facto imply that the Vessel could not be arrested in rem. The Hon'ble High Court observed that an action against the Defendant Vessel is an action in rem and the action against the owners of the Defendant Vessel is an action in personam. It is a well settled position in law that an action in rem is converted into an action in personam only when : (a) the Defendant enters an appearance; (b) submits to the jurisdiction of the Court; and (c) furnishes security for release of the Vessel. Until these three conditions are

fulfilled, the question of an action in rem being converted into an action in personam, does not arise. The Court also clarified that an action in rem is not an action that can be referred to Arbitration.

The Hon'ble BHC opined that during the order of arrest, the only test that the Plaintiff shall satisfy is that the Plaintiff shall have a maritime claim which thereto has to be the matter of the Admiralty proceedings. The arrest of a ship in an Admiralty claim in rem is "sequestration" and not "execution". The term "sequestration" simply means detention of property by a Court of Justice for the purpose of answering a demand which is made. The Hon'ble Court further explained that an arrest of a ship cannot be equated with attachment as enumerated under the Code of Civil Procedure.

With view of the aforesaid, the Hon'ble Bombay High Court held that the view and the reasoning of the Ld. Single Judge is a plausible view and does not require the interference of the Division Bench, thereby dismissing the Appeal, being completely devoid any merit.

ARBITRATOR'S POWER UNDER SECTION 32(2)I CAN BE EXERCISED ONLY IF CONTINUATION OF PROCEEDINGS HAS BECOME UNNECESSARY OR IMPOSSIBLE: SUPREME COURT

Case Title: Dani Wooltex Corporation & Ors. Vs Sheil Properties Pvt. Ltd. & Anr.- C.A. 6462/2024.

In interpreting Section 32I, the Apex Court emphasized that mere non-appearance of a party does not automatically render proceedings unnecessary. Instead, abandonment must be unequivocally established, either expressly or impliedly, through compelling evidence. The Supreme Court rejected the notion that a claimant's failure to schedule a hearing constitutes abandonment.

The Supreme Court held that the power to terminate proceedings under Section 32(2)I should only be invoked if the continuation of proceedings becomes genuinely unnecessary or impossible. Mere procedural lapses or nonappearance without reasonable cause do not warrant such termination.

DELHI HIGH COURT GRANTS INTERIM PROTECTION U/S 9 OF ARBITRATION AND CONCILIATION ACT TO SBI CARDS TO AVOID ANY DISRUPTION IN CARD SERVICES.

**Case Title: SBI Cards And Payment Services Private Limited Vs Kony Inc. & Ors.-
O.M.P.(I)(COMM.)-127/2024.**

The High Court noted that disputes between the parties were to be resolved through arbitration with the seat and venue set in New Delhi. The High Court noted that SBI Cards' services involved card services which are provided to a significant number of individuals. The High Court recognized that any disruption to the IT software or developer licenses required for these services could pose substantial risks to the customers and the operational continuity of its services.

The High Court held that SBI Cards established a prima facie case for the grant of an ex-parte ad-interim injunction. As such, the Respondents were restrained from taking any actions that could disrupt credit card services facilitated by the licensed software specified in the agreement. Additionally, the Respondents were prohibited from making any changes that could disrupt the SBI Cards' services or inconvenience users of the platform.

EXECUTING COURT CANNOT REVIEW OR ADD PAYMENT OF INTEREST WHILE ENFORCING FOREIGN AWARD: KERALA HIGH COURT

Case Title: M/S International Nut Alliance LLC v M/S Johns Cashew Co. - EP(ICA) NO. 1 OF 2018.

The Kerala High Court single bench held that Executing Court Cannot Review Or Add Payment Of Interest While Enforcing Foreign Award.

The Court held that the arbitral award does not mention payment of interest and that payment of interest ought to have been decided by the arbitrators and should have been given in the arbitral award itself and it cannot be questioned at the stage of enforcement. The Court further held that Section 31 (7)(b) of Part I of the Arbitration Act giving the right to claim interest would apply to domestic awards and would not apply to foreign awards.

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