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Supreme Court Criminalizes Passive Consumption of Child Pornography

The Supreme Court of India in ***Just Rights for Children Alliance vs. S. Harish, 2024 SCC OnLine SC 2611*** has reaffirmed the commitment to child protection by declaring that merely storing or viewing child pornography is a criminal offense. This judgment is grounded in the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Information Technology (IT) Act, 2000, marking an important legal precedent.

The case arises from the pervasive challenge of digital content, where illegal and harmful materials like child pornography can be easily accessed, stored, and shared through various online platforms. Before this judgment, there was ambiguity in interpreting whether passive consumption—such as downloading or merely watching child pornography—constituted a crime under existing Indian laws.

Child pornography, also referred to as child sexual abuse material (CSAM), is not only a global menace but also a gross violation of children's rights, privacy, and dignity. The POCSO Act, introduced in 2012, was India's primary legislation to protect children from sexual offenses, including sexual harassment, exploitation, and abuse. However, the internet's evolution raised new concerns, where technology facilitated the creation, dissemination, and consumption of illegal content related to minors.

The Supreme Court has clarified that even passive engagement with child pornography—without the intent to distribute or profit from it—can be a criminal offense. This judgment provides a robust legal mechanism to address those who contribute to the child pornography market by consuming such content privately, without sharing or producing it.

Key Aspects of the Judgment

1. **Criminalization of Possession**: The court emphasized that the possession or downloading of child pornography content is a direct violation of the law. While earlier interpretations might have focused on the distribution or sharing of such content as the primary offense, the court has now broadened the scope to include even private consumption.
2. **Active vs. Passive Consumption**: The court clarified that whether an individual actively distributes or merely watches child pornography, both actions contribute to the demand for such content, thereby indirectly perpetuating the exploitation of minors. Consequently, storing or viewing CSAM is now treated as a severe violation.

3. **Proposed Changes to Terminology**: The court also recognized the need to address the societal perception of child pornography and suggested that the term “child sexual abuse material” (CSAM) be used instead. This change would highlight the exploitative and harmful nature of such content, shifting focus away from it being merely ‘pornography’ and aligning with global conventions and terminologies that emphasize the abuse of children in the production of such material.
4. **Enhanced Penalties**: While the laws already prescribe stringent penalties for involvement with child pornography, this judgment could lead to stronger enforcement. The IT Act, 2000 prescribes imprisonment of up to seven years or fine for offenses related to child pornography, but with the new judgment, courts may take an even stricter stance on sentencing.

   The Hon’ble Supreme Court’s decision to criminalize the possession and viewing of child pornography is a landmark step toward eradicating the exploitation of children in digital spaces. It broadens the scope of accountability, acknowledging that passive consumption is part of the problem. The recommendation to adopt the term “child sexual abuse material” further shifts the discourse toward recognizing the human rights violations inherent in such content.

Ajay Kumar Sharda
Director (Administration)

LATEST CASES: CIVIL

"Amortisation is a form of depreciation, however, the distinction between the two being that in the case of depreciation, an asset may be depreciated progressively, and may even be exhausted before the lifetime expectancy of the asset in question, whereas, in the case of amortisation, the value of the asset gets progressively depleted, matching with the expected time-frame of the right."

-B.V. Nagarathna, J. in CIT v. Bharti Hexacom Ltd., (2024) 7 SCC 621, para 29

Bhagwan Singh Vs. State of Uttar Pradesh &Ors.: 2024 INSC 708-HELD- The Hon'ble SC discussed about the role and the duty of the Advocates, Witness Protection Programme, initiation of false proceedings in the name of person who has no knowledge and consent and a person is sought to be falsely implicated and thereby committing a fraud on the Courts. The court observed:

