



## Delhi High Court decides enforceability of a foreign award in a consolidated arbitration arising from different agreements involving separate parties<sup>1</sup>

### Brief Facts

The Petitioner filed a petition under Section 48 of the Arbitration and Conciliation Act, 1996 (“**Act**”) seeking enforcement of a foreign award passed by the sole arbitrator under the arbitration rules of Combined Edible Nut Trade Association ( “**CENTA Rules**”), now known as The Nut Association (“**TNA**”). Petitioner had entered into three contracts with Respondent No. 1 and one agreement with Respondent No. 2 for sale of NIPS Almonds. Respondents had agreed to abide by the Uniform Almond Contract (UAEC 2007) terms and conditions.

Disputes arose between the parties when three shipments of NIPS were delivered at the port and the Respondents refused to take delivery on account of fall in prices. Petitioner claimed the unpaid dues from the Respondents towards the shipped and accepted quantity of NIPS and losses incurred for the shipments which were not accepted by the Respondents. Petitioner through two separate notices to the Respondents invoked the arbitration clause in the respective contracts and nominated an arbitrator under the CENTA Rules. Respondents denied the existence of the arbitration agreement between the parties. TNA through its letter also stated that each contract should be regarded as the subject of a separate arbitration.

The Petitioner thereafter filed a consolidated Statement of Claim against Respondent Nos. 1 and 2. The Respondents informed TNA that the claim raised numerous contracts in one arbitration claim and that there was no arbitration agreement between the parties. TNA

treated the disputes separately and called upon the Respondents to nominate their arbitrator. The Respondents did not nominate an arbitrator and requested the Petitioner’s nominee arbitrator to decide the issue of jurisdiction as a preliminary issue. The arbitrator passed an award in favour of the Petitioner (“**Award**”), who filed present proceedings before the Delhi High Court.

### Issues

- (i) Whether a foreign award passed in consolidated arbitration proceedings arising from different agreements involving separate parties can be enforced in India?
- (ii) Whether the enforcing court has the power to modify the reasoning of the arbitrator in the context of a foreign award?

### Judgment

**Issue (i):** The Court held that the Award does not reflect any reason given by the arbitrator for excluding the Respondents’ submissions on merits. It was held that once it is found that the arbitrator has ignored the submissions of a party in totality, whatever be the merit of the submissions, such award cannot be enforced, being in violation of the principles of natural justice and contrary to the public policy of India under Section 48(2)(b) read with Explanation 1 (iii) of the Act. If the arbitrator disagreed with the Respondents’ submissions on merits, she was obligated to give reasons for the same.

The Court observed that the Award does not disclose any reasons for consolidating the proceedings and lifting the corporate veil. It was wrong for the arbitrator to fasten joint and several

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liability on the Respondents merely because they sent a common reply to the Petitioner's notices. A joint Statement of Claim and consolidated proceedings were not maintainable since the Respondents were two separate legal entities and entered into separate agreements with the Petitioner. Further, the Petitioner issued separate notices to the Respondents and therefore, should have referred the disputes separately. The Court also observed that TNA had treated both disputes as separate references.

**Issue (ii):** The Court held that Sections 47 to 49 of the Act provide for a scheme by which a foreign award can be enforced in India and the enforcing court cannot modify the award in the process of its enforcement. Having held thus, the Court refused to enforce the Award and dismissed the enforcement petition. The reasons for passing the award cannot be presumed or supplanted by the enforcing court by considering the claims and defenses on merit under Sections 48 and 49 of the Act.

## Analysis

The judgment in **Campos Brothers** deals with situations where courts can refuse to enforce a foreign award. The Court has held that in case an award has not given reasons or not considered the submissions of a party on merits, the same cannot be enforced. The judgment holds that the

enforcing court cannot supplant the reasons of an arbitrator. The Court has therefore followed the guidelines laid down by the Supreme Court in **Shri Lal Mahal v. Progetto Grano Spa**<sup>2</sup> that Section 48 does not allow a re-look at the foreign award at the enforcement stage. The judgment does not deviate from the position that the enforcing court in India is neither a court of appeal nor a court having jurisdiction to correct, modify, clarify or supplant reasons in a foreign award. However, in the present case, the Court came to the conclusion that ignoring the submissions of a party in totality, irrespective of the merit of the submissions, would render the foreign award unenforceable. To that extent, the judgment recognises the discretion of the enforcing court to examine if the foreign award is an unreasoned award, which would render the award violative of the principles of natural justice.

With regard to consolidated arbitrations, the position that emerges from **Campos Brothers** is that a foreign award should clearly record reasons for any consolidation and that the corporate veil can only be lifted in exceptional cases. However, the judgment also recognises an arbitrator's discretion of reasoning – in case the arbitrator demonstrates considered reasoning on consolidation, the enforcing court would not test the validity of the same.

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Quorum: Navin Chawla, J.

2 (2014) 2 SCC 433.

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