1. While the finest of the legal minds and legal eagles on the Bench and in the Bar of the Supreme Court are busy developing the best of the jurisprudence and laying down the best of the laws for the country, there are certain sinister cabal of unscrupulous litigants and a coterie of their counsellors, who are always busy in taking undue advantage of the systemic lacunae and in misusing the process of law, in turn damaging the image of the Courts as also of the entire legal fraternity/legal profession.
2. The huge quantum of work load in the Courts, limitations of the human agencies in manning the Justice Delivery System and the fertile minds of the unscrupulous litigants and their legal counsellors are some of the factors responsible for not allowing the Justice Delivery System to work as effectively and efficiently as it is expected to work.
3. The wrongdoers must fear the law that they will be punished, the innocents must rest assured that they will not be, and the victims must be confident that they will get the justice. This is what a citizen of the democratic country like India, governed by Rule of Law would legitimately expect from the Courts. The Courts are called the 'Temple of Justice'. However, often brazen attempts are being made to abuse and misuse the process of law by committing frauds on Courts. This is one of such cases where such an attempt has been made to pollute the stream of justice. With this little Preface let us deal with the facts of the case.
4. People repose immense faith in Judiciary, and the Bar being an integral part of the Justice delivery system, has been assigned a very crucial role for preserving the independence of justice and the very democratic set up of the country. The legal profession is perceived to be essentially a service oriented, noble profession and the lawyers are perceived to be very responsible officers of the court and an important adjunct of the administration of justice. In the process of overall depletion and erosion of ethical values and degradation of the

professional ethics, the instances of professional misconduct are also on rise.

5. There is a great sanctity attached to the proceedings conducted in the court. Every Advocate putting his signatures on the Vakalatnamas and on the documents to be filed in the Courts, and every Advocate appearing for a party in the courts, particularly in the Supreme Court, the highest court of the country is presumed to have filed the proceedings and put his/her appearance with all sense of responsibility and seriousness. No professional much less legal professional, is immuned from being prosecuted for his/her criminal misdeeds.

Ishwar since (D) through LRS.&Ors.Vs. Bhim Singh &Anr. 2024 INSC 651-HELD- that

a) by virtue of Section 37 of the CPC, the Execution Court being the Court of first instance with reference to the suit in which the decree was passed had jurisdiction to deal with the application under Section 28 of the 1963 Act. The Execution Court has jurisdiction to deal with the application for extension of time / rescission of the contract under Section 28 (1) of the 1963 Act;

b) An application seeking rescission of contract, or extension of time, under Section 28 (1) of the 1963 Act, must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of.

Choudappa & Anr.Vs. Choudappa since (D) by LRS.&Ors.: 2024 INSC 691-HELD- The Hon'ble SC discussed the scope of Order XX Rule 12 C.P.C., though the challenge was against the rejection of the application filed under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

Kattukandi Edathil Krishnan and Anr.Vs. Kattukandi Edathil Valsan and Ors. : 2022 (16) SCC 71-HELD-the Court while dealing with the matter regarding a preliminary decree and the final decree in connection with the decree passed in a suit for partition opined that fundamentally there is a distinction between a preliminary and a final decree and that proceedings for final decree can be initiated at any point of time as there is no limitation for initiation of such proceedings.Either of the parties to the suit can move an application for preparation of the final decree or the Court may take action in this regard suo moto. In fact, after the passing of the preliminary decree, the Trial Court is obliged to proceed for the preparation of the final decree and should not adjourn the matter sine die. There is no need to file any separate application for the preparation of the final decree.The aforesaid analogy with regard to the preparation of the final decree pursuant to the preliminary decree for partition can very well be applied to the cases where a decree is passed with a direction to hold an inquiry with regard to determination of mesne profits.

M/s. North Eastern Chemicals Industries (P) Ltd. & Anr.Vs. M/s. Ashok Paper Mill (Assam) Ltd. & Anr.-2023 INSC 1059-HELD- the Court has clearly stated that in a situation where no limitation stands provided either by specific applicability of the Limitation Act or by the special statute governing the dispute, the Trial Court must undertake a

holistic assessment of the facts and circumstances of the case to examine the possibility of delay. When no limitation stands prescribed, it would be inappropriate for a Court to supplement the legislature's wisdom by its own and provide a limitation. In view of the aforesaid decision also, no limitation as an absolute rule could be provided in such matters and it depends upon the facts and circumstances of each case whether the proceedings have been initiated in a fairly reasonable time.

M/s. Sitaram Enterprises Vs. Prithviraj Vardichand Jain: 2024 INSC 685-HELD- The Hon'ble SC, while deciding contempt petitions, discussed about the concept of Contempt, its consequences and lenient approach of the Court, unless it is deliberate. It was observed that the Contempt of court is a serious legal infraction that strikes at the very soul of justice and the sanctity of legal proceedings. It goes beyond from mere defiance of a Court's authority, but it also denotes a profound challenge to the principles that underpin the rule of law. At its core, it is a profound disavowal of the respect and adherence to the judicial process, posing a concerning threat to integrity of judicial system. When a party engages in contempt, it does more than simply refusing to comply with a Court's order. By failing to adhere to judicial directives, a contemnor not only disrespects the specific order, but also directly questions the Court's ability to uphold the rule of law. It erodes the public confidence in the judicial system and it's ability to deliver justice impartially and effectively. Therefore, power to punish for Contempt of Court's order is vital to safeguard the authority and efficiency of the judicial system. By addressing and penalizing contemptuous conduct, the legal system reinforces its own legitimacy and ensures that judicial orders and proceedings are taken seriously. This deterrent effect helps to maintain the rule of law and reinforces public's faith in the judicial process, ensuring that Courts can function effectively without undue interference or disrespect.

Rohan Builders (India) Pvt. Ltd. Vs. Berger Paints India Ltd.: SLP (Civil) No. 23320 of 2023- Whether an application for extension of time under Section 29A of the Arbitration and Conciliation Act, 1996 can be filed after the expiry of the period for making of the arbitral award.-**HELD-**The Hon'ble SC accepted the view taken by the High Courts of Delhi, Jammu and Kashmir and Ladakh, Bombay, Kerala, Madras, and the subsequent view expressed by the High Court and held that an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be.

The Hon'ble SC referred to Oswal Agro Mills Ltd. and Others v. Collector of Central Excise and Others, 1993 Supp (3) SCC 716 and observed that the language serves as a means to express thoughts and intentions. Words can have various meanings and connotations; thus, an interpretive exercise must be conducted with careful consideration of both the text and the context of the provision. Therefore, sometimes the court eschews a literal construction if it produces manifest absurdity or unjust results as observed in Babu Manmohan Das Shah and Others v. Bishun Das, (1967) 1 SCR 836. While interpreting a statute, the court

must strive to give meaningful life to an enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios. An interpretation which produces an unreasonable result is not to be imputed to a statute if there is some other equally possible construction which is acceptable, practical and pragmatic.

Rashmi Kant Vijay Chandra & Ors. Vs. Baijnath Choubey & Company : SLP (C) No. 24805 of 2023 –HELD-The Hon'ble Supreme Court affirmed the judgment of the City Civil Court and set aside order of the Hon'ble High Court and held that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law. The Hon'ble Supreme Court while considering the scope of Section 100 of the CPC, referred to Kshitish Chandra Purkait v. Santosh Kumar Purkait [(1997) 5 SCC 438], Sheel Chand v. Prakash Chand [(1998) 6 SCC 683],DnyanobaBhauraoShemade v. Maroti Bhaurao Marnor [(1999) 2 SCC 471], Narayanan Rajendran v. LekshmySarojini (2009) 5 SCC 264, Hardeep Kaur v. Malkiat Kaur (2012) 4 SCC 344, Kirpa Ram v. Surendra Deo Gaur [(2021) 13 SCC 57] and Suresh Lataruji Ramteke v. Sau. Suman bhai Pandurang Petkar [2023 SCC Online SC 1210].

Dr. Mandeep Mittal
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LATEST CASES: CRIMINAL

"Merely because either of the parties have disputed a factum of paternity, it does not mean that the court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. Only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the court can direct such test."

-BV Nagarathna, J. in Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, (2024) 7 SCC 773, para 43.4

Ramesh v. State of Karnataka : 2024 INSC 701 **–HELD-** The principles pertaining to appeal against acquittal are reiterated and in this case the judgment of acquittal was reversed by high court but the acquittal was again maintained by Apex Court and held that high court has failed to appreciate the following principles of law.

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

Arvind Kejriwal v. Central Bureau of Investigation: 2024 INSC 687 **–HELD-** While dealing with the issuance of arrest warrants against the accused and prayer was rejected by high court. The Apex

Court while deciding issue of arrest and regular bail held as under.

While arresting a person already in Judicial custody the Trial Court's approval of the CBI's application to interrogate the Person satisfies the essential requirements of Section 41A.The reasons are required to be recorded only where `any police officer may arrest without an order from a Magistrate or without a warrant and reasons not to be recorded where warrant is issued by the Court.

The filing of charge sheet is a change in the circumstances and superior court can relegate the accused to Trial Court for bail. Further there is no straitjacket formula which enumerates that every case concerning the consideration of bail should depend upon the filing of a charge sheet. The court has to form a prima facie opinion from the record of investigation with regard to.

(i) the gravity of offence;

(ii) the degree of involvement of the applicant;

(iii) the background and vulnerability of the witnesses;

(iv) the approximate timeline for conclusion of the trial based on the number of witnesses; and

(v) the societal impact of granting or denying bail.

Just rights for children alliance vs. S. Harish : 2024 SCC OnLine SC 2611-

HELD-The Supreme Court held that watching child pornography over the internet without downloading would also amount to "possession" of such material in terms of Section 15 of the Protection of Children from Sexual Offences Act (POCSO).

It is further observed that Section 15 deals with the offence of storage or possession of child pornographic material with an intention to transmit the same and the intention to transmit can be gauged from the failure of a person to delete and report the material. It is further concluded that:

"Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual r physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession." The apex court explained the concept of possession and constructive possession by giving examples as:

"For instance, say, 'A' is sent an unknown link by 'B', which upon clicking opened a child pornographic video on the phone of 'A'. Now if 'A' immediately closes the link, although once the link is closed 'A' is no longer in constructive possession of the child pornography, this by itself does not mean that 'A' has destroyed or deleted the said material by merely closing the link. 'A' will only be absolved of any liability if he after closing the link further reports the same to the specified authorities. Thus, when it comes to constructive possession of an accused, it is the failure or omission to report that constitutes the requisite actus-reus for the purposes of Section 15 sub- section (1) of POCSO."

However, if 'A' was sent an unknown link by 'B', which upon clicking opened a child pornographic video on the phone of 'A', he cannot be held to be in control of the material. Because, he was unaware as to what would open from the said link; thus 'A' cannot be said to be in possession. However, if 'A' rather than closing the link

in a reasonable time, continues to view such material he would be deemed to be in possession of such material. This is because, after a reasonable window of time, he would be said to have sufficient information about such material to have knowledge for the effective exercise of his control over such material.

It is also recommended that:

"The Parliament should seriously consider to bring about an amendment to the POCSO for the purpose of substituting the term "child pornography" with "child sexual exploitative and abuse material" (CSEAM) with a view to reflect more accurately on the reality of such offences. The Union of India, in the meantime may consider to bring about the suggested amendment to the POCSO by way of an ordinance."

Arockiasamy v. The State of Tamil Nadu &Anr.: Arising out of SLP (Crl.) No.5805/2023-HELD-While deciding a case involving allegations of forgery, the Supreme Court recently reiterated that there is no embargo under Section 195(1)(b)(ii) of CrPC to examine an allegation of forgery of documents filed in Court, when such forgery is committed before its production.

The respondents had fraudulently obtained stamp paper and prepared an unregistered sale agreement. Thereafter, a suit was filed by them seeking certain reliefs and, in the suit, the forged document was filed.Consequently, criminal proceedings were initiated against the respondents alleging inter-alia forgery of documents filed in Court. The High Court quashed these proceedings, holding that there could be no FIR/private complaint for forgery of a document filed before Civil Court until the finality of the litigation.The Apex Court after relying on Iqbal Singh, the bench of Justices Hrishikesh Roy and R Mahadevan concluded that the bar under Section 195(1)(b)(ii) of CrPC was not attracted. Accordingly, the appeals were allowed and the order of the High Court set aside.

Devendra Kumar Pal v. State of UP and Anr.: 2024 LiveLaw (SC) 687

The court of Additional Sessions Judge convicted some of the accused under Section 302 of the IPC and acquitted others on March 21, 2012. The Trial Court passed the conviction orders for the accused found guilty and acquitted the remaining accused. After recording the sentence for the convicted accused on the same day, the Trial Court invoked Section 319 of the CrPC, summoning the appellant in the case in hand to stand trial for the offence.In light of the Sukhpal Singh Khaira's decision, the Apex Court held that since the summoning order was passed after the imposition of the sentence, it was not sustainable.

Raghuveer Sharan V. District Sahakari Krishi Gramin Vikas Bank & Anr. : 2024 INSC 681 -HELD-The Supreme Court has recently observed that a witness who gives an incriminating statement cannot take a shield under proviso of Section 132 of the Evidence Act ("IEA") to claim immunity from prosecution if there exists other substantial evidence or material against him proving his prima facie involvement in the crime.During trial, a prosecution witness made a statement that it was the appellant in the case in hand who made the interpolation in the Fixed Deposit document. After this statement, the bank submitted application under Section 319 Cr.P.C. for arraying the appellant as additional accused. The Court further added that "the only protection available is, a witness cannot

be subjected to prosecution on the basis of his own statement. It nowhere provides that there is complete and unfettered immunity to a person even if there is other substantial evidence or material against him proving his prima facie involvement. If this complete immunity is read under the proviso to Section 132 of the Act, an influential person with the help of a dishonest Investigating Officer will provide a legal shield to him by examining him as a witness even though his complicity in the offence is writ large on the basis of the material available in the case.While considering the facts, the Court found that since the appellant was served summons under Section 319 of CrPC not only on the basis of his pre-summoning statement but on the basis of the statement of another Prosecution Witness. Thus there exists a prima facie material for the exercise of power under Section 319 Cr.P.C.

Dhanraj Aswani V. Amar S. Mulchandani And Anr. : 2024 INSC 669-

HELD-It is observed by Apex Court that no restriction can be applied under Section 438 of the CrPC to preclude an accused from applying for anticipatory bail in relation to an offence while he is custody in a different offence, as that would be against the purport of the provision and the intent of the legislature. The only restriction on the power of the Court to grant anticipatory bail under S.438 CrPC is one prescribed under sub-section (4) of Section 438 CrPC and in other statutes like SC/ST Prevention of Atrocities Act etc.It is also added that a person already in custody in a particular offence apprehends arrest in a different offence, then the subsequent offence is a separate offence for all practical purposes. Then it would necessarily imply that all rights conferred by the statute on the accused as well as the investigating agency in relation to the subsequent offence are independently protected.

NityaNand v. State of U.P. &Anr.,: 2024 LiveLaw (SC) 659

The Apex Court affirmed the findings convicting and sentencing the appellant for murder along with rioting armed with deadly weapon. It is observed , as held by this Court in Yunis alias Kariya Vs. State of M.P., no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as a part of the unlawful assembly is sufficient for conviction."The Court further observed that Section 149 creates a constructive or vicarious liability for members of unlawful assembly pursuant to the common object. It does not create a separate offence as held in VinubhaiRanchhodbhai Patel v..RajivbhaiDudabhai Patel (2008). It said: "By application of this principle, every member of an unlawful assembly is roped in to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC."

Dr. Gopal Arora
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LATEST CASES: ARBITRATION

"Whenever a child is subjected to sexual assault, the State or the Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child psychologist. It will help the victim children to come out of the trauma, which will enable them to lead a better life in future. The State needs to ensure that the children who are the victims of the offence continue with their education. The social environment around the victim child may not always be conducive to the victim's rehabilitation. Only the monetary compensation is not enough. Only the payment of compensation will not amount to rehabilitation in a true sense. Perhaps the rehabilitation of the girl victims in life should be part of the "Beti Bachao Beti Padhao" campaign of the Central Government. As a welfare State, it will be the duty of the Government to do so. We are directing that the copies of this judgment should be sent to the Secretaries of the departments concerned of the State."

— Abhay S. Oka, J. in State of Rajasthan v. G, (2023) 10 SCC 516, para 18

Ajay Madhusudan Patel v Jyotrindra S. Patel : 2024 SCC OnLine SC 2597-

Non-Signatories may be bound by Arbitration Agreements -HELD- Noting that the definition of "parties" under Section 2(1)(h) read with Section 7 of the Act, 1996 includes both the signatory as well as non-signatory parties, the Court held that persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may also intend to be bound by the terms of the agreement. Further, the requirement of a written agreement under Section 7 of the Act, 1996 does not exclude the possibility of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties. Therefore, the issue as to who is a "party" to an arbitration agreement is primarily an issue of consent. Actions or conduct could be an indicator of the consent of a party to be bound by the arbitration agreement.

The Court stated that the fact that a non-signatory did not put pen to paper may be an indicator of its intention to not assume any rights, responsibilities or obligations under the arbitration agreement. However, the courts and tribunals should not adopt a conservative approach to exclude all persons or entities who intended to be bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties. The Court explained that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such an agreement. "When the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement. However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental."

The Court reiterated that under its limited jurisdiction under Section 11(6)

of the Act, 1996 it should not conduct a mini trial and delve into contested or disputed questions of fact and that these aspects should be looked into more closely by the Arbitral Tribunal.

DLF Ltd v. Koncar Generators & Motors Ltd :2024 SCC OnLine SC 1907-

enforcement of Arbitral Award expressed in foreign currency- **HELD-** While considering the appeal revolving around the issue of enforcement of an arbitral award expressed in foreign currency, the Division Bench had to consider the following related questions- The correct and appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian rupees; The date of such conversion, when the award debtor deposits some amount before the Court during the pendency of proceedings challenging the award. To resolve the afore-stated questions, and considering the uncertainties regarding time-lapse between the date of the award and its enforceability and the ever-fluctuating exchange rates, the Court formulated twin principles- Following the principle in Forasol v. O.N.G.C., 1984 Supp SCC 263, the date when the arbitral award becomes enforceable shall be the date for conversion. Under the Arbitration and Conciliation Act, 1996, this date is when the objections against the award are dismissed, and the award attains finality. In the event that the award amount or part of it is deposited in Court pending objections, enabling withdrawal by the decree holder, the date of such deposit, shall be the relevant date for conversion as per the principle in Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644.

- The statutory scheme of the Act makes a foreign arbitral award enforceable when the objections against it are finally decided. Therefore, as per A&C Act and the principle in Forasol (supra), the relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the award becomes enforceable.
- When the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit.
- After the conversion of the deposited amount, the same must be adjusted against the remaining amount of principal and interest pending under the arbitral award. This remaining amount must be converted on the date when the arbitral award becomes enforceable, i.e., when the objections against it are finally decided.

Decision: The Court thus held that deposit of Rs. 7.5 crores stands converted as on the date of deposit (22-10-2010), when the rate of exchange as submitted by DLF was 1 euro = Rs. 59.17. It was further held that the second deposit of Rs. 50 lakhs pursuant to the High Court order dated 03-06-2011 stood on a different footing from the first

deposit. This order did not permit the respondent to withdraw this amount till the completion of the proceedings. Hence, the amount cannot be converted as on the date of deposit as Koncar could not have benefitted from the same. Exchange rate on 22-10-2010 would apply to that extent and non-withdrawal by Koncar of Rs. 7.5 crores was in its own discretion and inaction. Since the revision proceedings were complete on 01-07-2014, hence, it would be appropriate to apply the exchange rate as on this date to convert the deposit of Rs. 50 lakhs. The Court thus partly allowed the appeal, and set aside the findings of the High Court in the impugned judgment to the extent that Forasol (supra) does not apply under A&C Act and that the exchange rate on 01-07-2014 must be used for converting the entire arbitral award and interest.

Mahima Tuli
Research Fellow

NOTIFICATION

1. **MoF notifies new rules for compounding under FEMA:** On 12-9-2024, the Ministry of Finance notified the Foreign Exchange (Compounding Proceedings) Rules, 2024. The provisions came into effect on 12-9-2024.

Key Points:

1. The following can form the Compounding Authority under these rules:
    - Director of Enforcement;
    - an officer of the Directorate of Enforcement not below the rank of Deputy Director or Deputy Legal Adviser;
    - an officer of the Reserve Bank not below the rank of the Assistant General Manager.
2. Compounding authorities of Reserve Bank to compound various contraventions: where the sum involved:
    - Does not exceed Rupees 60 lakh– officer not below the rank of Assistant General Manager.
    - Does not exceed Rupees 2 and a half crore– officer not below the rank of Deputy General Manager.
    - Does not exceed Rupees 5 crore- officer not below the rank of General Manager.
    - Above Rupees 5 crore- officer not below the rank of Chief General Manager.
3. Compounding authorities of Directorate of Enforcement to compound various contraventions: where the sum involved:
    - Is Rupees 5 lakh or below– Deputy Director; Is more than Rupees 5 lakh but less than Rupees 10 lakh– Additional Director;
    - Is Rupees 10 lakh or more but less than Rupees 1 crore– Special Director;
    - Is Rupees 50 lakh or more but less than Rupees 1 crore- Special Director along with Deputy Legal Adviser;
    - Is Rupees 1 crore or more– Director of Enforcement along with Special Director.
4. In case any contravention is compounded before the adjudication of such contravention, no inquiry will be initiated or continued.

5. When the compounding of any contravention is made after making a complaint, the compounding authority will, in writing, give notice to the Adjudicating Authority, and the person in relation to whom contravention is compounded will be discharged.
6. Exceptions to compounding:
    - where the amount involved is not quantifiable;
    - where the Directorate of Enforcement is of the view that the proceeding relates to a serious contravention suspected of money-laundering, terror financing or affecting the sovereignty and integrity of the nation;
    - where the Adjudicating Authority has already passed an order imposing penalty;
    - Where the compounding authority believes the contravention involved requires further investigation by the Directorate of Enforcement to ascertain the amount of contravention.
7. Payment of the amount compounded will be done electronically or through online mode payment within 15 days from the date of compounding order of such contravention.
8. Every Compounding Order should contain the provisions of the Act/ Rules/ Regulations/ Directions/ Requisitions/ Orders under which contravention has taken place.
9. Any compounding application pending, on 12-9-2024, will be governed by the provisions of Foreign Exchange (Compounding Proceedings) Rules, 2000.[1]

[1] https://www.taxmann.com/post/blog/govt-notifies-new-rules-for-compounding-under-fema-specifies-list-of-non-compoundable-offences-expands-pecuniary-limits

EVENTS OF THE MONTH

- One Month Orientation Training Programme for 50 ADJs (on promotion) from the states of Punjab (21 Officers) and Haryana (29 Officers) culminated on 19th September, 2024.
- Four Month Training Programme for 4 ADJ's (Direct Recruitment) from the states of Punjab (2 Officers) and Haryana (2 Officers) commenced on 9th September, 2024.
- An Offline Refresher Programme **ECT_6_24: Training Programme on Digitization at High Court Level** for High Court digitization Officials/Staff was organized by Chandigarh Judicial Academy on 14th September, 2024 by Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA.
- An Online Refresher Programme **ECT_9_24: Refresher Programme for Court Staff** for Court Staff was organized by Chandigarh Judicial Academy on 28th September, 2024 by Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA.
- An Online Refresher Programme **ECT_14_24: Cyber Laws and appreciation and Handling of Digital evidence** for Judicial Officers of the states of Punjab and Haryana was organized by Chandigarh Judicial Academy on 28th September, 2024 by Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA.